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Tuesday
April 30, 1996

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

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

WASHINGTON, DC

[Two Sessions]

WHEN: May 14, 1996 at 9:00 am
May 21, 1996 at 9:00 am

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

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 131CE, Special Condition 23–ACE–86]

Special Conditions; Cessna Model 425 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 425 airplanes modified by Modern Avionics, Inc., Eden Prairie, Minnesota. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is on publication in the Federal Register. Comments must be received on or before May 30, 1996.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 131CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 131CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: ''Comments to Docket No. 131CE.'' The postcard will be date stamped and returned to the commenter.

Background

On March 8, 1996, Modern Avionics, Inc., 10000 Flying Cloud Drive, Eden Prairie, Minnesota 55347, made an application to the FAA for a supplemental type certificate (STC) for the Cessna Model 425 airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Cessna Model 425 Airplanes is given in Type Certification Data Sheet No. A7CE plus the following:

§ 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designed according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, effective October 25, 1989, after public notice, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2).

Modern Avionics, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was

not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310

FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Cessna Model 425 Airplanes, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Models 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the Federal Register. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Cessna Model 425 Airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on April 15, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10673 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28549; Amdt. No. 1725]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent.With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affecting airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 19, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 (CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC Number	SIAP
04/03/96	OK	Pauls Valley	Pauls Valley Muni	FDC 6/2009	GPS Rwy 35 Orig...
04/04/96	LA	Alexandria	Alexandria Intl	FDC 6/2028	VOR or GPS Rwy 32, Orig...
04/04/96	OK	Pauls Valley	Pauls Valley Muni	FDC 6/2026	NDB Rwy 35, Amdt 3...
04/04/96	TN	Tullahoma	Tullahoma Regional/WM Northern Field.	FDC 6/2043	VOR/DME or GPS–B, Amdt 3A...
04/04/96	TN	Tullahoma	Tullahoma Regional/WM Northern Field.	FDC 6/2045	SDF Rwy 18, Amdt 3...
04/05/96	AR	Texarkana	Texarkana Regional–Webb Field	FDC 6/2075	VOR or GPS Rwy 13, Amdt 14...
04/05/96	AR	Texarkana	Texarkana Regional–Webb Field	FDC 6/2078	ILS Rwy 22, Amdt 14...
04/05/96	AR	Texarkana	Texarkana Regional–Webb Field	FDC 6/2082	NDB or GPS Rwy 22, Amdt 11...
04/05/96	AR	Texarkana	Texarkana Regional–Webb Field	FDC 6/2084	LOC BC Rwy 4, Amdt 11...
04/08/96	KS	Wichita	Wichita Mid-Continent Airport	FDC 6/2116	ILS Rwy 1R, Amdt 16...
04/09/96	VA	Petersburg	Petersburg Muni	FDC 6/2128	LOC Rwy 5 Orig...
04/09/96	VA	Petersburg	Petersburg Muni	FDC 6/2130	NDB or GPS Rwy 5 Amdt 4...
04/09/96	VA	Petersburg	Petersburg Muni	FDC 6/2132	VOR or GPS Rwy 23 Amdt 3...
04/15/96	NE	Alliance	Alliance Muni	FDC 6/2236	VOR or GPS Rwy 12, Amdt 2...
04/15/96	TX	College Station	Easterwood Field	FDC 6/2223	DEP PROC/TKOF MNMS, Orig...
04/15/96	TX	College Station	Easterwood Field	FDC 6/2224	ILS Rwy 34, Amdt 10...
04/15/96	TX	College Station	Easterwood Field	FDC 6/2225	LOC BC Rwy 16, Amdt 4...
04/15/96	TX	College Station	Easterwood Field	FDC 6/2226	NDB or GPS Rwy 34, Amdt 11...
04/15/96	TX	College Station	Easterwood Field	FDC 6/2227	VOR/DME or GPS Rwy 28, Amdt 12...
04/15/96	TX	College Station	Easterwood Field	FDC 6/2228	VOR or TACAN or GPS Rwy 10, Amdt 18...

[FR Doc. 96–10676 Filed 4–29–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28548; Amdt. No. 1724]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as AA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 19, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 23, 1996*

Manchester, NH, Manchester, LOC RWY 17, Orig
Liberty, TX Liberty Muni, GPS RWY 16, Orig

** * * Effective June 20, 1996*

Selma, AL, Craig Field, VOR RWY 15, Orig
Selma, AL, Craig Field, VOR RWY 33, Orig
Selma, AL, Craig Field, VOR RWY 32, Amdt 3, CANCELLED
Koyuk, AK, Koyuk, NDB/DME RWY 36, Orig
St Paul Island, AK, St Paul Island, NDB/DME or GPS RWY 18, Amdt 2
St Paul Island, AK, St Paul Island, NDB–A, Orig
St Paul Island, AK, St Paul Island, NDB–3 or GPS RWY 36, Amdt 1, CANCELLED
Tucson, AZ, Tucson Intl, ILS RWY 11L, Amdt 12
Lompoc, CA, Lompoc, NDB or GPS–B, Orig, CANCELLED
Rio Vista, CA, Rio Vista Muni, GPS RWY 25, Orig
Santa Monica, CA, Santa Monica Muni, LDA/DME RWY 21, Amdt 1, CANCELLED
Bridgeport, CT, Igor I. Sikorsky Memorial, GSP RWY 29, Amdt 1
Jekyll Island, GA, Jekyll Island, GPS RWY 36, Orig
Great Barrington, MA, Great Barrington, NDB or GPS–A, Amdt 5
Great Barrington, MA, Great Barrington, GPS RWY 11, Orig
Aitkin, MN, Aitkin Muni, NDB or GPS RWY 16, Amdt 4
Brainerd, MN, Brainerd-Crow Wing Co Regional, VOR/DME RWY 12, Amdt 9
Brainerd, MN, Brainerd-Crow Wing Co Regional, VOR or GPA RWY 30, Amdt 13
Brainerd, MN, Brainerd-Crow Wing Co Regional, NDB or GPS RWY 23, Amdt 5
Brainerd, MN, Brainerd-Crow Wing Co Regional, ILS RWY 23, Amdt 5
Little Falls, MN, Little Falls-Morrison County, NDB or GPS RWY 30, Amdt 5
Mora, MN, Mora Muni, NDB or GPS RWY 35, Amdt 3
Corinth, MS, Roscoe Turner, GPS RWY 17, Orig
Reno, NV, Reno/Tahoe Intl, LOC–2 RWY 16R, Amdt 6
Southport, NC, Brunswick County, NDB or GPS–A, AMDT 3B, CANCELLED
Fargo, ND, Hector International, RADAR–1, Amdt 10
Gage, OK, Gage, VOR or GPS–A, Amdt 9A, CANCELLED
Miami, OK, Miami Muni, NDB or GPS RWY 17, Amdt 1, CANCELLED
Abilene, TX, Abilene Regional, RADAR–1, Amdt 8
Angleton/Lake Jackson, TX, Brazoria County, GPS RWY 35, Orig

Ballinger, TX, Bruce Field, GPS RWY 35, Orig
Conroe, TX, Montgomery County, GPS RWY 32, Orig
Fort Stockton, TX, Fort Stockton-Pecos County, GPS RWY 30, Orig
Hereford, TX, Hereford Muni, GPS RWY 21, Orig
Houston, TX, Houston Gulf, GPS RWY 31, Orig
Livingston, TX, Livingston Muni, GPS RWY 30, Orig
Monahans, TX, Roy Hurd Memorial, GPS RWY 12, Orig
Monahans, TX, Roy Hurd Memorial, GPS RWY 30, Orig
Ozona, TX, Ozona Muni, GPS RWY 16, Orig
Palestime, TX, Palestine Muni, GPS RWY 35, Orig
Hayward, WI, Hayward Muni, VOR RWY 20, Amdt 6
Hayward, WI, Hayward Muni, VOR/DME or GPS RWY 2, Amdt 1
Hayward, WI, Hayward Muni, NDB or GPS RWY 20, Amdt 12

The FAA published an amendment in Docket No. 28475, Amdt. No. 1712 to Part 97 of the Federal Aviation Regulations, Vol 61, FR No. Page 7698, dated February 29, 1996, Section 97.23 effective April 25, 1996, which is amended as follows:

Kokomo, IN, Kokomo Muni, VOR/DME or GPS RWY 23, Amdt 19 is amended to read:
Kokomo, IN, Kokomo Muni, VOR or GPS RWY 23, Amdt 19

[FR Doc. 96–10677 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 232, and 241

[Docket No. FR–3349–C–04]

RIN 2502–AF74

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Revision of FHA Multifamily Processing and Fees; Technical Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; technical correction.

SUMMARY: This document contains a correction to the final rule which was published on Monday, April 1, 1996, (61 FR 14410). That final rule concerned FHA multifamily mortgage insurance.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6138, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone (202) 708–2556. (This is not a toll-free telephone number.) Hearing- or speech-impaired may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections revised 24 CFR 200.40 and 200.45 of the FHA multifamily mortgage insurance regulations to increase processing/commitment fees and to make certain changes in the stages of processing.

Need for Correction

As published, the preamble to final regulations omitted a word which may prove to be misleading.

Accordingly, FR Doc. 96–7640, a final rule published in the Federal Register on April 1, 1996 (61 FR 14410), is corrected as follows:

On page 14411, in the preamble, in the first column, in the first paragraph under the heading ''4. Elimination of Conditional Commitment Stage,'' the third line is corrected by adding the word ''except'' after the word ''stage''.

Dated: April 18, 1996.

Stephanie A. Smith,

Acting General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–10600 Filed 4–29–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–95–033]

RIN 2115–AA98

Special Anchorage Areas; Herb River, Thunderbolt, GA; Bull River, Savannah, GA; South Channel Savannah River East, Savannah, GA; South Channel Savannah River West, Savannah, GA; Calibogue Sound, Hilton Head, SC; May River, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing six temporary special anchorage areas during the 1996 Centennial Olympic Games. These special anchorage areas become effective on July 4, 1996, at 7 a.m. EDT (Eastern Daylight Time), and terminate on August 5, 1996, at 11 p.m. EDT. The Coast Guard expects a significant number of spectator vessels to participate in the festivities surrounding the 1996 Olympic Games. By designating special anchorage areas the Coast Guard expects to minimize the problems associated with a large congestion of boaters in the area.

EFFECTIVE DATES: This rule is effective at 7 a.m. EDT, on July 4, 1996, and terminates at 11 p.m. EDT, on August 5, 1996.

ADDRESSES: Copies of documents referenced in this document are available for inspection or copying from Marine Safety Office, Savannah, 222 W. Ogelthorpe Avenue, Suite 402, Savannah, Georgia between 9 a.m. and 3 p.m. EDT, Monday through Friday, except Federal holidays. A copy of the environmental assessment is available from CEU Miami, 909 S.E. 1st Ave., Miami, Florida 33131.

FOR FURTHER INFORMATION CONTACT: LT J. Simmerman, project officer for the Captain of the Port, or BMC P. Webber, Marine Safety Office Savannah at Tel: (912) 652–4353, between the hours of 7:30 a.m. and 4 p.m. EDT, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 13, 1995, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (60 FR 53317) entitled ''Special Anchorage Areas; Herb River, Thunderbolt, GA; Bull River, Savannah, GA; South Channel Savannah River East, Savannah, GA; South Channel Savannah River West, Savannah, GA; Calibogue Sound, Hilton Head, SC; May River, Hilton Head, SC'' (CGD07–95–033). Three comments were received in response to the NPRM.

Discussion of Comments and Changes

All of the comments received addressed the proposed May River special anchorage area, proposed § 110.T72e(f). These comments addressed concerns that establishment of the May River anchorage as proposed would not allow for safe navigation of recreational and commercial vessels by residents who live along the May River west of the proposed anchorage area. Based on these comments, proposed § 110.T72e(f) has been modified in this final rule to decrease the anchorage area, restricting the anchorage area to the southern half of the May River. This change in area will allow for safe passage of commercial and recreational vessels in the northern side of the channel. The description of the May River anchorage area now appears in § 110.72e(a)(6). Additionally, an

effective date paragraph has been added to the section to make it clear that these special anchorage areas will only be in effect from July 4, 1996 until August 5, 1996.

Discussion of Regulations

Approximately 1,000 to 2,000 spectator vessels are expected to arrive and participate in the festivities of the 1996 Olympic sailing competition. The Coast Guard is establishing six special anchorage areas to alleviate the problems of a large congestion of recreational boats in a small area. By designating these special anchorages, the Coast Guard anticipates minimizing the associated problems with security and pollution, as well as the commercial congestion that a large influx of boaters might cause in the area. Vessels no more than sixty-five feet in length when anchored at any special anchorage area are not required to carry or exhibit the white anchor lights normally required by the Navigation Rules. These special anchorage regulations will be effective from July 4, 1996, at 7 a.m. EDT, until August 5, 1996, 11 p.m. edt.

Six special anchorage areas are being established in the following locations: (1) Herb River; from the mouth of the Herb River to just before Country Club Creek. (2) Bull River; south from the Bull River Bridge to the mouth of Lazaretto Creek. (3) The South Channel of the Savannah River west; extending from Elba Island Cut southeast to the Fort Pulaski Bridge. (4) The South Channel of the Savannah River east; extending from Fort Pulaski Bridge east to the entrance of Lazaretto Creek. (5) Calibogue Sound; south of the entrance of Harbourtown to Braddock Point. (6) May River; west of buoy 4 in the vicinity of Bass Creek to buoy 5 prior to the mouth of Bull Creek.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant effect on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not for profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Over 1100 athletes and coaches representing over 80 countries, over 300 competition vessesls, as well as approximately 1,000 to 2,000 support and spectator vessels are expected to arrive and participate in the festivities of the 1996 Olympic yatching competition. The special anchorage areas described in this rule will be established for a limited time period to help accommodate this large volume of spectator vessels in the port of Savannah. The boundaries of the anchorage areas have been tailored to reduce congestion while still allowing for safe navigation of the waterways by commercial and recreational vessels.

For the reasons discussed above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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 action and has determined pursuant to Section 2.B.2. of Commandant Instruction M16475.1B, that this action is categorically excluded from further environmental documentation.

A Categorical Exclusion Determination and Categorical Exclusion Checklist are available in the docket for inspection or copying at the location listed in **ADDRESSES**. In addition the environmental analysis above, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) has been issued for the area during the 1996 Olympic Yachting Competition. A copy of the EA and FONSI is available for copying and inspection at the location listed in **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. A new temporary § 110.72e is added to read as follows:

§ 110.72e Savannah Olympic Anchorage Areas, GA.

(a) *Anchorage Areas.* The following locations are special anchorage areas (All coordinates referenced used Datum: NAD 1983):

(1) *Herb River Anchorage.* The waters in Herb River within the area bounded at latitude 32°01′.2″ N, extending south to a line at latitude 32°00′.0″ N.

(2) *Bull River Anchorage.* The waters of Bull River within the area bounded at latitude 32°02′.2″ N, east to a line at latitude 31°59′.7″ N across Bull River.

(3) *South Channel of the Savannah River West Anchorage.* The waters of the South Channel of the Savannah River lying between latitude 32°04′.1″ N, extending east to a line of longitude 080°54′.9″ W in the vicinity of the Fort Pulaski Bridge.

(4) *South Channel of the Savannah River East Anchorage.* The waters of the South Channel of the Savannah River lying east of the Fort Pulaski Bridge, beginning at longitude 080°54′.9″ W, extending east to longitude 080°53′.9″ W across South Channel.

(5) *Calibogue Sound Anchorage.* The waters of Calibogue Sound lying within the following coordinates, the area west of the west shore of Hilton Head Island; starting at

32°08′12.0″ N, 080°48′55.0″ W; thence to,

32°08′12.0″ N, 080°49′13.0″ W; thence to,

32°06′50.0″ N, 080°49′55.0″ W; thence to,

32°06′50.0″ N, 080°49′43.0″ W; back north on the west shore of Hilton Head Island to the point of beginning.

(6) *May River Anchorage.* The waters of May River within the following

coordinates, the area north of the north shore of Bull Island; beginning at

32°11′45.0″ N, 080°48′03.0″ W; thence to,

32°11′52.0″ N, 080°48′02.0″ W; thence to,

32°12′00.0″ N, 080°48′17.0″ W; thence to,

32°12′19.0″ N, 080°49′35.0″ W; thence to,

32°12′09.0″ N, 080°49′43.0″ W; back east along the north shore of Bull Island to the point of beginning.

(b) *Effective dates.* This section is effective on July 4, 1996, at 7 a.m. EDT, and terminates on August 5, 1996, at 11 p.m. EDT.

Dated: April 23, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–10557 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD01–96–035]

RIN 2115–AE47

Drawbridge Operation Regulations; Manchester Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the operating rules that govern the Massachusetts Bay Transportation Authority (MBTA) Bridge at mile 1.0, in Manchester, Massachusetts. This change will require the bridge to be crewed for eight additional hours each day during the 1996 boating season and will modify the advance notice requirement for the 11 p.m. to 7 a.m. time period. This temporary final rule is based upon comments received as a result of a temporary deviation implemented by the Coast Guard during the 1994 boating season and a final temporary rule implemented for the 1995 boating season. The comments received from the mariners indicated their navigational needs require the bridge to be crewed from 7 a.m. to 11 p.m. during the boating season.

EFFECTIVE DATE: This temporary final rule is effective from May 27, 1996, through September 30, 1996. Comments must be received on or before October 31, 1996.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350. Comments also may be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–052), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

In accordance with 5 U.S.C. 553(6) good cause exists for publishing a temporary final rule without a prior comment period. It is in the public interest to have a rule increasing the hours the bridge is operated in effect before the Memorial Day weekend, the beginning of the 1996 boating season. Delaying this rule to provide for a notice and comment period would be impracticable, unnecessary and contrary to the public interest. Due to the manner in which openings are conducted, a greater number of openings does not cause delays to the commuter trains using the bridge. The MBTA has been advised of the extra hours that the bridge will be required to be crewed during the 1996 boating season and the need for comprehensive record keeping. This test period will allow the Coast Guard to fully evaluate marine traffic patterns and costs to the MBTA. After this test period, the Coast Guard will evaluate the comments received and prepare a notice of proposed rulemaking to permanently change the operating schedule if appropriate.

Regulatory History

On June 14, 1994, a temporary deviation effective during the 1994 boating season from the operating regulations for the MBTA Bridge was published in the Federal Register (59 FR 30524; June 14, 1994). The Coast Guard received three letters and seven petitions. A public hearing was not requested and one was not held.

On July 17, 1995, the Coast Guard implemented a temporary final rule (60 FR 36357; July 17, 1995) which was effective for the 1995 boating season. The Coast Guard received 22 letters and three petitions. A public hearing was not requested and one was not held.

Background and Purpose

The MBTA Bridge over Manchester Harbor has a vertical clearance of 6′ above mean high water (MHW) and 15′ above mean low water (MLW). The existing operating regulations at 33 CFR 117.603 require that the bridge open on signal from 1 April through 1 November from 9 a.m. to 6 p.m., with a one hour lunch closure between 1 p.m. and 2 p.m. daily.

The Coast Guard received a request in May, 1994, from the Manchester Harbormaster/Chief of Police and several mariners located upstream of the bridge to extend the hours that the Manchester MBTA Bridge be required to open on signal during the peak boating season. On June 14, 1994, the Coast Guard published a temporary (90 day) deviation (59 FR 30524; June 14, 1994) from the operating regulations to evaluate changes to the operating rules during the 1994 boating season. The temporary deviation extend the hours that the bridge was crewed by an additional five hours a day, from June 3 through August 31, 1994. It required the bridge to be crewed from 8 a.m. to 9 p.m. daily and eliminated the one hour lunch hour closure from 1 p.m. to 2 p.m. each day.

The Coast Guard received only one letter during the comment period that closed October 31, 1994. The MBTA, the bridge owner, opposed the proposal to extend the operating hours of the bridge. Their objection was based upon the

additional cost of $16,000 for crewing the bridge during the 1994 test period. The Coast Guard requested additional bridge log data from the MBTA to evaluate the impact of the deviation. The MBTA did not provide the requested data.

The Coast Guard did not proceed with a permanent change to the regulations immediately after the temporary deviation expired since only one comment letter was received within the comment period. The mariners who originally requested the changes to the operating rules did not provide comments until March 15, 1995, well after the comment period for the temporary deviation ended. These comments included seven petition letters, one letter representing forty-five boat owners located upstream of the bridge at the Manchester Harbor Marina and one letter from the Manchester Harbormaster/Chief of Police. All these letters were in favor of increasing the operating hours for the bridge.

During the summer of 1995, the Coast Guard implemented a temporary final rule (60 FR 36357; July 17, 1995) which tested an operating schedule from July 17, 1995, through September 30, 1995, which increased the period that the bridge opened on signal by three hours from 6 p.m. to 9 p.m. After the test period ended, the Coast Guard received 20 letters from mariners. Three petitions with a total of 40 signatures, a letter from Manchester Harbor Marina, and a letter from the Manchester Harbor Boat Club with 200 members were received requesting that the operating rules be changed to require the bridge to open on signal from 7 a.m. to 11 p.m. each day, Memorial Day through the end of September. The mariners requested the extended bridge operating hours so that they could get underway at a reasonable time in the morning and also be able to return to their moorings in the evening after their evening racing or sailing. One letter requesting that the hours remain unchanged was received from the bridge owner, the MBTA. The MBTA objected to the extra operating hours based upon a $27,000 additional cost to crew the bridge during the 1995 test period. As in 1994, copies of the bridge logs were not submitted by the bridge owner as requested by the Coast Guard.

The Coast Guard believes that there is good cause to test the hours of 7 a.m. to 11 p.m. based on the mariners comments and the fact that these hours have not been tested previously. Also, records of openings provided by the bridge owner regarding previous test periods have been incomplete and are therefore inconclusive. Complete records of openings during the scheduled test period will be considered by the Coast Guard for future rulemaking.

This temporary final rule extends the operating hours requiring the bridge to open on signal from May 27, 1996, to September 30, 1996, from 7 a.m. to 11 p.m. each day. Additionally, the advance notice requirement for openings from 11 p.m. to 7 a.m. is being changed from the existing two and five hour advance notice to a four hours advance notice from Memorial Day to the end of September. The existing requirement to provide two hours notice from 6:45 a.m. to 3:45 p.m. and at least five hours notice from 3:45 p.m. to 6:45 a.m. is confusing and difficult for mariners to recall while at sea or when they do not have access to a copy of the requirements. The Coast Guard will evaluate the effect of the four hour advance notice requirement during the 1996 boating season and may propose a modification of the requirement as a result of comments received.

Discussion of Proposed Amendments

This temporary final rule requires the bridge to open on signal from 7 a.m. to 11 p.m. from May 27, 1996, (Memorial Day) through September 30, 1996, an additional eight hours a day. In addition, a four hour advance notice for openings will be required from 11 p.m. to 7 a.m. during this same test period.

At present, mariners are forced either to return early after sailing or tie up at locations outside of the bridge (and the inner harbor where their moorings are located) if they return after 6 p.m. The harbormaster indicated that the increased operating hours would provide a safety advantage in the event of an emergency situation. Planned and emergency patrols would be able to transit through the bridge to the inner harbor on a more frequent basis in the event of a vessel in distress or a vessel on fire.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has 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 rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action 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). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.603 is suspended and a new 117.604 is added to read as follows:

§ 117.604 Manchester Harbor.

The Massachusetts Bay Transportation Authority Bridge at mile 1.0, in Manchester, shall operate as follows:

(a) The draw shall open on signal from 7 a.m. to 11 p.m. each day.

(b) At all other times, at least four hours advance notice for openings is required by calling the number posted at the bridge.

Dated: April 22, 1996.

J.L. Linnon,

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

[FR Doc. 96–10658 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–95–055]

RIN 2115–AA97

Safety Zone Regulations; Fort Vancouver Fourth of July Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting permanent safety zone regulations for the annual Fort Vancouver Fourth of July Fireworks Display in Vancouver, Washington. This event is held each year on the Fourth of July on the waters of the Columbia River. In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event occurs annually, the Coast Guard is adopting a permanent description of the event and permanent regulations to better inform the boating public.

EFFECTIVE DATE: This rule is effective on May 30, 1996.

ADDRESSES: Unless otherwise indicated, the documents referred to in this preamble are available for inspection or copying in the St. Helens Building, Waterways Management Section at the U.S. Coast Guard Group Portland, 6767 N. Basin Ave., Portland, OR 97217–3992. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) C. A. Roskam, c/o Commander, U.S. Coast Guard Group Portland, 6767 N. Basin Ave., Portland, OR 97217–3992. (Telephone: (503) 240–9327).

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 9, 1996 the Coast Guard published a notice of proposed rulemaking entitled Safety Zone Regulations; Fort Vancouver Fourth of July Fireworks Display, Columbia River, Vancouver, WA, in the Federal Register (61 FR 4945). The Coast Guard received no letters commenting on the proposal. No public hearing was requested, and none was held. No changes were made to the regulation, and it is being adopted as initially proposed.

Background and Purpose

The Coast Guard is adopting permanent safety zone regulations for the annual Fort Vancouver Fourth of July Fireworks Display in Vancouver, Washington. This event is held on the waters of Columbia River each year on July fourth from 10 p.m. to 10:30 p.m. (PDT). In the past, the Coast Guard has established a temporary safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event occurs annually, the Coast Guard is adopting a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Fort Vancouver Fourth of July Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Vancouver, Washington. This event is sponsored by the Fort Vancouver Fourth of July Committee. The fireworks display is conducted from a barge located just offshore on the Columbia River.

This one day event attracts a large number of spectators gathered on the waters near the fireworks display. Spectators who approach the fireworks barge at close range during the event may be struck by falling debris from the overhead fireworks display.

Discussion of Proposed Regulation

To promote the safety of both the spectators and the participants of this event, this regulation establishes a permanent safety zone which would become effective each year during the event. Entry into this safety zone and the area surrounding the event will be prohibited. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this regulation to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone established by this regulation encompasses only one mile of the Columbia River adjacent to Vancouver, Washington. Entry into the safety zone will be restricted each year for only three hours on the day of the event. These restrictions would have little effect on maritime commerce in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this regulation to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction

M16475.1B (as revised by 59 FR 38654; July 29, 1994), the regulation is categorically excluded from further environmental documentation. Appropriate environmental analysis of the Fort Vancouver Fourth of July Fireworks Display will be conducted in conjunction with the marine event permitting process each year. Any environmental documentation required under the National Environmental Policy Act will be completed prior to the issuance of a marine event permit for this event should such a permit be required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.1308 is added to read as follows:

§ 165.1308 Columbia River, Vancouver, WA.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River at Vancouver, Washington, bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37′17″ N, longitude 122°40′22″ W; thence south along the Interstate 5 highway bridge to latitude 45°37′03″ N, longitude 122°40′32″ W; thence to latitude 45°36′28″ N, longitude 122°38′35″ W; thence to Ryan's Point at latitude 45°36′42″ N, longitude 122°38′35″ W; thence along the Washington shoreline to the point of origin. [Datum: NAD 83].

(b) *Effective dates.* This section is effective annually on July fourth from 9 p.m. to 11 p.m. (PDT) unless otherwise specified by Federal Register notice.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Portland, Oregon.

Dated: April 18, 1996.

C.E. Bills,

Captain, U.S. Coast Guard Captain of the Port.

[FR Doc. 96–10559 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD07–95–062]

RIN 2115–AA97

Safety/Security Zone Regulations; Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety and security zones to protect life, property, and the environment during the 1996 Olympic Yachting Competition. The anticipated concentration of spectator and participant vessels associated with these races pose safety and security concerns. These regulations are intended to provide security for the Olympic participants and to insure safe navigation on the waters surrounding the Olympic Village located on the Savannah River, the two Olympic Marinas, the racing venues offshore, and the ferrying of athletes and officials between Olympic Marina locations.

EFFECTIVE DATES: This rule is effective from July 4, 1996 until August 4, 1996.

ADDRESSES: Copies of documents referenced in this document are available for inspection or copying from Marine Safety Office, Savannah, 222 W. Ogelthorpe Avenue, Suite 402, Savannah, Georgia between 9 a.m. and 3 p.m. EDT (Eastern Daylight Time), Monday through Friday, except Federal holidays. A copy of the environmental assessment is available from CEU Miami, 909 S.E. 1st Ave., Miami, Florida 33131.

FOR FURTHER INFORMATION CONTACT: BMC P.M. Webber or LT L.L. Fagan, Project Officer for Captain of the Port, Marine Safety Officer, Savannah at (912) 652–4353, between the hours of 7:30 a.m. and 4 p.m. EDT, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Over 1100 athletes and coaches representing over 80 countries, over 300 competition vessels, as well as approximately 1,000 to 2,000 support and spectator vessels are expected to arrive and participate in the festivities of the 1996 Olympic yachting competition. To ensure the security of the athletes and to ensure the safety of the large volume of recreational vessels expected in the area, the Coast Guard is establishing these safety/security zones to provide for the safety and security of the Olympic participants and spectators.

Regulatory History

On January 3, 1996, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Safety/Security Zone Regulations; Savannah, GA'' (CGD 07–95–062) in the Federal Register (61 FR 136). Due to requests, a public meeting, announced in the February 16, 1996 Federal Register (61 FR 6178), was held in Savannah by the Captain of the Port Savannah on February 29, 1996 to gather comments on the rulemaking. The meeting was attended by over 100 individuals. Twenty-six people made comments during the meeting and 17 written comments were submitted prior to closure of the comment period on March 4, 1996. Copies of the comments and an audio tape of the meeting are available for inspection or copying where indicated under **ADDRESSES**. The Coast Guard published a related Notice of Proposed Rulemaking on October 10, 1995 (60 FR 53317), which proposed anchorage areas in the same general area as the safety/security zones during the Olympic Yachting Event. The final rule on the anchorage areas is published elsewhere in today's Federal Register.

Discussion of Comments and Changes

The Coast Guard received forty-three separate comments on the NPRM during the comment period. The commentors fit into the following general categories: concerns from businesses on Bull River, Turner Creek, or Half Moon River; concerns from citizens living on these waterways or with vessels moored in effected areas; and concerns registered by or on behalf of the Atlanta Committee for the Olympic Games (ACOG). The Coast Guard received two comments from private citizens who fully supported the safety/security zones as proposed, stating that the Coast Guard had achieved a good balance between navigational interests and interest in security for the Olympic athletes. The comments which addressed specific proposed safety/security zones are discussed below by zone. General comments which pertain to all of the area are grouped by subject and are discussed following the discussion by specific zones.

The environmentally based constraints that were proposed as part of the NPRM have been incorporated as conditions in the permit issued by the Coast Guard to the ACOG for the water events. As a result, therefore, these restrictions have been eliminated from

the final rule. The Coast Guard has completed an Environmental Assessment, with a finding of no significant impact, for all Olympic activities in the area as discussed in the ''Environmental Assessment'' section below.

Savannah River; Olympic Torch Moving Safety Zone (Proposed Section 165.T07–077)

No Comments specifically addressed the Olympic Torch proposed moving safety zone. The effective date of the moving safety zone has been changed from July 10 to July 9, 1996. The duration of the effective time of the zone has been reduced from the NPRM, which had proposed an effective zone that lasted from 8 a.m. to 10 p.m. EDT. The moving safety zone will instead be effective from 6 p.m. to 10 p.m. EDT. The exact route of the torch is uncertain at this time. The zone will commence either, on the Savannah River in the vicinity of Coast Guard Station Tybee and continue west up river to the Highway 17A bridge (Talmadge bridge), or at the mouth of the Wilmington River and proceed to the Savannah River via the Intracoastal Waterway (ICW) and thence to the Highway 17A bridge. The Captain of the Port Savannah will announce the exact route for the vessel and its moving safety zone via Broadcast Notice to Mariners prior to the establishment of the zone.

Savannah River: Fireworks Safety Zone (Proposed Section 165.T07–078)

No comments were received on the proposed safety zone for the fireworks display. The effective time of the zone on July 4, 1996 has been moved up from the proposed starting time of 10 p.m. to 9:15 p.m. EDT. The zone will still terminate at 11 p.m. EDT.

Marriot Hotel/Olympic Village (Proposed Section 165.T07–062(1))

No comments specifically addressed the Olympic Village proposed zone and therefore it is being adopted in this final rule as proposed with a minor change in coordinates required to accurately delineate the zone.

Olympic Marina; Wilmington River and Turner Creek (Proposed Section 165.T07–062(2))

The NPRM proposed a zone that included a portion of Turner Creek and extended out to the center of the Wilmington River, surrounding the Olympic Marina and its docks. Olympic athletes will board vessels at the Olympic Marina and be shuttled to the Day Marina in Wassaw Sound. The Day Marina is the staging area for all the yachting events and is the area where the vessels used in competition will be moored. As proposed, entry into the Olympic Marina zone, including portions of Turner Creek and the Wilmington River, would be prohibited unless permission was granted by the Captain of the Port. The Coast Guard had planned to grant permission for entry to groups of vessels and provide Coast Guard escorts for their transit through the zone, thereby allowing controlled access to the Wilmington River through Turner Creek.

The Olympic Marina zone, as proposed, extended south of the Olympic Marina in the Wilmington River to encompass a number of private docks. To address the access problem this would have caused for the dock owners, the Coast Guard has modified the boundaries of the Olympic Marina zone so that the zone ends just north of the first private dock, thereby allowing free access from these docks to the Wilmington River.

The Coast Guard received a number of comments concerning the anticipated effects of closing Turner Creek and parts of the Wilmington River and concerning the expected delays which would result from the plan to escort groups of vessels through the area. Commentors included two private individuals who live in homes with private docks on the Wilmington River that were encompassed within the proposed Olympic Marina zone and business owners along Turner Creek who were concerned with the impact the delays and lack of access would have on their business.

In their comments, several business owners along Turner Creek expressed concerns with the Coast Guard's proposed plan to escort vessels in groups through Turner Creek to the Wilmington River. The commentors noted that this area experiences a heavy volume of vessel traffic and large delays were anticipated as a result of the restrictions. Based on these comments, and after consultation with the ACOG about the security concerns, the Coast Guard has decided not to escort vessels in groups through this zone. Instead, if vessels desire to transit through the Olympic Marina zone, a vessel may check in with the Coast Guard to receive permission to enter. The Captain of the Port (COTP) may grant permission for vessels to enter the Olympic Marina zone whenever circumstances allow. COTP permission will be granted with the condition that the vessels transit the zone without stopping within the zone.

Two comments at the public meeting and one written comment concerned the designation of this area as a ''no wake zone.'' The declaration of an area as a ''no wake zone'' is done by the State of Georgia and not the Coast Guard. Therefore, those comments have been passed to the responsible state officials for their consideration.

Wilmington River and Wassaw Sound (Moving Security Zone) (Proposed Section 165.T07–062(3))

No comments specifically addressed this proposed zone. The description of this zone has been modified to clarify the route that the vessels ferrying the athletes between the Olympic Marina and the Day Marina will take. These vessels will transit from the Olympic Marina in the Wilmington River to Tybee Cut, through Tybee Cut to Half Moon River and into Wassaw Sound were the Day Marina is located. The same route is planned for the return trip.

Bull River (Proposed Section 165.T07–062(4))

This was the most commented on of the proposed zones. The zone, as proposed, would close the southern entrance to Bull River at Pa Cooper Creek and would close Tybee Cut in the event of adverse weather. The proposed zone encompassed the Day Marina and provided for a less crowded route for the ferries shuttling the athletes between the Olympic Marina and the Day Marina.

The Coast Guard received eleven comments from business owners along the Bull River objecting to this proposed zone. These businesses fall into two primary categories; those that operate commercial vessels from dock facilities and those with fixed shore-based operations, such as restaurants or marinas. Most of the comments expressed concern that the Coast Guard was being overly restrictive with regard to access to Wassaw Sound and Bull River. The comments expressed a shared opinion that business in this area would be significantly affected by the proposed closing of the entrance to Bull River during the day. Fixed shore based operations expressed concerns that customers would not be able to reach the businesses and operators of commercial vessels moored at docks in the area expressed concern that they would have to leave the zone early in the day and not return until the evening. The comments pointed out that though there is an alternate route between this portion of the Bull River and Wassaw Sound via the Wilmington River, there are fixed span bridges over the Bull River which limits the size of vessels able to use this route. Hence, the only outlet for vessels with height

restrictions is out the mouth of the Bull River.

Conversely, the ACOG also expressed concerns about the proposed Bull River zone, stating that the zone as proposed was not restrictive enough. The ACOG requested that the Coast Guard also close the Half Moon River northwest of Tybee Cut, thereby including all of Tybee Cut within the zone during all times that the zone was in effect, not just during adverse weather as proposed. In its comments, the ACOG noted that Tybee Cut was chosen for transiting athletes for a number of reasons. Tybee Cut provides a route which is more protected from adverse weather as well as providing a shorter transit that does not interfere with racing in the Alpha race course (located in Wassaw Sound). The ACOG also pointed out that the only alternate route available for ferrying athletes between the Olympic Marina and the Day Marina was down the Wilmington River and then through Wassaw Sound. This route is considered unacceptable by the ACOG. Not only is the route longer and more prone to adverse weather, but more importantly it dramatically increases the athletes' exposure to the large number of commercial and recreational vessels expected to be transiting through, and congregating at, the mouth of the Wilmington River. The comment from the ACOG also noted that the Coast Guard had proposed July 6, 1996 as the starting date for the safety/security zones, but that in the ACOG's opinion, the zones would not be needed until July 8. The ACOG suggested that the Coast Guard delay the effective date for the Bull River zone to July 8, 1996.

The Coast Guard has reviewed the concerns expressed by the businesses and individuals regarding access to Wassaw Sound and Bull River, but must balance their need for access with the need for Olympic athletes' security. The Bull River area will be heavily used by Olympic athlete shuttles and affiliated Olympic vessels. The security zone boundaries and effective dates have been carefully tailored to ensure the need for athlete security is met. The Coast Guard agrees with the ACOG's concerns for security in this area. The Day Marina, which is the center of activity for the Olympic yachting events, consists of a group of barges moored in the water and is exposed on all sides. The vessels participating in the Olympic yachting races will be moored at the marina and will be transiting between the Day Marina and the race courses throughout the day. Large concentrations of athletes will be present at the marina throughout the day as well. Additionally, as the ACOG commented, because of the high concentration of spectator and commercial vessels expected in the Wilmington River near Wassaw Sound, ferrying athletes out the Wilmington River and into Wassaw Sound from the south will expose the athletes to a higher security risk. The Coast Guard is also concerned with navigational safety in this area. Wassaw Sound consists primarily of shoal waters, which create extremely hazardous conditions if the area becomes congested with vessels. For these reasons it would be extremely difficult to allow unimpeded vessel traffic in this area while still ensuring the safety of the Olympic athletes and of boaters.

In response to these comments, in the final rule the Coast Guard has modified the boundaries and the effective times of the Bull River zone to improve accessibility while still ensuring the need for athlete security is met. Based on the ACOG's concerns for athlete security, a security/safety zone will close all of Tybee Cut and a portion of the Half Moon River to unaffiliated vessels from July 6 until August 2, 1996 from 8 a.m. to 7 p.m. EDT daily. Unaffilated vessels are defined as all vessels that are not registered with the ACOG or designated as an Official Vessel by the Coast Guard Captain of the Port. However, after internal discussions within the Coast Guard and in consultation with the ACOG, the Coast Guard has decided that from July 6 through 18, 1996, Tybee Cut and parts of the Half Moon River is the only part of the proposed Bull River zone which will be in effect (Tybee Cut/Half Moon River zone). From July 19 through August 2, 1996, the safety/security zone in this area will encompass all of the Tybee Cut/Half Moon River zone plus a portion of the Bull River. However, the boundary proposed in the NPRM across the Bull River has been shifted south in the final rule. The boundary of the proposed Bull River zone ran from Pa Cooper Creek due east to the marsh adjacent to the entrance to Bull River. The new boundary line spans the Bull River farther south, and provides a one hour window, for passage thru Tybee Cut from 1 p.m. to 2 p.m. From July 19 to August 2, Wassaw Sound will be inaccessible from Bull River from 8 a.m. to 7 p.m. EDT daily. Tybee Cut will be used by the Athlete Shuttles and affiliated vessels from 8 a.m. to 1 p.m. EDT and from 2 p.m. to 7 p.m. EDT daily. Unaffiliated vessels will be allowed access to Tybee Cut, the Half Moon River, and the Bull River from 1 p.m. to 2 p.m. EDT daily. However, unaffiliated vessels will not be allowed to proceed south of the line described in section 165.T07–062(a)(5). This one hour access window may slide to a later time if race delays occur. Additionally, from 7 p.m. to 8 a.m. EDT daily, unrestricted access to Tybee Cut, the Half Moon River and the Bull River will be allowed.

The Olympic yachting events do not begin until July 19, though athletes will be in the area beginning July 6, 1996. The Coast Guard has decided that despite the ACOG's opinion that this zone need not be effective until July 8, it is necessary that a zone encompassing Tybee Cut be effective July 6. Beginning July 6, 1996, all of the waterside venues will be considered as being under the ''Olympic umbrella'' and athletes will have full access to all venues. Therefore, as athletes will be ferried through Tybee Cut beginning July 6, 1996, that date will remain as the effective date for the Tybee Cut/Half Moon River zone.

Between July 6 and 19, 1996, the eastern boundary of the safety/security zone closing Tybee Cut, the Tybee Cut/Half Moon River zone, will be the eastern entrance of the Half Moon River on the Wassaw Sound. This modification will allow vessels to navigate between the Bull River and Wassaw Sound west of Wassaw Breaker throughout that time period. Access between Bull River and Wassaw Sound, east of Wassaw Breaker, is restricted by the 200 yard fixed safety/security zone around the Day Marina. However, the Coast Guard notes that due to tidal changes in this area, the access between Bull River and Wassaw Sound west of Wassaw Breaker will be a viable alternative for vessel transit only at certain tides. As with the proposed Bull River zone, the Tybee Cut/Half Moon River zone will only be in effect from 8 a.m. to 7 p.m. EDT, thereby allowing free transit of vessels throughout almost all of this area during the evening. This zone is described in § 165.T07–062(a)(4).

In light of the modifications to the proposed Bull River zone discussed above, and to address security concerns in the immediate vicinity of the Day Marina, this final rule contains a new safety/security zone in Wassaw Sound, described in § 165.T07–062(6), which extends in a radius of 200 yards around the Day Marina. This zone will be in effect twenty-four hours a day from 8 a.m. EDT July 6, 1996 through 7 p.m. EDT August 2, 1996. The COTP anticipates granting permission for vessels to transit through this zone from 7 p.m. to 8 a.m. EDT daily, under the condition that vessels remain at a

distance of at least 50 yards from the Day Marina.

The Coast Guard received one comment seeking a dedicated small vessel viewing area within the Bull River zone to allow spectator vessels to view the races. In response to this comment as discussed above, the proposed security zone boundary across the Bull River has been shifted south in the final rule. This modification is in addition to the fact that, as discussed above, access to and from the Bull River west of Wassaw Breaker will not be effected until July 19. The new boundary line spans the Bull River farther south, though the resulting zone (termed the Tybee Cut/Bull River/Half Moon River zone) effectively closes the eastern and western entrance to Half Moon River in addition to closing off access to Tybee Cut. This zone is now described in § 165.T07–062(a)(5). This southern shift in the zone boundary will allow small vessels to get closer to the racing areas without compromising safety or security. The Tybee Cut/Bull River/Half Moon River zone does not prevent small vessels from viewing the event from outside the security zone perimeter. Also as discussed above, Wassaw Sound will be inaccessible from Bull River from July 19 to August 2, 1996, but unaffiliated vessels will be allowed access to Tybee Cut, the Half Moon River, and the Bull River from 1 p.m. to 2 p.m. EDT daily provided unaffiliated vessels do not proceed south of an alternate line described in section 165.T07–062(a)(5). This one hour access window may slide to a later time if race delays occur. The ACOG has agreed not to run ferries through Tybee Cut during this time to allow unimpeded access. This window should allow adequate time for vessels to transit without jeopardizing security. After the Olympic events are completed for the day, from 7 p.m. to 8 a.m. EDT daily, the zone will not be effective and therefore access to Tybee Cut, the Half Moon River and the Bull River will be allowed.

A number of comments expressed concern about the closing of Tybee Cut and the effect on boating safety that may have in regard to vessels seeking to return to port in the case of adverse weather. The Coast Guard is concerned with ensuring vessel safety, but notes that access to Tybee Cut is not required to ensure vessels can reach a safe harbor in case of adverse weather. Although the Coast Guard recognizes that Wassaw Sound can get choppy in adverse weather, once a vessel reaches the vicinity of Cabbage Island, an area outside all of the safety/security zones, calmer water can be found. There are also marinas available and accessible along the southern end of the Wilmington River at which vessels may moor. Therefore, it is the Coast Guard's opinion that due to available alternatives, Tybee Cut need not remain open to ensure the safety of vessels in the area.

The Coast Guard received one comment from the owner of commercial towing business located on Half Moon River. This individual had purchased property on this waterway due to its proximity to the Olympic venues and was concerned that he would be unable to leave his property. The comment stated that the location was selected partially based on conversations with Coast Guard officials last year who had expressed a need for commercial towing assistance during the Olympics. The Coast Guard notes that the boundaries of the zones in this area, both the Tybee Cut/Half Moon River and Tybee Cut/Bull River/Half Moon River, are carefully tailored to meet the need for security for Olympic athletes and officials. The property which is the subject of the comment is a private residence which provides a convenient area for mooring a tow vessel. Although the Coast Guard realizes that mooring this vessel at another location may be inconvenient, there are a number of available marinas and other areas which may be used by this business as a staging area to provide commercial towing assistance. Access to half Moon River and Tybee Cut is not needed to tow any vessel for safety or repairs. As discussed above, and in part to provide this business with some flexibility while at the same time providing for navigational safety and security, the zones in the Half Moon River area, § 165.T07–062(a)(4), have been revised to open a one hour window of opportunity for accessibility via Tybee Cut and Half Moon River in addition to the 7 p.m. to 8 a.m. EDT accessibility. Businesses with mobile assets such as this, or vessels with draft restrictions, are advised to seek other staging or embarkation points if additional flexibility is needed.

The Coast Guard received several comments at the public meeting and seven written comments which addressed the perceived hardships the proposed zones would have on the charter boat industry and marinas which operate in and around the Bull River. These comments represented the interests of vessel owners whose primary business is fishing charters, vessels that have been chartered to carry spectators, and two marinas on the Bull River that cater to charter vessels and sailboats. The change in effective dates of the zone, specifically, the opening of access between the Bull River and Wassaw Sound between July 6 through July 18, 1996 should help alleviate many of these businesses concerns. For the period of time when access to the Bull River is closed off or tidal conditions make access between the Bull River and Wassaw Sound difficult for draft restricted vessels, as discussed above, there are several alternate routes vessels may take to transit between the Bull River and Wassaw Sound. The most direct route is directly out the mouth of the Bull River into the Sound, west of Wassaw Breaker. Subject to tidal state, this route will be available from July 6 through 18 as a result of the modifications in this final rule. Under both the proposed and final rule, this route is also available every evening from 7 p.m. to 8 a.m. EDT. A second route is up the Bull River to Turner Creek and then into the Wilmington River. The second option requires a vessel to clear the upstream fixed span Route 80 bridge, which has a vertical clearance of 20 feet spanning the Bull River, en route to the Wilmington River. Three comments noted that any non-direct route between the Bull River and Wassaw Sound would add significant time to each trip, with estimates ranging from one to three hours additional transit time in each direction for vessels transiting between the Bull River and Wassaw Island, a traditional fishing ground. Most of the vessels affected by this rule are either too tall to clear the bridge or can do so only during certain tidal conditions. Additionally, one comment noted that even for vessels that can clear the bridge, the added time would make the normal fishing charter trip, which travels to the southeast of Wassaw Island, unmanageable in a typical eleven hour fishing day. The problem is aggravated by the fact that July and August, the times when the Bull River zone will be effective, is the charter industry's peak season. The marinas also commented that they expected to lose revenues as a result of the loss of charter boat business, loss in fuel sales and loss in dockage fees from sailboats. Restaurants and marina operators also commented that they expect to lose business because of the restrictions imposed by the proposed Bull River zone. Additionally, the marinas anticipated that the loss in dockage fees would continue in the future, citing a perceived trend that once someone changed to a new marina, they seldom return the following year.

The Coast Guard notes that portions of the Bull River, up river from the Tybee Cut/Bull River/Half Moon River

security/safety zone are being designated as a special anchorage area in a separate final rule. As a result, a large increase in smaller vessels and their passengers can be anticipated in the river. Many of these vessels will not be constrained by the limited clearance of the fixed span bridge and will be able to transit between the Bull River and Wilmington River during all times of the day. These vessels will be able to utilize any dock space vacated by the larger vessels. Additionally, the large number of people and vessels expected to use the anchorage area and the Bull River in general during the Olympics should help alleviate some of the lost revenue for businesses along Bull River. Any anticipated future losses are merely speculative. The Coast Guard estimates that overall in the Savannah area there will be an increase of 1000–2000 vessels during the time period when this rule is in effect. The ACOG estimates that each day its vessels and officials alone will use between 7,000 and 10,000 gallons of gasoline, two tons of ice, and eat over 1600 lunches. Those estimates are in addition to the need for similar items for the over 1500 volunteers who will be assisting with the events and for the support boats for the racing teams which will be used through July 19. It is inevitable that with all of the expected vessels, there will also be a large demand for vessel repairs.

In regard to the larger vessels, the Coast Guard is aware of the inconveniences that the operation of the zone will cause, but notes that there are other locations where these vessels can dock or anchor that are not affected by any of the zones. The boundaries of the Tybee Cut/Bull River/Half Moon River zone, as well as all the safety/security zones being adopted by this final rule, have been narrowly tailored to provide adequate security while still providing for the interests of navigation. The Coast Guard notes that access from the Bull River to Wassaw Sound will only be restricted during the days and times that the majority of athletes and officials will be present. This will allow access between the Bull River and Wassaw Sound during the evening and from July 6 to July 18, 1996. Additionally, as discussed above, the Captain of the Port anticipates granting general permission for all vessels to transit between the Bull River and Half Moon River and through Tybee Cut for an hour each afternoon, usually from 1 to 2 p.m. EDT, to allow greater accessibility between Bull River and Wassaw Sound.

Atlantic Ocean and Wassaw Sound Zone (Proposed Section 165.T07–062(5))

The Coast Guard received three comments concerning the Atlantic Ocean/Wassaw Sound zone. The first of these comments suggested that vessels and operators be allowed access to the Atlantic Ocean/Wassaw Sound zone after successfully undergoing a security screen. A second related comment sought access to the northern side of Wassaw Sound for a commercial charter business. The combination of security and safety concerns in the Atlantic Ocean/Wassaw Sound zone area combine to prohibit the entrance of any unaffiliated vessels into this zone. The implementation of a security screen by the Coast Guard would pose significant security and traffic management problems that would far outweigh any benefits that may result. Therefore, the Coast Guard is not adopting that suggestion and is not allowing access into this zone. Due to the over 280 competition vessels and 200 powered support vessels operating and racing in the area, this and the other safety/security zones are expected to experience a high degree of congestion during the Olympic races. The Coast Guard believes that to additionally allow the heavy concentration of recreational and commercial vessels expected as spectators into these zones would create an inherently unsafe condition. Therefore, even if all security concerns could be eliminated, which in and of itself would be a time consuming and intrusive task, the safety concerns are too great to allow this type of controlled access. The Atlantic Ocean/Wassaw Sound zone is located near both the Day Marina, where vessels ferrying Olympic athletes will be moored and race venue ''A'', where athletes and numerous vessels will be present. In addition, athlete shuttles will regularly transit the area. As proposed by the ACOG and as discussed below, the only spectator vessels allowed within the zones will be a controlled number of vessels carrying passengers with official Olympic tickets to view the yachting events (ticketed spectator vessels). Those vessels and the passengers on board will undergo extensive security screens prior to entry into the zone and their movement within the zone will be strictly controlled so as not to create a hazard to navigation.

The Coast Guard also received one comment from the operator of a sea kayak business. The business launches kayaks from the south end of Tybee Island and the kayaks then proceed to Myrtle Island. Under the proposed Atlantic Ocean/Wassaw Sound zone, Myrtle Island and surrounding water would be inaccessible as the area would be encompassed within the zone. The commentor was concerned the impact of the zone would have on his business and asked that the zone be modified so that the zone ended fifty yards offshore off the beach of Myrtle Island. In response to this comment, the Atlantic Ocean/Wassaw sound zone has been slightly modified from the proposal to allow access to the marsh area within 50 yards of Myrtle Island, thereby providing a large area suitable for kayaking without compromising safety or security. Additionally, due to the modifications to the proposed zones, the Atlantic Ocean/Wassaw Sound zone has been renumbered in the final rule and now is described in § 165.T07–062(7).

Ticketed Vessels

The Coast Guard received one comment that suggested the ''ticketed'' vessels that will operate inside the safety/security zones appear to represent a privileged fleet, particularly given the high price of tickets. The Coast Guard notes that these vessels, as well as their passengers, will be subject to the same security measures that spectators attending shoreside events will undergo. These vessels are merely mobile ''bleachers'' that will operate within the security envelope subject to strict instructions from the ACOG and the Captain of the Port. Tickets are being sold to all other Olympic events; the yachting events are no different. The cost of these tickets is comparable to the price of tickets for other Olympic events. As noted above, limiting spectator vessel access is necessary to ensure navigational safety and the security of the Olympic athletes and associated vessels.

Impacts on Commercial Fishermen

Several comments from commercial fisherman, commercial crab trappers and bait draggers in the area expressed concerns that they would be unduly impacted by the regulations due to the combination of the limited areas and times authorized for fishing by the safety and security zones and the limitations imposed by their state issued fishing licenses. Crab trappers commented on the inordinate number of buoys lost in the Wilmington River during last summer's regatta and were concerned that the high volume of traffic during the Olympics would result in the loss of large numbers of traps. A representative for commercial fishermen and shrimpers at the public meeting pointed out that there are usually 150–200 traps out during any given time and

that during a regatta last summer each boat lost nearly 50 traps. Concern was also expressed by a crab trapper on the effect of delays in entering Turner Creek and Wilmington River in combination with the summer heat, which could lead to loss of many crabs after harvesting.

The Coast Guard has reviewed the problems raised by the commercial fishermen which will result from the combination of heavy vessel traffic and restrictions on access due to the safety/security zones. The Coast Guard must balance these concerns against concerns, discussed in detail above, for security and navigational safety. In trying to strike a balance, the Coast Guard has had discussions with the State of Georgia Marine Fisheries Branch of Georgia Department of Natural Resources (DNR) which has been made aware of the concerns of the fishermen. The DNR is giving consideration to changing the authorized locations and/or hours of operation during the period covered by the Olympics. These changes would help alleviate some of the problems mentioned by commercial fishermen by reducing the overlap in times when access to certain areas will be restricted by the safety/security zones and access is permitted by state fishing licenses.

The ACOG has agreed to add a warning to its volunteer training program and to boating information given to the participants highlighting the need to be respectful of crabbers' traps. The Coast Guard also notes, though, that some disturbance of traps is unavoidable and that the representative at the public meeting noted that the impacts expected on trap loss during the Olympics is about the same as that expected on any busy weekend.

Additionally, the Coast Guard notes that the changes in planned operation of the zone in the Turner Creek/Wilmington River area (§ 165.T07–062(2)) to allow direct transit through the zone, as opposed to making vessels wait and escorting those vessels in groups through the zone, should reduce the concerns about loss of crabs due to prolonged exposure to heat. Vessels will be denied immediate transit through this area only in cases of immediate safety or security concerns.

Discussion of Regulations

These regulations are intended to promote secure and safe navigation on the waters surrounding the Olympic Village, Olympic ceremonies, Olympic Marinas, racing venue areas, and athlete waterborne transits, by controlling the traffic entering, exiting and traveling within these waters.

Coast Guard and State Law Enforcement patrol vessels with a Coast Guard representative on board will be on scene to enforce the zones and direct traffic. No persons or vessels will be allowed to enter or operate within the zones while they are in effect, except as may be authorized by the Captain of the Port. These regulations are issued pursuant to 33 U.S.C. 1231 and 50 U.S.C. 191, as set out in the authority citation of all of Part 165.

The effective dates of the individual safety/security zones vary, but overall the zones are in effect from July 6 to August 4, 1996.

Six fixed and one moving safety/security zone are being established in the following areas: (1) Savannah River (Olympic Village area), all the waters around the Marriott Hotel-Olympic Village; (2) Wilmington River/Turner Creek (Olympic Marina area); (3) Wilmington River/Tybee Cut, moving safety/security zones will be placed around all Olympic Athlete Shuttle vessels with athletes on board while transiting between the Olympic Marina and the Day Marina; (4) Tybee Cut/Half Moon River, the western entrance to Tybee Cut and the western and eastern approach to Half Moon River (July 6–18); (5) Tybee Cut/Bull River/Half Moon River, the western entrance to Tybee Cut, the western approach to Half Moon River and southern entrance to the Bull River (July 19–August 2); (6) Wassaw Sound, a fixed security zone will be placed around the Day Marina; and (7) the Atlantic Ocean and Wassaw Sound offshore racing areas, which includes the area from Myrtle Island until the Wilmington River and the area from Wilmington Island until the junction of the Half Moon and Bull Rivers. The following is a detailed description of each zone and its effective times.

Olympic Village: This zone will be in effect 24 hours a day from 8 a.m. EDT July 6 to 12 p.m. EDT August 4, 1996 and will affect the entire width of the Savannah River for a distance of 1,000 yards centered on the Marriott Hotel. Vessels representing the Captain of the Port will be available to escort unaffiliated vessels desiring to transit the area. Unaffiliated vessels are defined as all vessels that are not registered with the ACOG or designated as an Official Vessel by the Coast Guard Captain of the Port. Vessels will be asked to transit along the Northern side of the channel. During periods of heavy recreational traffic, delays should be expected. Priority will be given to commercial traffic. On July 20th, July 29th and August 2nd the zone will be extended 500 yards to the west from 7:30 p.m. to 10:30 p.m. EDT for the opening, medal, and closing ceremonies. No vessels will be allowed to transit the zone during these times.

Olympic Marina: This zone will be in effect 24 hours a day from 8 a.m. EDT July 6 to 7 p.m. EDT August 2, 1996 and will extend across the mouth of Turner Creek, just east of Sail Harbor. The zone will extend 200 yards west into the Wilmington River from Turner Rock and run south to a point due west of the first private dock, and then easterly to the shore. Vessels will need permission from a Coast Guard official acting for the COTP in the vicinity prior to transiting into or out of Turner Creek. Once permission is granted to transit the zone, unaffiliated vessels will not be allowed to stop or loiter in the vicinity of Sail Harbor or the Sheraton Complex. The COTP anticipates routinely granting permission to transit the zone, but should the number of vessels seeking to transit this area reach a number that compromises athlete security the Coast Guard may escort groups of vessels through the area, require one-way transits, or deny access for short time periods. Delays should be minimal.

Wilmington River/Tybee Cut: A 75 yard moving safety/security zone will be enforced around Athlete Shuttles from 8 a.m. to 7 p.m. EDT daily from July 6 to August 2, 1996 as they transit from the Olympic Marina (Sheraton) to the Day Marina at Beach Hammock. Vessel operators will need to be alert for the approach of these vessels and stand clear. Athlete shuttle vessels will be in continuous operation from 8 a.m. to 7 p.m. EDT and will proceed down the eastern side of the Wilmington River, through Tybee Cut, into Half Moon River and then to the Day Marina located in Wassaw Sound. The same route will be used for return trips.

Tybee Cut/Half Moon River: This safety/security zone closes Tybee Cut to all unaffiliated vessels from 8 a.m. to 7 p.m. EDT daily from July 6 to July 18, 1996. From July 19 through August 2, 1996 the area encompassed by this becomes part of the Tybee Cut/Bull River/Half Moon River zone. As part of this zone, the entrance to the Half Moon River just west of the intersection with Tybee Cut will also be closed. The eastern boundary of this zone will be the eastern entrance of the Half Moon River on Wassaw Sound. Wassaw Sound, west of Wassaw Breaker will be open to vessel traffic during this time. Tybee Cut will be used by the Athlete Shuttles and affiliated vessels from 8 a.m. to 1 p.m. EDT and from 2 p.m. to 7 p.m. EDT. The Captain of the Port, via Broadcast Notice to Mariners, will grant general permission for all vessels to transit between the Bull River and Half

Moon River and between Tybee Cut and Wilmington River. This one hour access window may slide to a later time if race delays occur. Additionally from 7 p.m. to 8 a.m. EDT daily, unrestricted access to Tybee Cut, the Half Moon River and the Bull River will be allowed.

Tybee Cut/Bull River/Half Moon River: This zone is effective from July 19 to August 2. The zone will encompass the entire area of the Tybee Cut/Half Moon River zone described above, including closing Tybee Cut, but the eastern boundary will shift to be across the Bull River at the Northern end of Wassaw Sound. As a result, from July 19 to August 2, Wassaw Sound will be inaccessible from Bull River from 8 a.m. to 7 p.m. EDT daily. Tybee Cut will continue to be used by the Athlete Shuttles and affiliated vessels from 8 a.m. to 1 p.m. EDT and from 2 p.m. to 7 p.m. EDT. Unaffiliated vessels will be allowed access to Tybee Cut, the Half Moon River, and the Bull River from 1 p.m. to 2 p.m. EDT daily. However, unaffiliated vessels will not be allowed to proceed south of an alternate line described in section 165.T07–062(a)(5). This one hour access window may slide to a later time if race delays occur. Additionally from 7 p.m. to 8 a.m. EDT daily, unrestricted access to Tybee Cut, the Half Moon River and the Bull River will be allowed.

Wassaw Sound: A 200 yard safety/security zone will be in effect 24 hours a day form 8 a.m. EDT July 6 to 7 p.m. EDT August 2, 1996 around the Day Marina. No unaffiliated vessels will be allowed access to the zone from 8 a.m. to 7 p.m. EDT. Note that beginning July 19 when the Tybee Cut/Bull River/Half Moon River and Wassaw Sound/Atlantic Ocean safety/security zones are in effect this zone around the Day Marina, is fully encompassed by those zones. From 7 p.m. to 8 a.m. EDT all vessels will be granted permission to transit this zone between Wassaw Sound and the Bull River, under the condition that the vessels may not proceed closer than 50 yards to the Day Marina, and must obtain prior authorization from Coast Guard Vessels patrolling the zone.

Wassaw Sound/Atlantic Ocean: The approximately 14 mile long safety/security zone offshore will be established from July 19 to August 3, 1996 and will be in effect 24 hours a day. From 8 a.m. to 7 p.m. EDT no unaffiliated vessels will be granted permission to enter this zone. Vessels desiring to transit the area from 7 p.m. to 8 a.m. EDT will need to check in with Coast Guard vessels in the vicinity for permission. The Coast Guard expects to grant such permission, provided there are no immediate safety or security concerns.

The regulations for the offshore racing areas included within this zone will be enforced for the race venues which are located within the navigable waters of the United States. These regulations are necessary to minimize navigational dangers and to ensure the safety and security of Olympic athletes and affiliated vessels operating within the Olympic venue. Nonobligatory guidelines are included in the regulatory language for that portion of the racing venue which falls outside the navigable waters of the United States. Entry into this safety/security zone by other than affiliated vessels will be prohibited without permission of the Captain of the Port or the Olympic Patrol Commander.

Olympic Torch: The Coast Guard is establishing a moving safety zone for the vessel which will carry the Olympic torch to the Savannah waterfront, prior to the commencement of the 1996 Olympic Games. The exact route of the torch is uncertain at this time. The zone will commence either, on the Savannah River in the vicinity of Coast Guard Station Tybee and continue west up river to the Highway 17A bridge (Talmadge bridge), or at the mouth of the Wilmington River and proceed to the Savannah River via the ICW and thence westerly to the Highway 17A bridge. The safety zone is needed for the protection of the vessel carrying the Olympic torch. The Captain of the Port will provide escort vessels and restrict approaching vessel operations in support of the moving safety zone.

Olympic Fireworks: Finally, the Coast Guard is establishing a safety zone for a fireworks display in connection with Olympic festivities, on the Savannah River in the vicinity of Rousakis Plaza. The safety zone is needed to protect vessels, facilities, and personnel from safety hazards associated with the storage, preparation, and launching of fireworks. The Captain of the Port is restricting vessel operations in the safety zone.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and do not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As discussed in the preamble, the boundaries, effective dates and times of all of the safety/security zones in this rule have been carefully tailored to meet the needs of security for the Olympic athletes while still providing for navigational safety. The 1,000 to 2,000 extra vessels expected to be in the Savannah area for the Olympics will bring a large amount of extra business into the area for many of the businesses affected by this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant effect on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not for profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Over 1,100 athletes and coaches representing over 80 countries, over 300 competition vessels, as well as approximately 1,000 to 2,000 support and spectator vessels are expected to arrive and participate in the festivities of the 1996 Olympic yachting competition. To ensure the security of the Olympic athletes and support personnel and to ensure the safety of the large volume of recreational and spectator vessels expected in the area, the Coast Guard is establishing these safety/security zones. The Coast Guard realizes that this rule will have some effect on some small entities, but the rule has been narrowly tailored to provide for security of the athletes and navigational safety on the waterways. The effective dates and times as well as the boundaries of the zones have been examined to ensure that they restrict movement only to the extent necessary to ensure security and navigational safety. Many of the zones are only in effect from 8 a.m. to 7 p.m. EDT when athletes are most likely to be in the areas, providing unlimited access to many areas each evening. As discussed in the preamble, alternate routes to those routes affected by this rule exist for many of the zones. If a vessel needs to transit through a zone, the COTP may grant permission for vessel transit even when the zone is in effect. To help vessels plan transits, the Coast Guard has provided details in this rule as to times and places when the COTP anticipates granting such permission and how vessels may request such

permission. As discussed in the preamble, the Olympic yachting events will bring large numbers of people and vessels into the area. Although the effect of this rule on small business is difficult to quantify, the Coast Guard expects that losses incurred by small entities as a result of this rule may be offset by a large increase in potential customers, albeit temporary.

For the reasons discussed above, including the determination that this rule is not economically significant, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule 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 rule consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this 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 finding of no significant impact has been prepared and is available for copying and inspection where indicated under the **ADDRESSES** section above.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, the Coast Guard amends as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T07–062 is added to read as follows:

§ 165.T07–062 Safety/Security Zones: Savannah River, Wilmington River and Turner Creek, Bull River and Wassaw Sound, GA.

(a) *Safety/Security zones.* The following areas are safety/security zones (all coordinates referenced use Datum: NAD 1983):

(1) *Marriott Hotel/Olympic Village.* The safety/security zone is in the following area: from the Marriott Hotel Olympic Village on the Savannah River in position:

32° 04′ 48″ N, 81° 04′ 54″ W; thence east to
32° 04′ 45″ N, 81° 04′ 44″ W; thence west to
32° 04′ 49″ N, 81° 05′ 05″ W.

This zone includes all waters within the above noted area in the Savannah River from shore to shore. This zone is extended an additional 500 yards to the west for opening (July 20, 1996) and closing ceremonies (August 2, 1996) as well as the award ceremonies (July 29, 1996).

(2) *Olympic Marina; Wilmington River and Turner Creek.* The safety/security zone is in the following area for the Olympic Village: On the Wilmington River Commencing at position:

32° 00′ 41″ N, 81° 00′ 16″ W; thence west 200 yards to
32° 00′ 34″ N, 81° 00′ 22″ W; then southerly to
32° 00′ 13″ N, 81° 00′ 12″ W; then east to the shore of Wilmington Island. Shoreside to the entrance of Turner Creek.

The eastern boundary of this zone is established in the following position:

32° 00′ 32″ N, 80° 59′ 55″ W; thence north to
32° 00′ 37″ N, 80° 59′ 53″ W.

(3) *Wilmington River and Tybee Cut.* A moving safety/security zone is in the following areas:

All waters within a 75 yard radius around all Olympic athlete shuttle vessels with Olympic athletes and officials onboard. These vessels will be transiting the Wilmington River in the area between the Olympic Marina at position:

32° 00′ 34″ N, 80° 59′ 55″ W; thence southeast via the Wilmington River and Tybee Cut to,
31° 56′ 40″ N, 80° 55′ 46″ W; the Olympic Day Marina.

(4) *Tybee Cut/Half Moon River.* This safety/security zone closes Tybee Cut and the eastern approach to the Half Moon River to all unaffiliated vessels, at the following positions:

(i) *Tybee Cut* from shore to shore across the entrance at position:

31° 57′ 06″ N, 80° 59′ 09″ W.

(ii) *Half Moon River (west)* extending from shore to shore from position:

31° 58′ 15″ N, 80° 57′ 46″ W; northeast to
31° 58′ 16″ N, 80° 57′ 36″ W.

(iii) *Half Moon River (east)* extending from shore to shore from position:

31° 57′ 42″ N, 80° 57′ 05″ W; thence northerly to
31° 57′ 53″ N, 80° 57′ 00″ W.

This zone includes all of Tybee Cut.

(5) *Tybee Cut/Bull River/Half Moon River.* This safety/security zone closes Tybee Cut, the southern entrance to the Bull River, and the eastern approach to the Half Moon River to all unaffiliated vessels, at the following positions:

(i) *Tybee Cut* from shore to shore across the entrance at position:

31° 57′ 06″ N, 80° 59′ 09″ W.

(ii) *Half Moon River* extending from shore to shore from position:

31° 58′ 15″ N, 80° 57′ 46″ W; northeast to
31° 58′ 16″ N, 80° 57′ 36″ W.

(iii) *Primary Bull River* the southern most tip of Wilmington Island at position:

31° 57′ 50″ N, 80° 56′ 55″ W; east to Little Tybee Island
31° 57′ 35″ N, 80° 55′ 55″ W.

Alternate Bull River from the northeastern most point of Cabbage Island at position:

31° 57′ 35″ N, 80° 56′ 55″ W; east to Little Tybee Island
31° 57′ 35″ N, 80° 55′ 55″ W.

This zone includes all of Tybee Cut and establishes the northwestern boundary of the Atlantic safety/security zone described in paragraph (a)(6).

(6) *Day Marina/Wassaw Sound.* This safety/security zone extends in a radius of 200 yards around the Olympic Day Marina located in approximate position 32° 56′ 40″ N, 81° 55′ 52″ W.

(7) *Atlantic Ocean and Wassaw Sound.* The following areas are a safety/security zone:

(i) from a position in Wassaw Sound at:

31° 57′ 32″ N, 80° 56′ 31″ W; thence east to Little Tybee Island, at 31° 57′ 30″ N, 80° 51′ 45″ W following the southern shoreline of Little Tybee Island to 31° 58′ 16″ N, 80° 51′ 45″ W thence southeast.
31° 58′ 00″ N, 80° 50′ 48″ W; thence southeast
31° 57 ′ 45″ N, 80° 50′ 08″ W; thence southeast
31° 57′ 27″ N, 80° 49′ 21″ W; thence south
31° 56′ 21″ N, 80° 48′ 48″ W; thence southwest to
31° 55′ 34″ N, 80° 49′ 11″ W; thence southwest to
31° 54′ 45″ N, 80° 49′ 34″ W; thence

southwest to
31° 53′ 58″ N, 80° 49′ 55″ W; thence southwest to
31° 53′ 09″ N, 80° 50′ 19″ W; thence west to
31° 52′ 45″ N, 80° 52′ 00″ W; thence northwest to
31° 53′ 06″ N, 80° 52′ 30″ W; thence northwest to
31° 53′ 36″ N, 80° 53′ 15″ W; thence northwest to
31° 54′ 32″ N, 80° 54′ 27″ W; thence northwest to
31° 54′ 48″ N, 80° 54′ 55″ W; thence west to
31° 55′ 02″ N, 80° 56′ 20″ W; thence to a curved line following the outer edge of Race Course Circle A northwest to 31° 56′ 11″ N, 80° 58′ 14″ W; east northeast to Cabbage Patch Island at position 31° 56′ 18″ N, 80° 58′ 04″ W following the southern shoreline of Cabbage Patch Island to 31° 57′ 30″ N, 80° 56′ 57″ W thence east to 31° 57′ 32″ N, 80° 56′ 31″ W. (ii) In Wassaw Sound from the southern tip of Wilmington Island at the junction of the Half Moon and Bull Rivers at position:
31° 57′ 47″ N, 80° 56′ 25″ W; thence southeast to
31° 57′ 33″ N, 80° 55′ 55″ W; thence south including all the waters of Wassaw Sound.

(b) *Definitions.*

(1) *Unaffiliated vessels.* All vessels that are not registered with the Atlanta Committee on the Olympic Games (ACOG) or designated as an Official Vessel by the Coast Guard Captain of the Port are unaffiliated vessels.

(2) *The ACOG vessels.* All vessels that are registered with the ACOG.

(3) *Olympic athlete shuttle vessels.* The ACOG vessels ferrying Olympic athletes between the Olympic Marina and the Day Marina.

(4) *Participant.* Any competition vessel or vessel directly supporting competition that is registered with the ACOG while in performance of its official function relative to a given race.

(5) *Competition Vessels.* Any vessel approved and designated by the ACOG for participation in sanctioned racing.

(6) *Official Vessels.* Official Vessels are all U.S. Coast Guard, U.S. Coast Guard Auxiliary, state and local law enforcement, and civilian vessels designated by the Coast Guard Captain of the Port.

(7) *Captain of the Port.* A Captain of the Port has been designated by the Commander, Seventh Coast Guard District. The Captain of the Port has the authority to control the movement of all vessels operating in the regulated areas and may suspend the races at any time it is deemed necessary for the protection of life and property.

Note: The Captain of the Port may be contacted during the regulatory periods on VHF/FM Channel 16 (156.8 MHZ) or Channel 22 (157.1 MHZ) by calling ''Coast Guard Captain of the Port'' or ''Coast Guard Marine Safety Office Savannah''.

(8) *Coast Guard Vessels.* Any Coast Guard vessel or other vessel with a Coast Guard representative onboard.

(c) *Effective dates.*

(1) *Marriott Hotel/Olympic Village.* The safety/security zone is effective from 8 a.m. EDT July 6, 1996, and terminates at 12 p.m. EDT August 4, 1996. From 7:30 p.m. until 10:30 p.m. EDT on July 20, July 29, and August 2, 1996 the zone is extended 500 yards west for the opening, medals, and closing ceremonies.

(2) *Olympic Marina; Wilmington River and Turner Creek.* This safety/security zone is effective from 8 a.m. EDT July 6, 1996, and terminates at 7 p.m. EDT August 2, 1996.

(3) *Wilmington River/Tybee Cut.* This moving safety/security zone is effective from 8 a.m. to 7 p.m. EDT daily from July 6, 1996 until August 2, 1996.

(4) *Tybee Cut/Half Moon River.* This safety/security zone is effective between 8 a.m. and 7 p.m. EDT daily from July 6, 1996 until July 18, 1996. The Captain of the Port may authorize access to Tybee Cut and Half Moon River between approximately 1 p.m. and 2 p.m. EDT daily.

(5) *Tybee Cut/Bull River/High Moon River.* This safety/security zone is effective between 8 a.m. and 7 p.m. EDT daily from July 19, 1996 until August 2, 1996. The alternate Bull River position granting access to Tybee Cut and Half Moon River is effective between approximately 1 p.m. and 2 p.m. EDT daily, unless otherwise published by the Captain of the Port in the Local Notice to Mariners.

(6) *Day Marina/Wassaw Sound.* This safety/security zone is effective from 8 a.m. EDT July 6, 1996 to 7 p.m. EDT August 2, 1996.

(7) *Atlantic Ocean and Wassaw Sound.* This safety/security zone is effective between the hours of 10 a.m. and 7 p.m. EDT daily, commencing July 19, 1996 to August 2, 1996 on each race date.

The Captain of the Port may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into the zones established by this regulation is prohibited unless authorized by the Captain of the Port or a Coast Guard commissioned, warrant, or petty officer designated by him. Section 165.33 also contains other general requirements.

(2) For the Atlantic Ocean/Wassaw Sound security/safety zone, described in (a)(7), on those waters within the Olympic offshore race venue which fall within the navigable waters of the United States, i.e., those waters within three nautical miles of the baseline from which the territorial sea is measured, the following regulations apply:

(i) Unaffiliated vessels shall remain outside the course perimeter, as marked by the ACOG vessels and Official Vessels.

(ii) All vessels shall follow the instructions of any Coast Guard, Coast Guard Auxiliary or state law enforcement vessels.

Note: The regulations specified in paragraph (d)(2) apply only within the navigable waters of the United States. In all waters within the Olympic offshore race venue which fall outside the navigable waters of the United States, during the specified dates and times, the following nonobligatory guidelines apply:

(A) All unaffiliated vessels should remain clear of the race venue and avoid interfering with any participant, the ACOG or Official Vessel. Interference with race activities may constitute a safety hazard warranting cancellation or termination of all or part of the race activities by the Captain of the Port.

(B) Any unauthorized entry within the race course perimeter, as marked by the ACOG and Official Vessels, by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

3. A new temporary § 165.T07–077 is added to read as follows:

§ 165.T07–077 Safety Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a moving safety zone: All waters within a 75 yard radius around the vessel that carries the Olympic torch to the Savannah waterfront. The exact route of the vessel carrying the torch will be announced via Broadcast Notice to Mariners before the zone is in effect. The zone commences either, on the Savannah River in the vicinity of Coast Guard Station Tybee (approximate position of 32° 02′ 10″ N, 80° 54′ 16″ W) and continue west up river to the Highway 17A bridge (Talmadge bridge) (approximate position 32° 05′ 13″ N, 81°

05′ 47″ W), or at the mouth of the Wilmington River and proceed to the Savannah River via the Intracoastal Waterway (ICW) and thence westerly to the Highway 17A bridge. All coordinates referenced use Datum: NAD 1983.

(b) *Effective date.* This section is effective at 6 p.m. and expires at 10 p.m. EDT on July 9, 1996, unless terminated sooner by the Captain of the Port, Savannah, GA.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his representative.

(2) The ''representative of the Captain of the Port'' is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf regardless of the support platform.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his Representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 81, or vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restrictions imposed. Coast Guard vessels enforcing the zones will have informational handouts. Information will also be available at local marinas.

4. A new temporary § 165.T07–078 is added to read as follows:

§ 165.T07–078 Safety Zone: Savannah River, Savannah, GA.

(a) *Location.* The following area is a safety zone: All waters within a 50 yards radius around a fireworks barge in the vicinity of Rousakis Plaza, Savannah River, Savannah, GA at an approximate position of 32°04′.55 N, 81°05′.27 W. All coordinates referenced use Datum: NAD 1983. The Savannah River will be closed to all vessel transits, during the actual fireworks display.

(b) *Effective date.* This section is effective at 9:15 p.m. and expires at 11 p.m. EDT on July 4, 1996, unless terminated sooner by the Captain of the Port, Savannah, GA.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his representative.

(2) The ''representative of the Captain of the Port'' is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf regardless of the support platform.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 81, or vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restrictions imposed. Coast Guard vessels enforcing the zones will have informational handouts. Information will also be available at local marinas.

Dated: April 23, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–10556 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 003–1003; FRL–5455–4]

Approval and Promulgation of Implementation Plans and Delegation of 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 4, 1995, the EPA published a proposed rulemaking to approve Iowa's voluntary operating permit program to serve as an alternative for sources otherwise subject to Title V of the Clean Air Act (the Act). No adverse comments were received on the proposed rulemaking. The EPA is now taking final action to approve this program.

EFFECTIVE DATE: This rule will become effective on May 30, 1996.

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

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: At 60 FR 39907, dated August 4, 1995, the EPA published a proposed rulemaking to approve Iowa's voluntary operating permit program as part of the State Implementation Plan (SIP) and pursuant to section 112(l) of the Act. This program serves as an alternative for sources which might otherwise be subject to Title V. In Section V of the August 4, 1995, Federal Register document proposing approval of Iowa's program, the EPA cited four regulatory deficiencies for the state to correct in order for EPA to proceed with final rulemaking. These four deficiencies concerned the definition of 12-month rolling period; fugitive emissions; eligibility for a voluntary permit; and a requirement that permit limitations, controls, and requirements be enforceable as a practical matter. The state adopted these changes and submitted them to the EPA under the signature of Larry Wilson, Director, Iowa Department of Natural Resources, on February 16, 1996. For further information on these items, the reader should consult the proposed rulemaking and the technical support document.

In a subsequent matter not contemplated in the proposed rulemaking, the state has made one regulatory change concerning when a source shall apply for a voluntary operating permit. In the original rule, the date of March 1, 1995, was specified. However, due to the delay in receiving approval of the program, the state revised its rule at 22.203(1)a(1) to read that applications are due 90 days after approval of the state's Title V program (October 1, 1995).

This change became effective on February 24, 1995, and was submitted to the EPA under the Director's signature on February 27, 1996. This change is approvable by the EPA because it is noncontroversial and it precludes sources from the tenuous position of applying for a program not yet approved (which the original rule did not anticipate).

EPA Action

The EPA is taking final action to approve revisions submitted on December 8, 1994; February 16, 1996; and February 27, 1996, for the state of Iowa. This action makes the state's program a federally enforceable part of the SIP, and also makes such permits federally enforceable for hazardous air pollutants by means of EPA's approval under section 112(l).

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

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

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

Unfunded Mandates

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

Through submission of this SIP, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that these rules result in no additional costs to tribal government.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 25, 1996.

William Rice,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(63) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(63) On December 8, 1994; February 16, 1996; and February 27, 1996, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implemenation Plan (SIP) to create a voluntary operating permit program as an alternative to Title V. These revisions strengthen maintenance of established air quality standards.

(i) Incorporation by reference.

(A) ''Iowa Administrative Code,'' sections 567–22.200–22.208, effective December 14, 1994. These rules create the voluntary operating permit program.

(B) ''Iowa Administrative Code,'' sections 567–22.201(1)''a'' and 22.206(1)''h'', effective January 11, 1995.

(C) ''Iowa Administrative Code,'' section 567–22.203(1)''a''(1), effective February 24, 1995.

(D) ''Iowa Administrative Code,'' sections 567–20.2; 22.200; 22.201(1)''a'' and ''b''; 22.201(2)''a''; and 22.206(2)''c'', effective October 18, 1995.

(ii) Additional material.

(A) Letter from Allan E. Stokes, Iowa Department of Natural Resources, to William A. Spratlin, U.S. EPA, dated February 16, 1995. This letter outlines various commitments by the state to meet requirements outlined by the EPA.

[FR Doc. 96–10568 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA153–2–7274a FRL–5459–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District; Sacramento Metropolitan Air Quality Management Division; Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Ventura County Air Pollution Control District (VCAPCD), the Sacramento Metropolitan Air Quality Management Division (SMAQMD), and the Placer County Air Pollution Control District (PCAPCD). This approval action will incorporate three rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_X emissions from natural gas-fired central furnaces, stationary internal combustion engines, and biomass boilers.

DATES: This action is effective on July 1, 1996, unless adverse or critical comments are received by May 30, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

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

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

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

Sacramento Metropolitan Air Quality Management District, Rule Development Section, 8411 Jackson Road, Sacramento, CA 95826.

Placer County Air Quality Management District, Rule Development, 11464 B. Avenue, Auburn, CA 95603.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

Applicability

This notice addresses EPA's direct final action for the following rules:

- VCAPCD, Rule 74.22, Natural Gas-Fired, Central Fan- Type Furnaces;
- SMAQMD, Rule 412, Stationary Internal Combustion Engines Located at Major Stationary Sources; and
- PCAPCD, Rule 233, Biomass Boilers.

The rules were adopted by the districts, submitted by the State of California, and found complete pursuant to EPA's completeness criteria set forth in 40 CFR Part 51 Appendix V [1] on the following dates:

- Rule 74.22—November 9, 1993; February 11, 1994; April 11, 1994.
- Rule 412—June 1, 1995; June 23, 1995; June 30, 1995.
- Rule 233—October 6, 1994; October 19, 1994; October 21, 1995.

Background:

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Sacramento Metropolitan Area (including part of Placer County) and the Ventura County Area are classified as a severe nonattainment areas for ozone.[2]. Both areas are subject to the RACT requirements of section 182(b)(2), cited above.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X category since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls by May 31, 1995 for those sources where installation by that date is practicable.

NO_X emissions contribute to the production of ground level ozone and smog. The three rules control emissions of NO_X from various industries used in a wide variety of applications. The rules were adopted as part of the VCAPCD's, SMAQMD's, and PCAPCD's efforts to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. All three rules are required to satisfy the mandates of the Clean Air Act requirements, and were submitted pursuant to the CAA requirements cited above.

EPA Evaluation and Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretations of these requirements, which form the basis for this action, appear in the NO_X Supplement and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT should be determined for major stationary sources of NO_X emissions. The document sets RACT emission levels specifically for electric utility boilers. For all other source

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

[2] The Sacramento Metropolitan (including Placer) and Ventura areas were designated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metropolitan Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

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

categories, EPA expects States/Districts to establish RACT levels comparable to those levels for utility boilers taking into account cost, cost-effectiveness, and emission reductions.

While most of the guidance issued by EPA (previous to the NO_X Supplement) on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control techniques documents (ACTs), that identify alternative controls for most categories of stationary sources of NO_X. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. While providing guidance and information for States to use in making RACT determinations, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been issued by EPA to ensure that submitted NO_X RACT rules are fully enforceable and strengthen or maintain the SIP.

Placer Rule 233 sets NO_X limits at 115 parts per million (ppm) corrected to 12% carbon dioxide (0.2096 pounds per million British Thermal Units (lb/MMBTU)). This limit corresponds to 162 ppm corrected to 3% oxygen. The district believes this limit meets RACT because it is similar to the RACT limits that EPA has set for electric utility boilers (0.20–0.50 lb/MMBTU). The district set the limits based on current emission limitations at existing facilities in Placer county, and is not expecting to achieve any further emissions reductions as a result of adopting this rule. Additionally, there will be no additional costs incurred by the sources subject to this rule as a result of its adoption.

The California Air Resources Board RACT/BARCT Guidance[4] document for institutional, commercial, and industrial boilers suggests a RACT limit of 70 ppm corrected to 3% O_2 for such units fired with gaseous fuel and 115–150 ppm for units fired with fuels other than gas. EPA established RACT levels for electric utility boilers and recommended for other source categories that States/Districts make RACT determinations comparable to those EPA established for electric utility boilers. This comparability should be based on several factors including cost, cost-effectiveness, and emission reductions. Because of the variability in application, equipment, and input and output characteristics of different NO_X source categories, comparability cannot easily be done solely by comparing the emissions rates. That is why EPA suggests that RACT levels should be made in comparison to the limits set for electric utility boilers using the factors cited above.

EPA does not necessarily agree that the limits in Rule 233 represent what would generally be considered RACT for this source category, even though the emissions rates are similar to those set for utility boilers. However, EPA recognizes that the two sources covered by this rule are already applying NO_X reduction technology according to their permits (district and federal). One source is permitted at 54 ppm at 12% CO_2 and the other at 115 ppm at 12% CO_2. Because these sources are currently utilizing NO_X controls, EPA believes the cost of achieving additional small reductions of NO_X to meet the general RACT limits would be cost prohibitive. In addition, PCAPCD is not claiming any emissions reductions in their Federal ozone attainment plan for Rule 233 and has submitted the rule for incorporation into the SIP to prevent any NO_X emissions increases from this source category. Therefore, EPA agrees that in this circumstance the limits set in Rule 233 for these sources satisfies the RACT requirements of the CAA.

Ventura Rule 74.22 sets NO_X emission levels at 40 nanograms per joule of heat output (ng/J). This limit represents a 75% average reduction from typical natural-gas fired furnaces and will be achieved from new units being purchased and installed. The limit was chosen so as not to require homeowners or businesses to modify furnace enclosures when replacing existing furnaces in order to keep the costs appropriate. The VCAPCD estimates the cost of compliance at approximately $2.24 per pound of NO_X reduced, and expects the rule to achieve reductions of 1.5 tons per day. Final compliance is required by May 31, 1994.

Sacramento Rule 412 sets limits for RACT and BARCT in the rule. The RACT levels are set at 50/125/700 ppm for rich burn, lean burn, and diesel engines, respectively. The BARCT limits are set at 25/65/80 ppm for rich, lean, and diesel engines, respectively. The rule is structured to allow exemptions from compliance with the emissions limits for some units which operate at annual levels that the control of which would not be cost-effective. The rule is expected to achieve reductions of 2.2 tons per year. RACT is required to be implemented by July 1, 1995.

EPA is incorporating these rules into the SIP because they strengthen the SIP through the addition of enforceable measures such as NO_X emission limits, recordkeeping, test methods, definitions, and compliance tests. EPA believes all three rules for these source categories in each district satisfy the RACT requirements of the CAA. A more detailed discussion of the sources controlled, the controls required, and the analysis of how these controls meet RACT can be found in the Technical Support Document (TSD) and its attachments, dated November 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. All three rules are new rules establishing RACT for their particular category, and contain implementation dates consistent with the CAA and EPA's policy. Therefore, all three are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 1, 1996, unless, by May 30, 1996, adverse or critical comments are received.

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

[4] Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (RACT/BARCT guidance for ICI boilers), California Air Resources Board, July 18, 1991.

received, the public is advised that this action will be effective July 1, 1996.

Regulatory Process

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

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

Unfunded Mandates

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: April 1, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(195)(i)(B), (202)(E)(i)(*2*), and (222)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(195) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rule 74.22, adopted on November 9, 1993.

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(202) * * *

(i) * * *

(E) * * *

(*2*) Rule 233, adopted on October 6, 1994.

* * * * *

(222) * * *

(i) * * *

(C) * * *

(*3*) Rule 412, adopted on June 1, 1995.

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[FR Doc. 96–10566 Filed 4–29–96; 8:45 am]

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40 CFR Part 52

[CA 095–0006a; FRL–5454–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District, El Dorado County Air Pollution Control District, Ventura County Air Pollution Control District, Yolo-Solano Air Quality Management District, and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Placer County Air Pollution Control District (PLCAPCD), El Dorado County Air Pollution Control District (EDCAPCD), Ventura County Air Pollution Control District (VTCAPCD), Yolo-Solano Air Quality Management District (YSAQMD), and Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from automotive refinishing, solvent cleaning and degreasing, wood coating and graphic arts operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittal, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on July 1, 1996, unless adverse or critical comments are received by May 30, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

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

rule revisions are available for inspection at the following locations:

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812–2815

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

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667

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

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

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Chief Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: PLCAPCD's Rule 216, Organic Solvent Cleaning and Degreasing Operations, and Rule 236, Wood Products Coating Operations; EDCAPCD's Rule 225, Organic Solvent Cleaning and Degreasing Operations, Rule 230, Motor Vehicle and Mobile Equipment Coating Operations and Rule 235, Surface Preparation and Cleanup; VTCAPCD's Rule 74.18 Motor Vehicle and Mobile Equipment Coating Operations and Rule 74.30, Wood Products Coatings; YSAQMD's Rule 2.13, Organic Solvents and Rule 2.26, Motor Vehicle and Mobile Equipment Coating Operations; MDAQMD's Rule 1104, Organic Solvent Degreasing Operations, Rule 1114, Wood Products Coating Operations and Rule 1117, Graphic Arts. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994 (Rules 74.30 and 1117), November 30, 1994 (Rules 225, 230, 1104, and 2.13), February 24, 1995 (Rule 74.18 and 2.26), March 31, 1995 (Rule 1114), May 24, 1995 (Rule 236) and October 13, 1995 (Rules 216 and 235).

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included Ventura County, part of the Southeast Desert Air Basin, and the Sacramento Metro area, which includes portions of Placer, Yolo, and El Dorado County. See 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the PLCAPCD, EDCAPCD, VTCAPCD, YSAQMD and the MDAQMD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182 of the CAA, Congress statutorily adopted the requirements that nonattainment areas both fix their deficient reasonably available control technology (RACT) rules for ozone and submit RACT rules for other stationary sources of VOCs (the RACT fix-up and catch-up requirements). Congress established a deadline of May 15, 1991 for States to submit corrections to deficient rules and a deadline of November 15, 1992 for States to submit rules for other VOC source categories.

Section 182 applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Ventura County, a portion of the Southeast Desert Air Basin, the Sacramento Metro area, which includes portions of Placer, Yolo and El Dorado County are classified as severe;[2] therefore, these areas were subject to the RACT fix-up and catch-up requirements and the deadlines cited above.[3]

The State of California submitted many revised RACT rules for incorporation into its SIP on July 13, 1994, November 30, 1994, February 24, 1995, March 31, 1995, May 24, 1995, and October 13, 1995, including the rules being acted on in this document. This document addresses EPA's direct-final action for PLCAPCD's Rule 216, Organic Solvent Cleaning and Degreasing Operations, and 236, Wood Products Coating Operations; EDCAPCD's Rules 225, Organic Solvent Cleaning and Degreasing Operations, 230, Motor Vehicle and Mobile Equipment Coating Operations, and 235, Surface Preparation and Cleanup; VTCAPCD's Rules 74.18 Motor Vehicle and Mobile Equipment Coating Operations, and 74.30, Wood Products Coatings; YSAQMD's Rules 2.13, Organic Solvents, and 2.26, Motor Vehicle and Mobile Equipment Coating Operations; MDAQMD's Rules 1104, Organic Solvent Degreasing Operations, 1114, Wood Products Coating Operations and 1117, Graphic Arts. These submitted rules were found to be complete on July 22, 1994 (1117), September 12, 1994 (74.30), January 3, 1995 (1104), January 30, 1995 (2.13, 225, and 230), March 10, 1995 (74.18, 2.26,), May 2, 1995 (1114), July 24, 1995 (236), and November 28, 1995 (216, 235) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being finalized for approval into the SIP.

VTCAPCD's Rule 74.18, EDCAPCD's Rule 230, and YSAQMD's Rule 2.26 control emissions of VOCs from refinishing of motor vehicles and mobile equipment, YSAQMD's Rule 2.13 controls emissions of VOCs from the usage of organic solvents, EDCAPCD's Rule 235 controls emissions of VOCs from surface preparation and cleanup using organic solvents, EDAPCD's Rule 225, PLCAPCD's Rule 216 and MDAQMD's Rule 1104 control emissions of VOCs from organic solvent degreasing operations, PLCAPCD's Rule 236, MDAQMD's Rule 1114 and VTCAPCD's Rule 74.30 control emissions of VOCs from coating of wood products and MDAQMD's Rule 1117

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

[2] Ventura County and a portion of the Southeast Desert Air Basin retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995)

[3] California did not make the required SIP submittal for Mojave Desert AQMD's Rule 1104, Graphic Arts, by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18 month sanction clock. The rule being acted on in this direct final rule was submitted in response to the EPA finding of failure to submit.

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

controls emissions of VOCs from graphic arts operations. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted by the respective districts as part of their effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP–Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

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

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to EDCAPCD's Rule 225, PLCAPCD's Rule 216 and MDAQMD's Rule 1104 is entitled, Control of Volatile Organic Emissions From Solvent Metal Cleaning. EPA–450/2–77–022, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, November 1977, and the CTG applicable to MDAQMD's Rule 1117 is entitled, Control of Volatile Organic Emissions from Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography, U.S. Environmental Protection Agency, Office of Air Quality And Standards, December 1978, EPA–450/2–78–033. MDAQMD's Rule 1114 and VTCAPCD's Rule 74.30 limit emissions from a source category for which EPA has published a draft CTG entitled, Control Techniques Guideline Document; Wood Furniture Finishing and Cleaning Operation, see 60 FR 46595, September 7, 1995, which was used as guidance in the evaluation. VTCAPCD's Rule 74.18, EDCAPCD's Rules 230 and 235, and YSAQMD's Rule 2.26, and 2.13 are applicable to source categories for which EPA has not published a CTG. Accordingly, these rules were evaluated against the interpretation of EPA policy found in the Blue Book, referred to in Footnote 1 and against other EPA policy including the EPA Region 9/CARB document entitled: Guidance Document for correcting VOC rule deficiencies, (April 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

PLCAPCD's submitted Rule 216, Organic Solvent Cleaning and Degreasing Operations, includes the following significant changes from the current SIP:

- Updated format of rule to be consistent with other district rules, and to enhance clarity,
- Expanded section 200, to include definitions of exempt compounds, VOCs, leaks, wipe cleaning, stationary source and lip exhaust,
- Regrouped requirements and standards to enhance clarity and enforceability of the rule,
- Revised section 500, to cite test methods that have been approved by the EPA.

PLCAPCD's submitted Rule 236, Wood Products Coating Operations, is a new rule containing the following significant provisions:

- Limits VOC emissions from coating and surface preparation of wood products including furniture, cabinets and custom replica furniture, but exempts application of coatings to wooden musical instruments, and exempts facilities using less than 20 gallons of coatings per year,
- The rule applies only to facilities located in the Sacramento Valley Air Basin portion of Placer County.

EDCAPCD'S submitted Rule 225, Organic Solvent Cleaning and Degreasing Operations, includes the following significant changes from the current SIP:

- Corrected the deficiencies noted in EPA's SIP call of September 7, 1988 (53 FR 34500)
- Incorporates the provisions of the RACT/BARCT determination developed by the California Air Resources Board (CARB).

EDCAPCD's submitted Rule 230, Automotive Refinishing Operations, is a new rule containing the following significant provisions:

- Limits the VOC contents of numerous coatings and solvents utilized in the automotive refinishing industry,
- Implements the provisions of RACT/BARCT developed by the California Air Resources Board,
- Requires the use of high efficiency transfer equipment for the application of all coatings, such as High Volume Low Pressure (HVLP), electrostatic or other coating application methods having a transfer efficiency of 65% or greater,
- Requires add-on abatement equipment when non-compliant coatings are being used,
- Specifies testmethods for analysis of samples, determination of emissions, transfer efficiency, capture efficiency, metallic particle content in metallic coatings and acid concentration in pretreatment wash primer,
- Defines recordkeeping requirements.

EDCAPCD's submitted Rule 235, Surface Preparation and Cleanup is a new rule containing the following significant provisions:

- Limits the emissions of VOCs from solvent cleaning operations in production, repair, maintenance or servicing of parts, products, tools, machinery, equipment, or general work areas,
- Exempts facilities using less than 10 gallons of solvents in any one calendar year, provided that the daily use does not exceed one liter,
- Defines cleaning devices and methods to be used when performing solvent cleaning,
- Defines recordkeeping requirements and test methods.

VTCAPCD's Rule 74.18, Motor Vehicles and Mobile Equipment Coatings Operations, includes the following significant changes from the current SIP:

- Sets the standard for pretreatment wash primer at 780 grams of VOC per liter, and limits the use of this coating to 10% of all undercoats used, averaged over one month,
- Deletes the category of precoat,
- Changes the implementation date of the primer sealer VOC standard to January 1, 1997,
- Changes the implementation date of the multistage topcoat VOC limit to January 1, 1996,
- Limits the use of specialty coatings to no more than 5% of total coating usage.

VTCAPCD's Rule 74.30, Wood Products Coatings, is a new rule containing the following significant provisions:

- Limits the VOC content of coatings applied to wood products,
- Establishes two categories of wood coating operations: new wood products and refinishing wood products,

• Allows add-on control equipment as an alternative to using low VOC coatings,

• Requires operators of wood coating facilities to use coating application methods yielding at least 65% transfer efficiency,

• Defines the test methods to be used and specifies recordkeeping provisions.

YSAQMD's Rule 2.13, Organic Solvents, includes the following changes from the current SIP:

• Reformatting of the entire rule,

• Added section 101, Purpose

• Added section 102, Applicability

• Deleted the sections concerning asphalt paving and graphic arts. These sources are now covered in Rule 2.28 and 2.29 respectively,

• Added section 502, test methods.

YSAQMD's Rule 2.26, Motor Vehicle and Mobile Equipment Coating Operations, is a new rule containing the following significant provisions:

• Limits the VOC content of coatings applied to group I and group II vehicles,

• Specifies the application method to be used to achieve a transfer efficiency of 65% or greater,

• Limits the VOC contents of surface preparation and clean-up solvents,

• Limits use of specialty coatings to no more than 5% of all coatings applied, on a monthly basis,

• Limits use of precoat to no more than 25%, by volume, of the amount of primer surfacer used,

• Includes a prohibition of specification and sale clause,

• Defines test methods to be used and specifies records to be kept.

MDAQMD's Rule 1104, Organic Solvent Degreasing Operations, is a new rule containing the following significant provisions:

• Limits emissions of VOCs from wipe cleaning and degreasing operations using organic solvents,

• Applies to any facility engaged in wipe cleaning, cold solvent cleaning (degreasing) operations for metal/non metal parts/products or electronic circuit boards, which utilize organic solvents,

• Defines equipment requirements for remote reservoir cleaners, cold solvent degreasers, conveyorized cold solvent degreasers, batch loaded vapor degreasers, and conveyorized vapor degreasers,

• Defines operating requirements for all degreasers in general, and batch loaded, conveyorized degreasers, and remote reservoir degreasers specifically,

• Provides recordkeeping requirements and specifies test methods.

MDAQMD's Rule 1114, Wood Products Coating Operations, is a new rule containing the following significant provisions:

• Limits emissions of VOCs from the coating operations of wood products,

• Provides limits of VOC content for topcoats, fillers stains, inks, mold-seal, multi-colored and pigmented coatings, sealers, strippers and adhesives.

• Defines application methods to be used when applying coatings to achieve a transfer efficiency of 65% or more,

• Defines the VOC limits of clean-up and equipment cleaning solvents,

• Allows the use of add-on control devices to comply with the rule,

• Exempts facilities using less than one gallon of coating material in any one day, or have maximum actual emissions of 3 lbs of VOCs per day and not more than 200 lbs of VOCs per calendar year,

• Specifies test methods to be used and records to be kept.

MDAQMD's Rule 1117, Graphic Arts, is a new rule containing the following significant provisions:

• Applies to rotogravure and flexographic printing sources, but exempts facilities that emit less than 2500 pounds of VOC per month,

• Requires sources to maintain daily records of coatings, inks, and adhesives used by the facility. If an emission control system is used, the facility must continuously monitor its operating parameters,

• Limits VOC content of inks, coatings, and adhesives to 300 grams per liter of coating as applied,

• Defines capture and control efficiency requirements of 75% by weight for publication rotogravure, of 65% by weight for packaging rotogravure, and of 60% by weight for flexographic printing,

• Defines test methods to be used and records to be kept.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, PLCAPCD's Rules 216, Organic Solvent Cleaning and Degreasing Operations, and 236, Wood Products Coating Operations, EDCAPCD's Rules 225, Organic Solvent Cleaning and Degreasing Operations, 230, Motor Vehicle and Mobile Equipment Coating Operations, and 235, Surface Preparation and Cleanup, VTCAPCD's Rules 74.18, Motor Vehicle and Mobile Equipment Coating Operations, and 74.30, Wood Products Coating, YSAQMD's Rules 2.13, Organic Solvents, and 2.26, Motor Vehicles and Mobile Equipment Coating Operations, and MDAQMD's Rules 1104, Organic Solvent Degreasing Operations, 1114, Wood Products Coating, and 1114, Graphic Arts, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 1, 1996, unless, by May 30, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 1, 1996.

Regulatory Process

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

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would

constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 26, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(198)(i)(E)(*2*) and (i)(J)(*2*), (207)(i)(B)(*4*), (i)(C)(*4*) and (i)(D)(*2*),(215)(i)(B)(*3*) and (i)(D)(*1*), (216)(i)(A)(*4*), (220)(i)(B)(*2*) and (225)(i)(B)(*5*) and (i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(E) * * *

(*2*) Rule 1117 adopted June 22, 1994.

* * * * *

(J) * * *

(*2*) Rule 74.30 adopted May 17, 1994.

* * * * *

(207) * * *

(i) * * *

(B) * * *

(*4*) Rules 225 and 230 adopted September 27, 1994.

(C) * * *

(*4*) Rule 2.13 adopted May 25, 1994.

(D) * * *

(*2*) Rule 1104 adopted September 28, 1994.

* * * * *

(215) * * *

(i) * * *

(B) * * *

(*3*) Rule 74.18 adopted December 13, 1994.

* * * * *

(D) * * *

(*1*) Rule 2.26 adopted November 9, 1994.

* * * * *

(216) * * *

(i) * * *

(A) * * *

(*4*) Rule 1114 adopted February 22, 1995.

* * * * *

(220) * * *

(i) * * *

(B) * * *

(*2*) Rule 236 adopted on February 9, 1995.

* * * * *

(225) * * *

(i) * * *

(B) * * *

(*5*) Rule 216 adopted on June 8, 1995.

(C) * * *

(*2*) Rule 235 adopted on June 27, 1995.

* * * * *

[FR Doc. 96–10563 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 70

[TN–KNOX–95–01; FRL–5464–1]

Clean Air Act Final Full Approval of Operating Permits Program; Knox County Department of Air Pollution Control, Knox County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the title V operating permits program submitted by the State of Tennessee on behalf of the Department of Air Pollution Control (''Knox County'' or ''the County''), located in the geographic area of Knox County. The County's 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: May 30, 1996.

ADDRESSES: Copies of the Knox County 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, on the 3rd floor of the Tower Building. Interested persons wanting to examine these documents, contained in EPA docket number TN-KNOX–95–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, 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 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. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal program.

On November 8, 1995, EPA proposed full approval, or in the alternative, interim approval of the operating permits program for Knox County. *See* 60 FR 56281. The November 8, 1995, Federal Register document also proposed approval of the County'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. On March 6, 1996, the State of Tennessee submitted on behalf of Knox County a package containing revisions to the operating permits program, which addressed the deficiencies discussed in the full/interim approval document. As required in the November 8, 1995, Federal Register document, the County made the following revisions to the Knox County Air Pollution Control (K.C.A.P.C.) regulations:

1. K.C.A.P.C. section 25.70.7.e.2.i.B was amended to include the following language: ''Notwithstanding paragraphs e.2.i.A and e.3.i. of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. The Department may establish additional requirements for such permit conditions.''

2. K.C.A.P.C. section 30.1.D was amended to include the following statement: ''These penalties shall be recoverable in a maximum amount of $25,000 per day per violation as provided by state law.''

3. K.C.A.P.C. section 30.1.G was amended to include the following language: ''The Director has the authority to restrain or enjoin immediately and effectively any person, by order or by suit in court, from engaging in any activity in violation of a permit or the Knox County Air Pollution Control Regulations that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.''

4. K.C.A.P.C. section 30.1.F was amended to include the following statement at the end of the section: ''Such actions may be taken by the Director without the necessity of a prior revocation of any permit.''

These changes and other minor revisions to the County's title V program became locally effective on January 10, 1996.

In this action, EPA is promulgating full approval of the Knox County title V 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

The EPA is promulgating full approval of the title V operating permits program submitted by the State of Tennessee, on behalf of Knox County, on November 12, 1993, and supplemented on August 24, 1994; January 6 and 19, 1995; February 6, 1995; May 23, 1995; September 18 and 25, 1995; and March 6, 1996. The November 8, 1995, Federal Register notice established that Knox County would receive full approval of its program if the changes to the County's regulations described in the previous section were adopted prior to final promulgation. Knox County has demonstrated that the program is adequate to meet the minimum elements of a state or local operating permits program as specified in 40 CFR part 70.

The scope of the County's part 70 program approved in this document applies to all part 70 sources (as defined in the approved program) within Knox County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 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 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

B. Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Knox County's preconstruction review program found in K.C.A.P.C. section 25.1 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and the County'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 Knox County 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 the County 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 the County's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of Knox County'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 Knox County submittal and other information relied upon for the final full approval are contained in docket number TN–KNOX–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

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: April 19, 1996.

A. Stanley Meiburg,

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. Appendix A to part 70 is amended by adding paragraph (c) to the entry for Tennessee to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

* * * * *

(c) The Knox County Department of Air Pollution Control; submitted on November 12, 1993, and supplemented on August 24, 1994; January 6 and 19, 1995; February 6, 1995; May 23, 1995; September 18 and 25, 1995; and March 6, 1996; full approval effective on May 30, 1996, in the Federal Register.

* * * * *

[FR Doc. 96–10657 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5461–3]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deletion Amnicola Dump Superfund Site Chattanooga, Tennessee from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Amnicola Dump Superfund Site from the National Priorities List (NPL), Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State have determined that all appropriate Fund-financed responses under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup is appropriate. Moveover, EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare and the environment. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Superfund Remedial Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 347–7791, extension 2033.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: Amnicola Dump Superfund Site in Chattanooga, Tennessee.

A Notice of Intent to Delete for this site was published on February 22, 1996, (FR–5436–5). The closing date for comments on the Notice of Intent to Delete was March 22, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: April 4, 1996

Phyllis P. Harris,

Acting Deputy Regional Administrator, U.S. EPA Region 4.

For reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the Amnicola Dump Superfund Site, Chattanooga, Tennessee.

[FR Doc. 96–10104 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85, FCC 96–154]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Interim and final rules.

SUMMARY: This Order implements sections of the Telecommunications Act of 1996 (''1996 Act''). The Order establishes rules conforming the Commission's rules to statutory mandates that became effective upon enactment of the 1996 Act. Although all rules promulgated pursuant to this Order are ''final,'' the Commission recognizes that some rules, apart from those implementing the explicit language of the 1996 Act, should be viewed as ''interim'' rules subject to revision in the near future based on comments and information received in an associated Notice of Proposed Rulemaking (''NPRM'') that has been released concurrently with this Order and published in this issue of the Federal Register. This Order implements rules related to the 1996 Act's cable reform provisions, including the definition of effective competition, the cable rate complaint process, the sunset of cable programming service tier regulation, small cable operators, uniform rate requirements, subscriber notice of service and rate changes, technical standards, cable system buy out restrictions, program access, the definitions of cable system and cable

service, operator refusals to carry indecent programming, and prior year losses. The intended effect of this action is to implement provisions of the 1996 Act that revised the Cable Television Consumer Protection and Competition Act of 1992.

DATES: The statutory requirements reflected in the final rules adopted in this Order were effective February 8, 1996, the date of enactment of the Telecommunications Act of 1996. The effective date for the final rule changes (47 C.F.R. 76.5 (a) and (ff), 76.309(c)(3)(i)(B), 76.505, 76.605 Note 6, 76.701, 76.702, 76.905(b)(4), 76.933 (e) and (g)(5), 76.950, 76.951, 76.953(a), 76.956(a), 76.964, 76.984(c) as established herein is April 30, 1996. The effective date of the interim rules (47 C.F.R. 76.1400–76.1404) is April 30, 1996. Procedures for submitting comments can be found in the companion NPRM issued with this Order. The companion NPRM can be found elsewhere in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Tom Power, Paul Glenchur, Nancy Stevenson, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of a Commission Order in CS Docket No. 96–85, FCC 96–154, adopted April 5, 1996 and released April 9, 1996. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20017.

Synopsis of Order

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I. Introduction

1. In this item we amend the Commission's rules relating to cable television to conform them to changes in the Communications Act enacted, on February 8, 1996, in the Telecommunications Act of 1996 (the ''1996 Act''). In addition, in an associated Notice of Proposed Rulemaking (''NPRM''), we propose further rules to the extent necessary to implement various provisions of the 1996 Act. Finally, because many of these statutory provisions were effective upon enactment, we establish interim rules to govern implementation of the 1996 Act pending adoption of final rules.

2. Our intent in this item is to conform our rules promptly to statutory requirements that are already in effect, to bring certainty to cable operators and local regulators, and to achieve as quickly as possible the deregulation intended by Congress. Further, we seek to streamline our procedural regulations and, of course, to continue to protect consumers, consistent with congressional intent.

3. Much of the 1996 Act consists of clear, self-effectuating revisions to prior federal statutory provisions. The *Order* portion of this item conforms our rules to meet these new statutory requirements. We are revising these rules without providing prior public notice and an opportunity for comment because the rule modifications are mandated by the applicable provisions of the 1996 Act. We find that notice and comment procedures are unnecessary, and that therefore this action falls within the ''good cause'' exception of the Administrative Procedure Act. 5 U.S.C. § 553(b)(B). The final rules adopted in this *Order* do not involve discretionary action on the part of the Commission. Rather, they simply implement provisions of the 1996 Act according to the specific terms set forth in the legislation.

4. Other provisions of the 1996 Act are already effective, but require further rulemaking in order to be fully and clearly implemented. The companion *NPRM* addresses these issues. We find it in the public interest to adopt interim rules immediately and find good cause to establish them without the benefit of the traditional notice and comment process. Of course, our final rules will be crafted to take into account public comment to the same extent as would be the case in a rulemaking that was not preceded by the adoption of interim policies. However, we intend the interim rules to create a safe harbor, i.e., operators can be assured that if they comply with these interim rules, their behavior will not later be subject to challenge based upon the ultimate outcome of the rulemaking.

II. Order

A. Effective Competition

1. Final Rule Change

5. Since passage of the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''), regulation of cable television has been guided by Congress' intent to ''rely on the marketplace, to the maximum extent feasible . . . .'' The 1992 Cable Act required the Commission to prescribe rate regulations that protect subscribers from having to pay unreasonable rates by ensuring that rates for regulated services do not exceed rates that would be charged in the presence of effective competition. Thus, regulations governing the rates charged for cable services do not apply to cable systems that actually face effective competition. For a system that is not subject to effective competition, the Commission is obligated to ensure the reasonableness of rates charged for the basic service tier (''BST'') and for the cable programming service tier (''CPST''). The BST, which a subscriber must purchase in order to have access to any other tier of service, must include all of the local broadcast television stations that the operator offers over its system, plus any public, educational, or government access channels that the operator is required to provide to subscribers under the terms of its franchise. A CPST is any tier of programming, other than the basic service tier, that a cable operator offers. Where effective competition is present, certain other regulatory requirements also become inapplicable, including the uniform rate requirement, the ''tier buy through'' requirement, and certain of the ownership rules.

6. Section 76.905(b) of our rules incorporates the statutory definition of ''effective competition'' as set forth in the 1992 Cable Act. Pursuant to that rule, a system is subject to effective competition in the area covered by its local franchise if any one of the following three tests are met:

(1) Fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.

(2) The franchise area is:

(i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15% of the households in the franchise area.

(3) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.

7. The three effective competition test categories described above are not altered by the 1996 Act. However, Section 301(b)(3) of the 1996 Act creates a fourth test, finding that effective competition exists when video programming is offered by, or over the facilities of, a local exchange carrier (''LEC'') or its affiliate. Thus, effective competition now exists if a:

Local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

This provision was effective upon enactment. Therefore, we amend our rules to incorporate this additional prong of the definition of effective competition. Consistent with Section 623 of the statute, we seek to adopt interim and permanent rules that will allow the Commission to determine when the level of competition provided by a LEC or its affiliate is sufficient to have a restraining effect on cable rates.

2. Definitions of ''offer'' and ''in the franchise area''

8.–9. The Commission's pre-existing definition of ''offer'' will apply under the new test for effective competition:

Service of a multichannel video programming distributor will be deemed offered: (1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and (2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

10. The legislative history to the 1996 Act indicates congressional intent to apply this definition of ''offer'' for purposes of the new test for effective competition.

11. An operator should focus on each element of the ''offer'' definition, in the context of the new test for effective competition, when attempting to prove that the service offered by the LEC-affiliated multichannel video programming distributor (''MVPD'') is effective in restraining cable rates. For example, a cable operator seeking to prove effective competition will have to show that the competitor is ''physically able'' to offer service to subscribers ''in the franchise area.'' Where the competitor's service area does not follow the borders of the local cable franchise areas, a cable operator should describe the extent of the overlap between its franchise area and the actual or planned service area of the competitor. With respect to multichannel multipoint distribution service (''MMDS''), for example, we previously have determined that the potential subscribers include only those who reside in ''areas to which the MMDS operator is capable of providing video programming.'' We note that the zone in which our rules protect a MMDS licensee from harmful electrical interference is a circle with a radius of 35 miles centered on the MMDS transmitter site. Thus, in seeking to establish effective competition from a LEC-affiliated MMDS operator, a cable operator should provide the location of the MMDS transmitter and the 35-mile protected zone. The cable operator also should provide any other reasonably available technical and geographic information, as well as information about the geographic scope of the competitor's marketing efforts, to help establish that service is being offered to subscribers in the franchise area. Such data, whether with respect to a MMDS operator or some other LEC-affiliated MVPD, will also be relevant to a showing that there are no technical or other impediments to households taking service from the MVPD. Where appropriate, we will request additional relevant information from the competing MVPD.

12. In addition, the cable operator must establish that ''potential subscribers in the franchise area are reasonably aware'' that they may purchase the competitor's service. The marketing efforts of the LEC or its affiliate often will be directly related to this issue. As we previously have observed, ''potential subscribers may be made reasonably aware of the availability of a competing service, for example, through advertising in regional or local media, direct mail, or any other marketing outlet.'' (Rate Order), 58 FR 29736 (May 21, 1993). Thus, cable operators may rely on marketing information to the extent necessary to show consumer perceptions of the availability and comparability of the competing service. Again, the Commission may seek information directly from the competitor in appropriate circumstances.

3. Definition of ''comparable programming''

13. The legislative history reveals Congress's intent that video programming be deemed ''comparable'' for purposes of this test if the competing service ''includes access to at least 12 channels of programming, at least some of which are television broadcasting signals.'' On an interim basis we will require the broadcast programming to include the signals of local broadcasters. Broadcast programming delivered by satellite (e.g., ''superstations'') shall not be deemed broadcast programming for purposes of the interim application of the new effective competition test.

4. MMDS Provision of Local Broadcast Channels

14. The definitions of ''offer'' and ''comparable programming'' require us to address a further question that arises specifically in the context of MMDS. An MMDS operator has two ways of ensuring that its subscribers receive local broadcast programming. The operator can pull in the broadcast signals itself via its own centrally located broadcast antenna and then retransmit the entire package of broadcast and non-broadcast signals to the microwave antenna located at the subscriber's residence, or the operator can install a separate broadcast antenna to complement the microwave antenna at each subscriber location. We must determine whether the wireless cable operator should be deemed to be ''offering'' broadcast programming in the latter situation, i.e., when the operator does not transmit the broadcast signals to the subscriber via microwave. In that situation, the operator must join the broadcast signals to the microwave signals at some point. One approach is to join those signals in a single cable that runs to the back of the customer's television set or to a settop converter box. Another approach is to run separate cable lines from each antenna to an A/B switch from which a single line is connected to the television set.

The subscriber pushes the switch back and forth between the A position and the B position, depending upon whether the subscriber wants to see the broadcast channels or the microwave channels.

15. On an interim basis, we will resolve this issue as follows. If the broadcast channels are available to the subscriber without an A/B switch or similar device, the MMDS operator will be deemed to be offering them within the meaning of Section 301(b)(3) of the 1996 Act. If an A/B switch or similar device is required, we will still deem the broadcast stations offered if the MMDS operator is responsible for the installation. However, if the customer must install his or her own A/B switch to receive the broadcast channels, the MMDS operator will not be deemed to be offering those channels. Inclusion of broadcast channels on the MMDS operator's rate card, advertising, or other marketing materials may be evidence that the MMDS operator offers the broadcast channels in accordance with our definition of ''offer.'' We note the significance of marketing materials because it is arguable that an MMDS operator that markets itself as a provider of local broadcast channels will take the steps necessary to ensure that subscribers receive those channels. In those circumstances, the broadcast channels would seem to be a part of the programming package that the MMDS operator is offering and providing, regardless of the technical means employed.

5. Definition of ''affiliate''

16. Under our interim rules implementing this statute, an entity will be considered affiliated with a LEC if it meets the definition of ''affiliate'' set forth in Section 3 of the 1996 Act:

> The term ''affiliate'' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person. For purposes of this paragraph, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

17. We note that this definition of ''affiliate,'' which has been incorporated in Title I of the Communications Act, does not strictly apply to matters under Title VI, since Title VI contains a separate definition of that term that does not set a percentage threshold as to what constitutes ownership. We believe this gives us discretion to establish an ownership threshold other than 10% for purposes of Title VI. However, because a determination of the precise threshold must await the rulemaking we initiate in the accompanying *NPRM,* on an interim basis we find it reasonable to use the Title I ownership threshold that Congress has prescribed for purposes of most other provisions of the Communications Act. Therefore, effective competition under the new test may be established when a LEC owns an active or passive equity interest, or the equivalent thereof, of more than 10% in the competing MVPD. We will determine what constitutes the ''equivalent'' of an equity interest on a case-by-case basis. Affiliation also can be shown through de facto control, regardless of the actual ownership interest. The ownership threshold we adopt in the interim does not in any way preclude the establishment of a permanent rule that incorporates a different threshold.

6. Procedures

18. A cable system that meets all of the relevant criteria in the new effective competition test is exempt from rate regulation as of February 8, 1996, the date the 1996 Act was enacted. Such an operator may file a petition for a determination of effective competition with the Commission. The petition should demonstrate that all the relevant criteria are satisfied. We note that, by necessity, we have adopted the substantive requirements discussed above on an interim basis without the usual notice and comment proceeding. Accordingly, petitioners seeking a declaration of effective competition under the new test are free to provide additional information, consistent with the statute, that the operator believes proves the existence of effective competition that must exist in order to exempt an operator from rate regulation.

19. This petition may be filed with the Commission at any time, including in response to a notice from the local franchising authority (''LFA'') that it intends to file a CPST rate complaint. (A LFA certified to regulate rates can simply withdraw its certification at any time if it believes the cable operator is subject to effective competition, or for any other reason.) The operator shall provide a copy of the petition to the LFA. The Commission will provide public notice of the petition's filing to enable interested parties to file responses to the petition. Thereafter, we will determine whether effective competition exists and may issue an order granting the petition. As we have noted, the Commission may issue an order directing one or more persons to produce information relevant to the operator's petition. For example, the order may be directed to a LEC that is asserted to hold an interest in an MVPD sufficient to reach affiliation levels that would trigger a finding of effective competition. The Commission will act promptly on these petitions. A Commission determination regarding effective competition will be applicable to both the BST and CPST.

B. CPST Rate Complaints

20. Under existing regulations, adopted pursuant to Section 623(c)(1)(B) of the Communications Act as it existed prior to the 1996 Act, subscribers were allowed to file complaints concerning CPST rates directly with the Commission. Section 301(b)(1)(C) of the 1996 Act alters the manner in which the Commission reviews complaints concerning rates charged for a CPST. In particular, that Section provides:

> The Commission shall review any complaint submitted by a franchising authority after the date of enactment of the Telecommunications Act of 1996 concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective, it receives subscriber complaints.

21. Accordingly, we amend our rule to incorporate the self-effectuating language of Section 301(b)(1)(C). In addition, we have eliminated the requirement in Section 76.964 of our rules that operators notify subscribers of their right to file complaints with the Commission. Also in Section 76.964, we eliminate the requirement that operators notify subscribers of the Commission's address and phone number for purposes of filing rate complaints. Subscriber complaints received by the Commission after February 8, 1996 are being returned to the subscriber with a notice of this change.

22. We also establish interim rules governing the filing of rate complaints by LFAs. Section 301(b)(a)(C) authorizes an LFA to file a rate complaint with the Commission if the LFA receives subscriber complaints within 90 days after an operator's rate increase becomes effective. Although the statute allows only LFAs to file rate complaints directly with the Commission, subscribers now have twice as long to complain about a rate increase as they did under our previous rules. We provide in this interim rule that an LFA may file rate complaints with the Commission when the LFA receives more than one subscriber complaint concerning an operator's rate increase. Modifications to the Commission cable rate complaint form, Form 329, will be made accordingly. The records

maintained by an LFA in accordance with its regular business practice should be sufficient to establish that the LFA received the subscriber complaints within 90 days of a rate increase.

23. If the LFA receives more than one subscriber complaint within the 90-day period and decides to file its own complaint with the Commission, it must do so no more than 180 days after the rate increase became effective. Before filing a complaint with the Commission, the LFA shall first give the cable operator written notice of its intent to do so and give the operator a minimum of 30 days to file with the LFA the relevant FCC Forms used to justify a rate increase. The LFA shall then forward its complaint and the operator's response to the Commission within the 180 day deadline specified above. If the operator fails to respond, the LFA should file its complaint and specify that the operator has not filed a response. We will then decide the case based upon the information before us. This procedure shall not apply to LFA complaints filed on or before the 15th day following the release date of this item. We will address those complaints filed prior to such date on an individual basis.

C. Small Cable Operators

1. Final Rule Change

24. The 1996 Act exempts certain smaller cable systems from certain provisions of Section 623 of the Communications Act that authorize the Commission and LFAs to regulate cable rates. Specifically, Section 301(c) of the 1996 Act amends Section 623 of the Communications Act by adding the following subsection:

(m) Special Rules For Small Companies.

(1) In General. Subsections (a), (b), and (c) do not apply to a small cable operator with respect to—

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) Definition of Small Cable Operator. For purposes of this subsection, the term ''small cable operator'' means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

25. We amend our rules, to reflect the exceptions to rate regulation created by section 301(c) of the 1996 Act.

26. Because Section 301(c) was effective upon enactment of the statute, we will establish in this *Order* interim rules to apply pending adoption of final rules.

2. Definition of ''small cable operator''

27. With respect to the definition of a small cable operator, and for interim purposes only, we find that there are 61,700,000 cable subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Further, to implement the small operator provisions pending adoption of final rules, we will use the definition of ''affiliate'' that we adopted last year for purposes of our small system cost-of-service rules. Therefore, an entity shall be deemed affiliated with a small cable operator if that entity has a 20% or greater equity interest in the operator (active or passive) or holds de jure or de facto control over the operator. In the present context, we believe it is reasonable to apply our definition of affiliation as it exists under our small system rules, given that those rules and the small cable operator provisions of the 1996 Act all have the same intent of minimizing regulation and ensuring access to needed capital for smaller cable entities.

3. Scope of Deregulation

28. Assuming an operator is eligible for deregulation under the statutory subscriber and revenue criteria, the scope of deregulation will depend, at least on an interim basis, upon the number of tiers of service that were subject to rate regulation as of December 31, 1994. We believe it to be Congress's intent that any qualifying system that had only a single tier of cable service subject to regulation as of December 31, 1994 shall be exempt from rate regulation as to all of its programming services, regardless of the number of tiers it now offers. By contrast, a qualifying system that had more than one tier subject to regulation as of December 31, 1994 shall remain regulated on the BST.

4. Procedures

29. A cable operator that satisfies all of the relevant criteria is exempt from rate regulation as to the extent provided above effective February 8, 1996, the date the 1996 Act was enacted. If such an operator had only a single tier as of December 31, 1994, and the LFA for the franchise area in which that operator offers service is certified to regulate cable rates under the 1992 Cable Act, the operator should certify in writing to such LFA that the operator meets all of the criteria for deregulation of the BST. It may make this certification at any time. Upon request of the LFA, the operator shall identify in writing all of its affiliates that provide cable service, the total cable subscriber base of itself and each affiliate, and the aggregate gross revenues of all its cable and non-cable affiliates. Within 90 days of the original certification, the LFA shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the LFA. If the LFA finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may challenge that decision by filing an appeal with the Commission within 30 days.

30. Once the operator has certified its eligibility for deregulation on the BST, the LFA shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds, unless and until the LFA has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. Thus, the operator may take rate increases while its certification is pending. However, the operator shall be liable for refunds for the revenues it gains (beyond those revenues that it could have gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event it is later found not to be deregulated. In addition, the running of the standard one-year limitation on refund liability will be tolled during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator otherwise would incur.

31. A system that qualifies under the new small operator subscriber and revenue requirements and that had more than one tier as of December 31, 1994 is deregulated on all its CPSTs as of February 8, 1996. Within 30 days of being served with a LFA's notice that it intends to file a CPST rate complaint, such an operator shall certify to the LFA that it meets the relevant small operator criteria, in accordance with the new CPST rate complaint procedure described above. This certification shall be in lieu of the rate justification that an operator otherwise would submit. The LFA may either resolve the issue itself in accordance with the procedures set

forth immediately above, or it may forward its notice and the operator's response for Commission review in accordance with the new procedures for CPST rate complaints. No certification is necessary if the operator does not receive notice that the LFA intends to file a CPST rate complaint. If a pending CPST rate complaint was filed with the Commission before the effective date of these interim rules, the operator should file its certification of small operator status directly with the Commission within 15 days of that effective date.

32. We adopt these interim rules solely for the purpose of implementing Section 301(c) of the 1996 Act pending our adoption of final rules. These interim rules in no way alter or amend our small system cost-of-service rules or any other rules applicable to small systems or small cable companies, except to the extent such rules no longer apply to systems deregulated under Section 301(c) of the 1996 Act.

4. Relationship With Preexisting Small System Rules

33. In the interests of eliminating confusion and uncertainty, we will summarize the separate treatment available to small systems as defined by our preexisting rules. Last year, the Commission adopted rules streamlining cost-of-service rate regulation for any system serving fewer than 15,000 subscribers (a ''small system''), as long as the system is owned by an operator that serves no more than 400,000 subscribers over all of its systems (a ''small cable company''). Once a system qualifies under these criteria, it remains subject to the relaxed rules for so long as the system serves fewer than 15,000 subscribers, even if the company later exceeds 400,000 subscribers or if the small system is acquired by an operator with more than 400,000 subscribers. When the system exceeds 15,000 subscribers, it may maintain its current rates but cannot seek an increase until such an increase is permitted under our standard rate rules applicable to systems generally. Our small system rules are unaffected by the 1996 Act or this rulemaking.

D. Uniform Rate Requirement

34. Prior to enactment of the 1996 Act, Section 623(d) of the Communications Act provided in full: ''A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.'' Section 76.984 of the Commission's rules was adopted to implement this requirement. The Commission interpreted the rules (and the statutory requirement) as applying to systems not facing effective competition as well as to those facing effective competition. Upon review, the court in *Time Warner Entertainment Co. v. FCC* found this interpretation to be incorrect, holding that ''[a]pplication of the uniform rate provision to competitive systems violates 47 U.S.C. § 543(a)(2). . . .''

35. Section 301(b)(2) of the 1996 Act addresses the uniform rate structure through a statutory amendment which, in relevant part, is consistent with the action of the court. It amends the uniform rate provision by adding the following at the end of Section 623(d):

> This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

36. Accordingly, we amend Section 76.984 of our rules to conform to the new statutory language.

37. Until final rules are adopted, the complaint process established by Section 301(b)(2) of the 1996 Act shall be governed by the provisions of Section 76.7 of our rules applicable to petitions for special relief generally.

E. Subscriber Notice

38. Section 301(g) of the 1996 Act adds a new subsection to Section 632 of the Communications Act. The new subsection reads as follows:

> Subscriber Notice. A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 623(b)(6) or any other provision of this Act, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

39. Accordingly, we modify our rules pursuant to Section 301(g) of the 1996 Act to provide that a cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion, and that a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

40. We note that previously the Commission distinguished written notice sent to subscribers from written announcements on the cable system or in the newspaper. We made these distinctions in an effort to ensure that notice was adequate depending upon the circumstances. We now note the legislative history of the House amendment, which was ultimately adopted by the Conference Committee, states that ''[n]otice need not be inserted in the subscriber's bill.'' Given the cited statutory provision and its legislative history, a change in our current rules is justified so that notice provided through written announcements on the cable system or in the newspaper will be presumed sufficient. We believe this furthers Congressional intent regarding the adequacy of any required notice. We will address any disputes that may arise in this area on a case-by-case basis.

F. Technical Standards

41. Pursuant to Section 624(e) of the Communications Act, the Commission has adopted technical standards that govern the picture quality performance of cable television systems. Prior to enactment of the 1996 Act, Section 624(e) provided, in part:

> A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.

42. Section 301(e) of the 1996 Act strikes the above two sentences and adds the following:

> No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

43. Thus, we eliminate the language in Note Six to Section 76.605 of our rules which permitted a franchising authority to apply to the Commission for a waiver to impose cable technical standards that are more stringent than the standards prescribed by the Commission. We insert the new language from Section 301(e) in Note Six.

G. Buy Out Prohibitions

44. Section 302(a) of the 1996 Act creates a new Section 652 of the Communications Act that provides as follows:

(a) Acquisitions By Carriers. No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

(b) Acquisitions By Cable Operators. No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

(c) Joint Ventures. A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

(d) Exceptions.

(1) Rural Systems. Notwithstanding subsections (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that—

(A) such system or facilities only serve incorporated or unincorporated—

(i) places or territories that have fewer than 35,000 inhabitants; and

(ii) are outside an urbanized area, as defined by the Bureau of the Census; and

(B) in the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

(2) Joint Use. Notwithstanding subsection (c), a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

(3) Acquisitions in Competitive Markets. Notwithstanding subsections (a) and (c), a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as ''the subject cable system'') if—

(A) the subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

(B) the subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

(D) the system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

(4) Exempt Cable Systems. Subsection (a) does not apply to any cable system if—

(A) the cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

(B) the cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

(C) the cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

(5) Small Cable Systems In Nonurban Areas. Notwithstanding subsections (a) and (c), a local exchange carrier with less than $100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(6) Waivers. The Commission may waive the restrictions of subsections (a), (b), or (c) only if:

(A) the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

(i) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

(ii) the system or facilities would not be economically viable if such provisions were enforced; or

(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

(B) the local franchising authority approves of such waiver.

(e) Definition Of Telephone Service Area. For purposes of this section, the term ''telephone service area'' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

45. Accordingly, we add a new section to our rules regarding the ownership of cable systems to incorporate the provisions of Section 302(a) of the 1996 Act described above.

46. With respect to the joint use provisions of Section 302(a), the Commission will make such determinations on a case-by-case basis using the following procedures in accordance with Section 76.7 of our rules. Within ten days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the LFA, along with a notice of the deadline by which the LFA must file comments, if any, with the Commission. Based upon the record before it, the Commission shall then determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user is reasonably limited in scope and duration. In determining whether such use is reasonably limited in scope and duration, the Commission will look to the underlying policy goals of the legislation: To promote competition in both services and facilities, and to encourage long-term investment in the infrastructure.

H. Program Access

47. Section 628 of the Communications Act governs access to programming. These program access provisions are intended to eliminate unfair competitive practices and facilitate competition by providing competitive access to certain defined categories of programming. Generally speaking, the restrictions in Section 628 are applicable to cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, and satellite broadcast programming vendors. The

Commission rules implementing Section 628 appear at Section 76.1000 et seq.

48. Section 301(j) of the 1996 Act amends section 628 by adding the following: (j) Common Carriers.—Any provision that applies to a cable operator under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this subsection, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

49. Accordingly, we add a new section to the program access rules to broaden their scope as described above. We also note that the meaning of the term ''attributable interest'' as defined in our program access rules shall also apply to common carriers, subject to the last sentence of Section 301(j) of the 1996 Act, for purposes of program access.

I. Sunset of Upper Tier Rate Regulation

50. Consistent with the 1992 Cable Act, the Commission established rules to ensure that rates for cable programming services are not unreasonable. The 1996 Act adds a provision to the Communications Act that provides a sunset date for regulation of CPST rates. Specifically, rate regulation ''shall not apply to cable programming services provided after March 31, 1999.''

51. Accordingly, to implement this mandate, we are amending our rules to include the statutory sunset provision.

J. Definition of ''Cable System''

52. Prior to enactment of the 1996 Act, and subject to four specific exceptions, Section 602(7) of the Communications Act defined the term ''cable system'' to include:

A set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. . . .

53. The four exceptions to this definition included

. . . (B) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right of way; [and] (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers. . . .

54. This statutory definition and the four exceptions were incorporated into Section 76.5(a) of the Commission's rules.

55. The 1996 Act revises the definition of a cable system by amending the two exceptions cited above and by adding a third exception. Section 301 of the 1996 Act amends the first exception cited above, subsection (B), by striking the quoted language and inserting the following: ''(B) a facility that serves subscribers without using any public right-of-way.'' Section 302 of the 1996 Act amends the second exception quoted above, subsection (C), by adding the following clause at the end of that subsection: '', unless the extent of such use is solely to provide interactive on-demand services.'' In addition, Section 302 creates a new exception to the cable systems definition as follows: ''(D) an open video system that complies with section 653 of this title.'' Finally, Section 302 of the 1996 Act moves what had been the fourth exception, subsection (D), to new subsection (E) of section 602(7) of the Communications Act.

56. In order to conform Section 76.5(a) to the new statutory definition, we amend our rules accordingly.

57. Section 302 of the 1996 Act also adds the following definition corresponding to one of the exceptions to the cable system definition:

The term ''interactive on-demand services'' means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

58. Section 76.5 of our rules is amended to add this definition.

K. Definition of ''Cable Service''

59. Section 602(6) of the Communications Act defines the term ''cable service.'' Cable service is also defined in Section 76.5(ff) of the rules. The 1996 Act amends that statutory definition by adding the bracketed words:

(ff) Cable service. The one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection [or use] of such video programming or other programming service. For the purposes of this definition, ''video programming'' is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, ''other programming service'' is information that a cable operator makes available to all subscribers generally.

60. According to the legislative history of this provision, it reflects the evolution of cable to include interactive services such as game channels, information services made available to subscribers by the cable operator, and enhanced services. This amendment is not intended to affect Federal or State regulations of telecommunications service offered through cable system facilities, or to cause dial-up access to information services over telephone lines to be classified as a cable service.

61. Accordingly, we amend our rules to conform Section 76.5(ff) to the new statutory definition.

L. Cable Operator Refusal To Carry Certain Programming

62. Sec. 506(a) of the 1996 Act amends Sec. 611(e) of the Communications Act, which governs public, educational, and governmental access channels, by providing that ''a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.''

63. Therefore, we amend the first sentence of Section 76.702 of the Commission's rules by adding the bracketed language:

Any cable operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, indecent material as defined in § 76.701(g), [nudity], or material soliciting or promoting unlawful conduct.

64. The 1996 Act contains a similar provision concerning programming provided over leased access channels. Specifically, Section 506(b) of the 1996 Act amends Section 612(c)(2) of the Communications Act, which restricts a cable operator's exercise of editorial control over leased access programming, to provide that ''a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity . . . .''

65. However, the 1996 Act does not alter Section 612(h) of the Communications Act which permits a cable operator

to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities of organs in a patently offensive manner as measured by contemporary community standards.

66. Section 76.701(a) of the Commission's rules parallels Section 612(h) of the 1996 Act. The remaining subsections of Section 76.701 contain related provisions. Under sections 76.701(b) and (c), an operator that chooses to carry leased access programming falling within the description contained in Section 76.701(a) must place all such programming on channels made available only to subscribers who have made a written request for the program and have certified to being at least 18 years old. Subsections (d) and (e) require a person providing leased access programming to identify, upon request of the cable operator, any indecent programming or to certify that the programming is not indecent or obscene. Subsection (f) permits the cable operator to withhold access from a program provider that does not comply with an operator request made under this rule. Subsection (g) defines ''indecent programming'' and subsection (h) requires operators to maintain records verifying their compliance with these rules.

67. Reading the amended version of Section 612(c)(2) of the Communications Act together with the pre-existing provisions of Section 612(h), we amend Section 76.701 such that its various subsections now apply to ''any leased access program or portion of a leased access program which the cable operator reasonably believes contains obscenity, indecency, or nudity.''

68. The underlying Commission rules being amended here (Sections 76.701 and 76.702, 47 CFR §§ 76.701 and 76.702) were adopted to implement Section 10 of the 1992 Cable Act. These provisions are the subject of the litigation in Alliance for Community Media v. FCC. In that case, a panel of the D.C. Circuit Court of Appeals reversed and remanded the rules to the Commission on the grounds that Section 10 of the 1992 Act violated the First Amendment or raised serious constitutional questions that warranted Commission reconsideration. The full court vacated the panel's judgment and found the requirements constitutional. The rules were stayed after the initial decision finding them unconstitutional and that stay has been continued in force pending Supreme Court review. Oral argument before the Supreme Court took place on February 24, 1996. Nothing herein is intended to affect the status of that stay. Accordingly, these amendments are stayed for as long as the Alliance stay remains effective.

III. Regulatory Flexibility Analysis

69. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–612, the Commission's Flexibility Analysis with respect to the Report and Order is as follows:

70. *Need and purpose of this action:* The Commission issues this Report and Order to enact or revise rules in response to the 1996 Act.

71. *Significant Alternatives considered:* Not applicable because action is taken pursuant to statutory directive.

72. *Federal rules that overlap, duplicate or conflict with these rules:* None.

IV. Inital Paperwork Reduction Act of 1995 Analysis

73. This Order contains modified information collection requirements. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due 60 days from the date of publication of this Order in the Federal Register. Comments should address: (a) Whether the 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.

V. Effective Date

74. The statutory requirements reflected in the final rules adopted in the Order were effective February 8, 1996, the date of enactment of the 1996 Act. The interim rules adopted in the Order are effective upon publication of the Order in the Federal Register. We find good cause for making these rule changes effective upon publication in the Federal Register because the rules merely either implement statutory language from the 1996 Act, or establish interim procedures (pending the adoption of final rules) in response to immediately effective statutory provisions in the 1996 Act. We also find notice and comment is not necessary or in the public interest in this limited context. Accordingly, the Commission will forego notice and comment pursuant to the ''good cause'' exception of the Administrative Procedure Act. See 5 U.S.C. § 553(d).

VI. Ordering Clauses

79. It is Ordered that pursuant to sections 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and Telecommunications Act of 1996, § 301, the Commission's Rules are amended as set forth below, effective April 30, 1996.

80. It is further ordered that we are revising these rules without providing prior public notice and an opportunity for comment because the rule modifications are mandated by the applicable provisions of the 1996 Act. We find that notice and comment procedures are unnecessary, and that therefore this action falls within the ''good cause'' exception of the Administrative Procedure Act. 5 U.S.C. § 553(b)(B). The final rules adopted in this Order do not involve discretionary action on the part of the Commission. Rather, they simply implement provisions of the 1996 Act according to the specific terms set forth in the legislation, or establish interim procedures (pending the adoption of final rules) in response to immediately effective statutory provisions in the 1996 Act. For the same reasons, we find good cause to make the rules effective April 30, 1996.

81. It is further ordered that the Secretary shall send a copy of this Order, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601, et seq. (1981).

82. For additional information regarding this proceeding, contact Tom Power, Paul Glenchur, or Nancy Stevenson, Policy and Rules Division, Cable Services Bureau (202) 416–0800.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. § 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.5 is amended by revising paragraphs (a) and (ff) to read as follows:

§ 76.5 Definitions.

(a) *Cable system or cable television system*. A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that services only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public right-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Communications Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility systems.

Note to paragraph (a): The provisions of Subparts D and F of this part shall also apply to all facilities defined previously as cable systems on or before April 28, 1985, except those that serve subscribers without using any public right-of-way.

* * * * *

(ff) *Cable service*. The one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, ''video programming'' is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, ''other programming service'' is information that a cable operator makes available to all subscribers generally.

* * * * *

3. Section 76.309 is amended by revising paragraph (c)(3)(i)(B) to read as follows:

§ 76.309 Customer service obligations.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this section. Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

* * * * *

4.–5. A new § 76.505 is added to read as follows:

§ 76.505 Prohibition on buy outs.

(a) No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

(b) No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

(c) A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

(d) Exceptions:

(1) Notwithstanding paragraphs (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that:

(i) Such system or facilities only serve incorporated or unincorporated :

(A) Places or territories that have fewer than 35,000 inhabitants; and

(B) Are outside an urbanized area, as defined by the Bureau of the Census; and

(ii) In the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

(2) Notwithstanding paragraph (c) of this section, a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

(3) Notwithstanding paragraphs (a) and (c) of this section, a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as ''the subject cable system'') if:

(i) The subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

(ii) The subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(iii) The subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

(iv) The system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

(4) Paragraph (a) of this section does not apply to any cable system if:

(i) The cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

(ii) The cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

(iii) The cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

(5) Notwithstanding paragraphs (a) and (c) of this section, a local exchange carrier with less than $100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(6) The Commission may waive the restrictions of paragraphs (a), (b), or (c) of this section only if:

(i) The Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service:

(A) The affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

(B) The system or facilities would not be economically viable if such provisions were enforced; or

(C) The anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

(ii) The local franchising authority approves of such waiver.

(e) For purposes of this section, the term ''telephone service area'' when used in connection with a common carrier subject in whole or in part to title II of the Communications Act means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

6. Section 76.605 is amended by revising paragraph (b) Note 6 to read as follows:

§ 76.605 Technical standards.

* * * * *

Note 6: No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

7. Section 76.701 is amended by adding new paragraph (i) to read as set forth below. Effective April 30, 1996, paragraph (i) is stayed.

§ 76.701 Leased access channels.

* * * * *

(i) Paragraphs (a) through (h) of this section apply to any leased access program or portion of a leased access program which the cable operator reasonably believes contains obscenity, indecency, or nudity.

8. Section 76.702 is revised to read as set forth below. Effective April 30, 1996, § 76.702 is stayed.

§ 76.702 Public, educational and governmental access.

Any cable operator may prohibit the use on its system of any channel capacity of any public, educational, or governmental access facility for any programming which contains nudity, obscene material or indecent material as defined in § 76.701(g), or material soliciting or promoting unlawful conduct. For purposes of this section, ''material soliciting or promoting unlawful conduct'' shall mean material that is otherwise proscribed by law. A cable operator may require any access user, or access manager or administrator agreeing to assume the responsibility of certifying, to certify that its programming does not contain any of the materials described in this section and that reasonable efforts will be used to ensure that live programming does not contain such material.

9. Section 76.905 is amended by adding new paragraph (b)(4) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(b) * * *

(4) A local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

* * * * *

10. Section 76.933 is amended by revising paragraphs (e) and (g)(5) to read as follows:

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

* * * * *

(e) Notwithstanding paragraphs (a) through (d) of this section, when the franchising authority is regulating basic service tier rates, a cable operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to § 76.922(d) may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees or Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. 159. For the purposes of paragraphs (a) through (c) of this section, the increased rate attributable to Commission regulatory fees or franchise fees shall be treated as an ''existing rate'', subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to § 76.944. When the Commission is regulating basic service tier rates pursuant to § 76.945 or cable programming service rates pursuant to § 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in § 76.945. A cable operator must adjust its rates to reflect decreases in franchise fees or Commission regulatory fees within the periods set forth in § 76.922(d)(3)(i),(iii).

* * * * *

(g) * * *

(5) Notwithstanding paragraphs (a) through (f) of this section, when the franchising authority is regulating basic service tier rates, a cable operator may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees. The increased rate attributable to Commission regulatory

fees or franchise fees shall be subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to § 76.944. When the Commission is regulating basic service tier rates pursuant to § 76.945 or cable programming service rates pursuant to § 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in § 76.945.

* * * * *

11. Section 76.950 is revised to read as follows:

§ 76.950 Complaints regarding cable programming service rates.

(a) A franchising authority may file with the Commission a complaint challenging the reasonableness of its cable operator's rate for cable programming service, or the reasonableness of the cable operator's charges for installation or rental of equipment used for the receipt of cable programming service. The franchise authority may file a complaint with the Commission only upon receipt of more than one subscriber complaint made to the franchise authority within 90 days after the effective date of the challenged rate increase.

(b) The Commission shall not review any complaint with respect to cable programming services filed after March 31, 1999.

12. Section 76.951 is revised to read as follows:

§ 76.951 Standard complaint form; other filing requirements.

(a) Any complaint regarding a cable operator's rate for cable programming service or associated equipment must be filed using standard complaint form, FCC 329.

(b) The following information must be provided on the standard complaint form:

(1) The name, mailing address and phone number of the franchising authority that is filing the complaint;

(2) The name, mailing address, and FCC community unit identifier of the relevant cable operator;

(3) A description of the cable programming service or associated equipment involved and, if applicable, how the service or associated equipment has changed;

(4) The current rate for the cable programming service or associated equipment at issue and, if the complainant is challenging the reasonableness of a rate increase, the most recent rate for the service or associated equipment immediately prior to the rate increase;

(5) If the complainant is filing a corrected complaint, an indication of the date the complainant filed the prior complaint and the date the complainant received notification from the Commission that the prior complaint was defective;

(6) A certification that a copy of the complaint, including all attachments, is being served contemporaneously via certified mail on the cable operator;

(7) An indication that the complainant franchising authority received more than one subscriber complaint within 90 days of the operator's imposition of the rate in question; and

(8) A certification that, to the best of the complainant's knowledge, the information provided on the form is true and correct.

13. Section 76.953 is amended by revising paragraph (a) to read as follows:

§ 76.953 Limitation on filing a complaint.

(a) *Complaint regarding a rate change.* A complaint alleging an unreasonable rate for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate change, including an increase or decrease in rates, or a change in rates that results from a change in a system's service tiers. A rate change may involve an implicit rate increase (such as deleting channels from a tier without a corresponding lowering of the rate for that tier). A complaint regarding a rate change for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate change.

* * * * *

14. Section 76.956 is amended by revising paragraph (a) to read as follows:

§ 76.956 Cable operator response.

(a) Unless the Commission notifies a cable operator to the contrary, the cable operator must file with the Commission a response to the complaint filed on the applicable form, within 30 days of the date of service of the complaint. The response shall indicate when service occurred. Service by mail is complete upon mailing. See § 1.47(f) of this chapter. The response shall include the information required by the appropriate FCC Form, including rate cards, channel line-ups, and an explanation of any discrepancy in the figures provided in these documents and the rate filing. The cable operator must serve its response on the complainant via first class mail.

* * * * *

15. Section 76.964 is revised to read as follows:

§ 76.964 Written notification of changes in rates and services.

(a) In addition to the requirement of § 76.309(c)(3)(i)(B) regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file complaints about changes in cable programming service tier rates and services, shall state that the subscriber may file the complaint within 90 days of the effective date of the rate change, and shall provide the address and phone number of the local franchising authority.

(b) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable means at its sole discretion.

(c) Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

16. Section 76.984 is amended by revising paragraph (c) to read as follows:

§ 76.984 Geographically uniform rate structure.

* * * * *

(c) This section does not apply to:

(1) A cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or

(2) Any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this section, except that a cable operator of a cable system that is not subject to effective

competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

17. A new § 76.1004 is added to subpart O to read as follows:

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this section, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

18. A new subpart R is added to read as follows:

Subpart R—Telecommunications Act implementation

§ 76.1400 Purpose.
§ 76.1401 Effective competition and local exchange carriers.
§ 76.1402 CPST rate complaints.
§ 76.1403 Small cable operators.
§ 76.1404 Use of cable facilities by local exchange carriers.

Subpart R—Telecommunications Act implementation

§ 76.1400 Purpose.

The rules and regulations set forth in this subpart provide procedures for administering certain aspects of cable regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions.

§ 76.1401 Effective competition and local exchange carriers.

(a) As used in § 76.905(b)(4), the term ''comparable'' programming means access to at least 12 channels of programming, at least some of which are local television broadcasting signals.

(b) As used in § 76.905(b)(4), the term ''affiliate'' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person. For purposes of the section, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(c) An operator meeting the relevant criteria under § 76.905(b)(4), may, at any time, file a petition for a determination of effective competition with the Commission. The petition should set forth information supporting a determination that effective competition exists as defined in § 76.905(d)(4).

(d) Upon filing of a petition described in paragraph (c) of this section with the Commission, the operator filing the petition shall provide a copy of the petition to the local franchise authority. The Commission will issue a public notice of the petition's filing to allow interested parties to respond. The Commission may then issue an order granting or denying the petition. The Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.

§ 76.1402 CPST rate complaints.

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

§ 76.1403 Small cable operators.

(a) Effective February 8, 1996, a small cable operator is exempt from rate regulation on its cable programming services tier, or on its basic service tier if that tier was the only service tier subject to rate regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.

(b) A small cable operator is an operator who, directly or through an affiliate, serves in the aggregate fewer than 617,000 subscribers in the United States and whose annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.

(c) As used in this section, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent or greater equity interest, passive or active, in the operator or exercises de jure or de facto control over the operator.

(d) Procedures. (1) If a small cable operator has only a single tier that is subject to regulation, the operator, at any time, may certify in writing to its local franchise authority that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the operator to respond to a proper request for information by the local franchising authority. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

(2) Once the operator has certified its eligibility for deregulation on the basic service tier, the local franchising authority shall not prohibit the operator from taking a rate increase and shall not order the operator to make any refunds unless and until the local franchising authority has rejected the certification in a final order that is no longer subject to appeal or that the Commission has affirmed. The operator shall be liable for refunds for revenues gained (beyond revenues that could be gained under regulation) as a result of any rate increase taken during the period in which it claimed to be deregulated, plus interest, in the event the operator is later

found not to be deregulated. The one-year limitation on refund liability will not be applicable during that period to ensure that the filing of an invalid small operator certification does not reduce any refund liability that the operator would otherwise incur.

(3) Within 30 days of being served with a local franchising authority's notice that the local franchising authority intends to file a cable programming services tier rate complaint, an operator may certify to the local franchising authority that it meets the criteria for qualification as a small cable operator. This certification shall be filed in accordance with the cable programming services rate complaint procedure set forth in § 76.1402. Absent a cable programming services rate complaint, the operator need not file for small cable operator certification in order to treat its cable programming services tier as deregulated.

(4) If a pending CPST rate complaint was filed with the Commission before April 30, 1996 the operator should file its certification of small cable operator status directly with the Commission within 15 days of that date.

§ 76.1404 Use of cable facilities by local exchange carriers.

For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the following procedures:

(a) Within 10 days of final execution of a contract permitting a local exchange carrier to use that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end use, the parties shall submit a copy of such contract, along with an explanation of how such contract is reasonably limited in scope and duration, to the Commission for review. The parties shall serve a copy of this submission on the local franchising authority, along with a notice of the local franchising authority's right to file comments with the Commission consistent with § 76.7.

(b) Based on the record before it, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[FR Doc. 96–10173 Filed 4–26–96; 8:45 am]
BILLING CODE 6712–01–P

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47 CFR Part 90

[PR Docket No. 93–61, FCC 96–115]

Automatic Vehicle Monitoring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order on Reconsideration resolves issues raised by petitions for reconsideration of the Commission's Report and Order in PR Docket No. 93–61, which established rules governing the licensing of the Location and Monitoring Service (LMS) in the 902–928 MHz band. Specifically, the Order on Reconsideration resolves issues regarding existing LMS licensees that are being afforded grandfathered status. These issues involve interference testing, accommodation of secondary uses in the 902–928 MHz band, emission masks, frequency tolerance, type acceptance and site relocation, as well as extension of the construction deadline for grandfathered licensees to September 1, 1996. The actions taken in the Order on Reconsideration are needed to provide such grandfathered licensees with certainty as they construct their systems.

EFFECTIVE DATES: This final rule is effective May 30, 1996, except that §§ 90.203(b)(7) and 90.363(d) became effective March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Wireless Telecommunications Bureau, Commercial Wireless Division, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration in PR Docket No. 93–61, adopted March 18, 1996, and released March 21, 1996. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., (202) 857–3800.

Synopsis of Order on Reconsideration

I. Introduction and Background

1. LMS encompasses both the Automatic Vehicle Monitoring (AVM) service established in 1974 and future advanced transportation-related services. Existing AVM systems were authorized in the 903–912 and 918–927 MHz bands, as well as in several bands below 512 MHz. Existing LMS systems in these bands generally fall into one of two broad technological categories: multilateration systems and non-multilateration systems. Multilateration systems use spread-spectrum technology to locate vehicles (and other moving objects) with great accuracy throughout a wide geographic area. Non-multilateration systems typically use narrowband technology to transmit data to and from vehicles passing through a particular location.

2. LMS systems, both multilateration and non-multilateration, and Part 15 devices will play an important role in providing many valuable services to the public in the future. In Report and Order, PR Docket No. 93–61, 10 FCC Rcd 4695 (1995), 60 FR 15248 (March 23, 1995) (LMS Report and Order), the Commission developed a spectrum plan that is designed to accommodate these service providers' requirements to the extent possible. Aspects of the spectrum plan include: (1) continuing to permit secondary operations by unlicensed Part 15 devices across the entire band; (2) providing a ''safe harbor'' in which Part 15 devices may operate, along with a testing requirement to determine questions of interference from multilateration systems; (3) authorizing additional spectrum in the 902–928 MHz band in order to enable non-multilateration LMS systems to operate on spectrum separate from multilateration systems; and (4) permitting only one new multilateration provider in each sub-band of spectrum allocated for multilateration operations.

3. In the LMS Report and Order, the Commission decided to stop accepting applications for the operation of multilateration LMS systems in the 904–912 and 918–926 MHz bands under our current rules as of February 3, 1995. In addition, the Commission adopted certain grandfathering provisions that allowed existing, operating multilateration LMS systems until April 1, 1998, to complete the transition to the rules adopted in the LMS Report and Order. These grandfathering provisions were adopted to prevent any undue hardship on existing, operating multilateration LMS systems. The Commission also conferred grandfathered status on multilateration LMS licensees who had not constructed their systems so that such licensees may construct and operate their licensed stations under the rules adopted in the LMS Report and Order. The Commission concluded, however, that such systems must be constructed and

operational by April 1, 1996, and must comply with the rules adopted in the LMS Report and Order by that date. The LMS Report and Order directed existing licensees to file applications to modify their licenses to reflect operations consistent with the new band plan for multilateration systems.

4. In addition to adopting a new spectrum plan and grandfathering provisions, the Commission resolved other technical issues in the LMS Report and Order. The Commission established conditions under which Part 15 operations would not be considered to cause interference to multilateration licensees. It allowed multilateration licensees to commence operations only after demonstrating efforts to minimize interference with Part 15 operations.

5. In the Order on Reconsideration, the Commission clarifies its decision in the LMS Report and Order regarding the treatment of grandfathered LMS systems with respect to Part 15 interference testing. In addition, it clarifies that the rule regarding non-interference by Part 15 devices set out in § 90.361 applies to grandfathered LMS licensees that did not construct as of February 3, 1995, as well as future LMS licensees. It also considers modification of various technical rules, including emission mask specification, frequency tolerance, and site relocation, and we clarify our rules regarding type acceptance of LMS equipment. Any remaining issues raised in the petitions for reconsideration will be addressed in a later Memorandum Opinion and Order.

6. The Order on Reconsideration also extends the build-out deadline for grandfathered LMS licensees by five months, to September 1, 1996. It also notes that because the 902–928 MHz frequency band is shared with federal government users, LMS operators are required to coordinate with the Interdepartmental Radio Advisory Committee (IRAC) concerning any proposed modifications to their systems. The Commission expresses concern that if existing licensees must await the completion of such frequency coordination process before commencing modifications to their systems, licensees may not have sufficient time to complete their system modifications by the build-out deadline. As a result, the Commission concludes that these licensees should be permitted to begin modifications to their systems provided they have initiated the frequency coordination process with IRAC and on the condition that the Commission's final approval of such modifications will be contingent upon the successful completion of such frequency coordination.

7. In addition, On May 22, 1995, Southwestern Bell Mobile Systems (SBMS) filed a request for waiver of Section 90.363 of the Commission's Rules to grandfather SBMS applications that were pending as of the date the LMS Report and Order was adopted. The Commission concludes that pending LMS applications should not be eligible for grandfathering. The Commission notes that its stated purpose in adopting grandfathering provisions was ''[t]o ensure that our new licensing scheme does not impose undue hardship on existing, operating multilateration [LMS] systems,'' and to allow already-licensed systems the opportunity to construct and operate pursuant to the LMS rules adopted in the LMS Report and Order. LMS Report and Order, 10 FCC Rcd at 4728. The Commission concludes that if some licensees are warehousing spectrum, as alleged by SBMS, then they will likely not construct in the time allotted so as to attain grandfathered status. That spectrum will then be available for competitive bidding by all prospective licensees, including SBMS if they so choose.

8. Further, the Commission notes the argument of SBMS that in the SMR context, the Commission adopted a grandfathering provision awarding certain secondary sites in the 900 MHz SMR service primary status so as to entitle them to full interference protection and decided to grandfather pending applications for these secondary sites, concluding that this would promote service to the public, that the additional amount of protected spectrum would be *de minimis* and that such action would be equitable in light of processing delays. The Commission distinguishes the SMR situation from the case of pending LMS applications in that the 900 MHz SMR secondary sites were extensions of primary sites that were already licensed and constructed, while the LMS facilities at issue are unbuilt. Thus, it is questionable how service to the public would be facilitated by extending grandfathered status to sites that have not even been licensed, much less constructed. Moreover, grant of the pending applications could materially alter the LMS landscape by adding a number of additional sites and would thus not be a *de minimis* change. Accordingly, the Commission declines SBMS's request and clarifies that LMS applications filed prior to February 3, 1995, will not be eligible for grandfathering. SBMS also asks for an extension of the construction deadline for its pending applications. Because the Commission is not affording SBMS grandfathered status with respect to these applications, this issue is moot. In addition, SBMS seeks a waiver to permit relocation of grandfathered sites by more than two kilometers and to add sites within a 75-mile radius. This same suggestion was made by petitioners for reconsideration and, for the reasons discussed *infra*, the Commission denies SBMS's request.

II. Discussion

A. Multilateration System Operations (Part 15 Testing)

9. In the LMS Report and Order, the Commission adopted a spectrum band plan and established technical criteria for the operators of the various systems designed to minimize the potential for interference and provide a more conducive environment for sharing of the band by disparate services. In an effort to ensure that the coexistence of the various services in the band would be as successful as possible, the Commission decided to condition the grant of each MTA multilateration license on the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices.

10. On reconsideration, Part 15 users requested that grandfathered multilateration LMS systems be required to demonstrate through testing that their systems will not cause unacceptable interference to Part 15 devices. Further, some Part 15 petitioners suggested that the Commission establish uniform guidelines for the testing of LMS systems and the demonstration of non-interference to Part 15 devices. Some LMS providers, on the other hand, argues that testing of LMS systems is not necessary. Further, some parties contended that the testing requirement violated the Administrative Procedure Act (APA) because testing procedures were not contemplated in the Notice of Proposed Rule Making in this proceeding, Notice of Proposed Rule Making, PR Docket No. 93–61, 8 FCC Rcd 2502 (1993), 58 FR 21276 (April 20, 1993), and/or because testing requirements materially alter the Part 15 rules, which was not previously proposed.

11. In the Order on Reconsideration, the Commission clarifies that as a condition of grandfathering, it will require all multilateration LMS operators who did not construct stations prior to February 3, 1995, to demonstrate through testing that their LMS systems will not cause unacceptable interference to Part 15

devices. The Commission reiterates that multilateration licensees may employ any one of a number of technical refinements, i.e., limiting duty cycle, pulse duration power, etc., to facilitate band sharing and minimize interference to Part 15 operations. Further, the Commission seeks to ensure not only that Part 15 operators refrain from causing harmful interference to LMS systems, but also that LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected.

12. The Order on Reconsideration declines to establish specific guidelines for Part 15 testing at this time. The Commission states that it recognizes that LMS systems employ different methods to provide location and monitoring that are constantly changing to keep up with consumer demand. Moreover, the Part 15 industry has an even greater array of technologies that fluctuate in response to the needs of the public. It thus concludes that it would be inappropriate to apply uniform testing parameters to those varied technologies, as no one testing method would adequately address the needs of either LMS or Part 15 operations. Instead, the Commission believes that the more prudent course of action would be for LMS and Part 15 operators to work closely together to reach consensus on testing guidelines that satisfy their respective requirements.

13. Further, the Commission does not agree that its adoption of the testing requirement violated the APA. The Commission believes that the testing requirement was a logical outgrowth of the Notice of Proposed Rule Making in this proceeding, which sought comment on ways to accommodate the various users of the 902–928 MHz band. Moreover, it concludes that the rules adopted in the LMS Report and Order do not modify our Part 15 rules by elevating the status of Part 15 providers, as alleged by some petitioners. Part 15 operation remain secondary; the testing requirement is merely an attempt to achieve the most efficient coexistence possible among the various users of the band.

B. Accommodation of Secondary Users in the 902–928 MHz Band

14. The LMS Report and Order affirmed that unlicensed Part 15 devices in the 902–928 MHz band are secondary and, as in other bands, may not cause harmful interference to and must accept interference from all other operations in the band. To accommodate the concerns of Part 15 users about their secondary status in light of multilateration LMS and our authorizing LMS to use the additional 8 MHz of the band (902–903, 912–918 and 927–928 MHz), however, the Commission in the LMS Report and Order adopted rules that describe a ''safe harbor'' within which a Part 15 operation would be deemed not to cause interference to a multilateration LMS system.

15. On reconsideration, many petitioners agreed that a safe harbor provision is necessary to provide Part 15 technologies protection against claims of interference from existing LMS licensees. On the other hand, most LMS petitioners argued that they should be able to rebut any presumption of non-interference by Part 15 operators. If not, they argued, a large class of Part 15 devices will be immune from complaints of interference to multilateration licensees. They also contended that such a result would be contrary to the secondary status of Part 15 devices.

16. In the Order on Reconsideration, the Commission clarifies that if Part 15 devices operate within the ''safe harbor'' provision they will be deemed not to cause harmful interference to LMS operators. In addition, this provision applies to all LMS licensees, including existing and grandfathered licensees. The Commission notes that in the LMS Report and Order, it stated that a definition of what shall constitute harmful interference from amateur operations or unlicensed Part 15 devices to multilateration LMS systems would promote the cooperative use of the 902–928 MHz band. It also noted that this ''safe harbor'' approach would promote effective use of the 902–928 MHz band by the various services through establishing the parameters under which such devices may operate without risk of receiving complaints of interference from service providers with a higher allocation status. Based on the technical diversity of the numerous existing LMS systems and the multiplicity of Part 15 devices that eventually will be placed in operation, the Commission concluded in the LMS Report and Order that some interference problems would remain unresolved. As a result, the Commission determined that by providing multilateration LMS system operators a means of recourse by way of complaint to the Commission only when a Part 15 device is not operating in the ''safe harbor,'' the vast majority of equipment and services would be able to operate successfully in this band. The Commission concludes in the Order on Reconsideration that although the multilateration LMS system operators will not be able to file a complaint with the Commission where the Part 15 user has satisfied the ''safe harbor'' provisions, the Commission encourages LMS operators to resolve the interference by modifying their systems or by obtaining the voluntary cooperation of the Part 15 user. The Commission disagrees that such a result is inconsistent with the secondary status of Part 15 devices under our Rules and believes that its approach will assure the efficient and equitable use of the 902–928 MHz band.

C. Technical Issues

1. Emission Mask Specification

In the LMS Report and Order, the Commission required that licensees' emissions be attenuated by at least 55 + 10 log(P) dB at the edges of the specified LMS subbands. The band edges for multilateration systems where emissions must be attenuated are 904, 909.75, 919.75, 921.75, 927.50, 927.75 and 928 MHz. If the 919.75–921.75 and 921.75–927.25 MHz subbands were aggregated by a single licensee, the emission mask limitations at the band edges at 921.75 and 927.50 MHz may be ignored. The band edges for non-multilateration systems where emissions must be attenuated are 902, 904, 909.75 and 921.75 MHz.

18. On reconsideration, a group of LMS providers contended that the emission mask adopted in the LMS Report and Order is flawed. They propose a modification of the emission mask specification that they believe should not inhibit the operation of non-multilateration systems, and the emission levels outside of the multilateration LMS sub-bands would be below the field strength levels permitted under Part 15 of the Commission's Rules for operation within the 902–928 MHz band. The proposed emission mask specification is as follows:

For LMS wideband emissions, operating in the 902–928 MHz band, in any 100 kHz band, the center frequency of which is removed from the center of authorized sub-band(s) by more than 50 percent up to and including 250 percent of the authorized bandwidth: The mean power of emissions shall be attenuated below the maximum permitted output power, as specified by the following equation but in no case less than 31dB:

A=16+0.4 (P–50)+10logB (attenuation greater than 66dB is not required)

Where:

A=attenuation (in decibels) below the maximum permitted output power level

P=percent removed from the center of the authorized sub-band(s)

B=authorized bandwidth in megahertz

19. On the other hand, CellNet, a Part 15 operator, objected to the relaxation of the emission mask specification,

contending that the potential for interference to Part 15 devices will be increased if the emission mask requirements are relaxed. Hughes contended that the attenuation used in the formula proposed by the LMS Providers would be insufficient to protect adequately against interference in the portion of the spectrum band set aside for non-multilateration systems. Thus, Hughes proposed a variation of the LMS multilateration parties' formula that requires greater attenuation. The Part 15 Coalition contended that there is no justification for relaxing the emission mask standard. TIA opposed the justification used by the LMS Providers to modify the emission mask specification. TIA pointed out that the LMS Providers' proposal is very similar to Sections 21.106(a)(2) and 94.71(c)(2) of our rules, which specify emission limits for the Domestic Public Fixed Radio Services and Private Operational Fixed Microwave Service, respectively. Further, TIA contended that in fixed services, the emission is but one of several ways to prevent interference, while in mobile services emission masks and power limits are the primary forms of interference control. It contended that while it may be appropriate to base the limits of LMS wideband emissions on the limits that apply to high-speed digital microwave transmissions, it is not reasonable that the LMS specification should be less strict than the fixed microwave specification.

20. In the Order on Reconsideration, the Commission finds that the LMS providers have shown that the single emission mask adopted in the LMS Report and Order to cover all LMS operations in the 902–928 MHz band is not appropriate for multilateration LMS systems. It notes that the LMS providers stated that none of their various multilateration systems, either existing or proposed, can comply with the existing mask and still achieve a commercially marketable level of locating accuracy. Additionally, the Commission states that it is persuaded by the LMS providers that an emission mask similar to the one applicable to narrowband PCS channels is more appropriate for narrowband forward link equipment operating in the spectrum between 927.250 MHz and 928 MHz.

21. Therefore, the Commission states that it will not apply the existing mask to equipment used for wideband multilateration links, either forward or reverse, in the three subbands 904–909.75 MHz, 921.75–927.25 MHz and 919.75–921.75 MHz, or to equipment used for narrowband forward links in the spectrum between 927.25 and 928 MHz. Instead, it will adopt two additional emission masks, both essentially the same as proposed by the LMS providers, that will apply to this equipment. All other equipment to operate in the LMS will remain subject to the emission mask adopted in the Report and Order.

22. Although these new emission masks are less stringent than the one adopted in the Report and Order, they do require a greater attenuation of out-of-band emissions than was considered to be required for multilateration systems operating under the interim rules. The Commission states its belief that these masks are adequate to prevent interference to non-multilateration systems. The Commission indicates that while TIA is correct that these new masks are less stringent than those for fixed microwave links, it does not agree with TIA that the masks for LMS multilateration systems must necessarily be more strict than for fixed microwave links. These two services are very different and the expectations of potential interference must also be considerably different—one is a highly coordinated fixed microwave service in exclusively allocated spectrum and the other is a mobile multilateration system operating in spectrum shared with a multitude of other users. Also, the Commission states that it is not persuaded that the refinement suggested by Hughes (increasing the slope of the wideband mask) is necessary to prevent interference, and that adopting it might unnecessarily preclude the use of some technologies or favor one type of system over another.

2. Frequency Tolerance

23. In the LMS Report and Order, the Commission adopted a frequency tolerance of 0.00025 percent (2.5 parts per million (ppm)) for both multilateration and non-multilateration systems. It noted that tighter frequency tolerances were justified to help reduce the potential for interference to systems operating on adjacent frequencies.

24. On reconsideration, Hughes, TI/MFS, and AMTECH requested that the Commission relax the frequency tolerance. Hughes argued that the 0.00025 percent frequency tolerance is overly restrictive for non-multilateration systems. It contended that a frequency tolerance of 2.5 ppm does not add significantly to existing means of avoiding interference between non-multilateration systems within designated subbands. Hughes submitted that since non-multilateration systems operate over relatively short ranges, the instances of coverage overlap between facilities on adjacent channels will be rare.

25. Hughes further alleged that the present frequency tolerance level would necessitate a significant and expensive design modification for their Vehicle to Roadside Communications (VRC) system readers. In addition, they contended that equipment changes required to conform their VRC mobile transponders to the present frequency tolerance level would be economically prohibitive. If the Commission decides to maintain the present frequency tolerance level for non-multilateration systems, Hughes requested that the Commission apply the frequency tolerance level only to the reader transmitters and not to the mobile transponders, which are designed to transmit with extremely low power and only while passing in close proximity to a reader.

26. According to TI/MFS there are no current LMS non-multilateration systems in operation that conform to the 2.5 ppm frequency tolerance. They noted that most of the non-multilateration technology operates at frequency tolerance levels no greater than 50 ppm. TI/MFS stated its belief that the imposition of the present frequency tolerance level will have the negative effect of decreasing both available technology and potential players in the market.

27. In response to the concerns raised by the non-multilateration system operators, the Commission in the Order on Reconsideration imposes the present frequency tolerance level of 2.5 ppm on high power fixed reader transmitters operating near the band edges, but not on mobile transponders or hand-held portable readers. The Commission is persuaded that the significant cost of tightening the frequency tolerance for mobile transponders and hand-held readers could severely raise the cost of the devices beyond the realm of economic feasibility. The Commission is not changing the tolerance requirement for other non-multilateration LMS systems or for multilateration LMS systems.

3. Type Acceptance

28. In the LMS Report and Order, the Commission determined that the mobile nature of most LMS transmitters and the new advanced technology that will be employed by this equipment justified strict regulatory oversight of having equipment type accepted rather than continuing to use the notification procedure. Therefore, it decided that all LMS equipment imported or marketed after April 1, 1996, including the ''transmitting tags'' used in certain non-

multilateration systems, must be type accepted for use under Part 90. If, however, these units met the requirements under Part 15, they may have been authorized under that part and do not need to be type accepted.

29. On reconsideration, the LMS providers requested that for systems constructed after February 3, 1995, that the type acceptance requirement for multilateration LMS be extended from the current date of April 1, 1996, until 12 months after any rule on reconsideration concerning the emission mask (the ''1996 Effective Date''). They also requested that all LMS transmitters imported or manufactured domestically prior to the 1996 Effective Date be exempt from type acceptance regardless of whether they are used before or after the 1996 Effective Date. In addition, they asked the Commission to clarify that LMS providers may indefinitely continue to use equipment deployed prior to the 1996 Effective Date provided that it is not marketed after that date (whether the deadline is April 1, 1996 or a later date), unless the equipment is first type accepted.

30. The LMS providers further requested that for systems constructed before February 3, 1995, the installation of non-type accepted multilateration LMS transmitters imported or manufactured domestically on or before the 1996 Effective Date should be permitted through April 1, 1998. They urged that such equipment need not be type-accepted at any time unless such a step is necessary in order to resolve interference problems that cannot otherwise be accommodated, but that such equipment must comply with the emission mask requirements by April 1, 1998. In addition, for systems constructed and placed into operation before February 3, 1995, the LMS providers would mandate that transmitters imported or manufactured after the 1996 Effective Date must be type accepted. Similarly, AMTECH requests that the Commission delay the type-acceptance date at least until 12 months after final technical requirements have been adopted.

31. In the Order on Reconsideration, the Commission states its belief that the type acceptance requirements it adopted in the LMS Report and Order are necessary to ensure efficient deployment of LMS to the public without causing significant interference. The Commission provides that it recognizes the concern of multilateration LMS operators that they may experience difficulty in meeting the construction deadline if they must comply with type acceptance requirements. To alleviate this concern, the Commission's Office of Engineering and Technology has committed to process type acceptance applications within 40 days of receipt. Further, the Commission notes that it has extended the construction deadline. The Commission therefore concludes that compliance with these type acceptance requirements should not impede a licensee's efforts to meet the build-out deadline. It also notes that constructed multilateration LMS systems must also meet type acceptance requirements after September 1, 1996.

32. The Commission further notes that non-multilateration systems contain a substantial amount of embedded equipment with numerous users, particularly state and local governments. Thus, non-multilateration system operators will be able to continue operation of current equipment until replacement is needed. However, if non-multilateration system operators decide either to build new systems or replace existing equipment on or after September 1, 1996, the Commission states, the new equipment must comply with type acceptance by April 1, 1998.

4. Site Relocation

33. In the LMS Report and Order, the Commission allowed LMS licensees to modify their applications to comply with the new band plan, and stated that an alternate site must be within two kilometers (km) of the site specified in the original license. On reconsideration, the LMS providers contended that the two kilometer restriction is unworkable due to the upcoming April 1, 1996, deadline for preserving grandfathered status. They argued that competition for wireless facilities has caused many sites to become unavailable or unsuitable for LMS use. They also noted that site surveys and negotiations are time-consuming and in many cases replacements within the 2 km radius either do not exist or are unavailable. Thus, the LMS providers proposed that the Commission instead allow replacement sites within a ten-mile radius.

34. The Commission declines to modify the site relocation restriction in the Order on Reconsideration. It notes that the Third Report and Order in GN Docket No. 93–252 utilized two kilometers as the benchmark for determining whether an application for a site change of a CMRS facility is to be treated as a modification application or an ''initial'' application for the purpose of determining eligibility for competitive bidding procedures. Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, Third Report and Order, GN Docket No. 93–252, 9 FCC Rcd 7988, 59 FR 59945 (Nov. 21, 1994) (CMRS Third Report and Order). The Commission concludes that the LMS providers have failed to demonstrate adequately that a different benchmark should apply in the LMS context and that it will continue to place a 2 km restriction on replacement sites for LMS systems.

III. Procedural Matters and Ordering Clauses

35. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604 is as follows:

36. Need and Purpose of this Action: The rules adopted herein will enhance use of the 902–928 MHz band for location and monitoring systems. The new rules create a more stable environment for LMS system licensees and provides much needed flexibility for operators of such systems.

37. Issues Raised in Response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

38. Significant Alternatives Considered and Rejected: All significant alternatives regarding grandfathering issues are discussed in this Order on Reconsideration. Other issues raised on reconsideration will be addressed in a forthcoming Memorandum Opinion and Order.

39. It is ordered that, pursuant to the authority of Sections 4(i), 302, 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(r), and 332(a), the rule changes specified below are adopted.

40. It is further ordered that the rule changes set forth below will become effective May 30, 1996, except for §§ 90.203(b)(7) and 90.363(d). Sections 90.203(b)(7) and 90.363(d) were effective March 18, 1996.[1]

41. It is further ordered that the petitions for reconsideration filed by the parties listed in the attachment below are granted to the extent discussed herein, and denied to the extent discussed herein. Those issues not resolved by this Order on

[1] Sections 90.203(b)(7) and 90.363(d) extend the type acceptance and construction deadlines, respectively, from April 1, 1996, to September 1, 1996. As such, these rules relieve a restriction and are not subject to the 30 days' notice requirement of the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(d)(1). Moreover, the Commission finds good cause to make these rules effective on less than 30 days' notice to prevent the former type acceptance and construction deadline of April 1, 1996, from taking effect. *See* 5 U.S.C. 553(d)(3).

Reconsideration will addressed in a future Memorandum Opinion and Order.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.203 is amended by revising paragraph (b)(7) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(b) * * *

(7) Transmitters imported and marketed prior to September 1, 1996 for use by LMS systems.

* * * * *

3. Section 90.210 is amended by revising paragraph (k) to read as follows:

§ 90.210 Emission masks.

* * * * *

(k) *Emission Mask K.* (1) Wideband multilateration transmitters. For transmitters authorized under Subpart M to provide forward or reverse links in a multilateration system in the subbands 904–909.75 MHz, 921.75–927.25 MHz and 919.75–921.75 MHz, and which transmit an emission occupying more than 50 kHz bandwidth: in any 100 kHz band, the center frequency of which is removed from the center of authorized sub-band(s) by more than 50 percent of the authorized bandwidth, the power of emissions shall be attenuated below the transmitter output power, as specified by the following equation, but in no case less than 31 dB:

A=16+0.4 (D − 50)+10 log B (attenuation greater than 66 dB is not required)

Where:

A=attenuation (in decibels) below the maximum permitted output power level

D=displacement of the center frequency of the measurement bandwidth from the center frequency of the authorized sub-band, expressed as a percentage of the authorized bandwidth B

B=authorized bandwidth in megahertz.

(2) Narrowband forward link transmitters. For LMS multilateration narrowband forward link transmitters operating in the 927.25–928 MHz frequency band the power of any emission shall be attenuated below the transmitter output power (P) in accordance with following schedule:

On any frequency outside the authorized sub-band and removed from the edge of the authorized sub-band by a displacement frequency (f_d in kHz): at least 116 log ((f_d+10)/6.1) dB or 50 + 10 log (P) dB or 70 dB, whichever is the lesser attenuation.

(3) Other transmitters. For all other transmitters authorized under Subpart M, the peak power of any emission shall be attenuated below the power of the highest emission contained within the authorized channel bandwidth in accordance with the following schedule:

(i) On any frequency within the authorized bandwidth: Zero dB;

(ii) On any frequency outside of the authorized bandwidth: 55+10log(P) dB where (P) is the highest emission (watts) of the transmitter inside the authorized bandwidth.

(4) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 kHz, except that, in regard to paragraph (2) of this section, a minimum spectrum analyzer resolution bandwidth of 300 Hz shall be used for measurement center frequencies within 1 MHz of the edge of the authorized subband. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth.

(5) Emission power shall be measured in peak values.

4. Section 90.213 is amended by revising the entry for the 902–928 MHz band and adding footnote 13 to the table in paragraph (a) to read as follows:

§ 90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2W output power	2W or less output power
* * * * *	*	*	
902–928 [13]	2.5	2.5	2.5
* * * * *	*	*	

[13] Fixed non-multilateration transmitters operating within 40 kHz from the band edge, intermittently operated hand-held readers, and mobile transponders are not subject to frequency tolerance restrictions.

* * * * *

5. Section 90.363 is amended by revising paragraph (d) to read as follows:

§ 90.363 Grandfathering provisions for existing AVM Licensees.

* * * * *

(d) Multilateration AVM licensees for stations that *were not* constructed and placed in operation on or before February 3, 1995 must construct their LMS systems and place them in operation on the spectrum identified in their LMS system license on or before September 1, 1996, or their licenses will cancel automatically (see Section 90.155 (e)). Also, these licenses will cancel automatically on July 1, 1996 unless timely modification applications are filed on or before this date (see paragraph (a) of this section).

* * * * *

Attachment—Petitions for Reconsideration

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

1. Ad Hoc Gas Distribution Utilities Coalition (Ad Hoc Gas)
2. AirTouch Teletrac (Teletrac)

3. The American Radio Relay League, Inc. (ARRL)
4. AMTECH Corporation (AMTECH)
5. CellNet Data Systems, Inc. (CellNet)
6. Connectivity for Learning Coalition
7. Hughes Transportation Management Systems (Hughes)
8. Intelligent Transportation Society of America (ITSA)
9. Metricom, Inc. and Southern California Edison Company (Metricom/SCE)
10. MobileVision, L.P. (MobileVision)
11. The New Jersey Highway Authority, the New Jersey Turnpike Authority, the New York State Thruway Authority, the Pennsylvania Turnpike Commission, the Metropolitan Transportation Authority Bridges and Tunnels, the Port Authority of New York and New Jersey, the South Jersey Transportation Authority and the Delaware River Port Authority (''the Interagency Group'').
12. The Part 15 Coalition (Part 15 Coalition)
13. Pinpoint Communications (Pinpoint)
14. Rand McNally & Company (Rand McNally)
15. Safetran Systems Corporation (Safetran)
16. Southwestern Bell Mobile Systems, Inc. (SBMS)
17. Texas Instruments, Inc. and MFS Network Technologies, Inc. (TI/MFS)
18. Uniplex Corporation (Uniplex)
19. UTC
20. Wireless Transactions Corporation (Wireless Transactions)

[FR Doc. 96–10498 Filed 4–29–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 96–D309]

Defense Federal Acquisition Regulation Supplement; Pricing for Sales of Defense Articles

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement statutory provisions which require that foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to acquisitions of like items purchased by DoD for its own use.

DATES: *Effective date:* April 30, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 1, 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 (703) 602–0350. Please cite DFARS Case 96–D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 225.73 to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107), which amends Section 22 of the Arms Export Control Act (22 U.S.C. 2762) to require that foreign military sales of defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis as is applicable to like items purchased by DoD for its own use.

B. Regulatory Flexibility Act

This 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. 601 et seq., because DFARS Subpart 225.73 already requires pricing of foreign military sales contracts using the same general principles as are used in pricing other defense contracts. The only significant change in this rule relates to the allowability of independent research and development and bid and proposal costs in accordance with the cost principle at FAR 31.205–18. This change is not expected to significantly impact small entities, as most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require application of the FAR cost principles. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 96–D309 in correspondence.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements which require the approval of the Office of Management and Budget 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 promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 531A of the Fiscal Year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–107), which became effective on April 12, 1996. 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 Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 225.7303 is amended by revising the title to read as follows:

225.7303 Pricing acquisitions for foreign military sales (FMS).

3. Section 225.7303–2 is amended by revising the introductory text of paragraphs (a) and (c) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, except as provided in 225.7303–5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

* * * * *

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205–18 do not apply to such contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for foreign military sales not wholly paid for from funds made available on a nonrepayable basis shall

be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such foreign military sales—

* * * * *

4. Section 225.7303–5 is added to read as follows:

225.7303–5 Aquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements, as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements will be allowable under such contracts. Indirect burden rates applicable to such direct costs shall be permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred to implement its offset agreement with a foreign government or international organization if the organization if the foreign military sale Letter of Offer and Acceptance is financed with funds made available on a nonrepayable basis.

[FR Doc. 96–10542 Filed 4–29–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 951227306–6117–02; I.D. 121295C]

Foreign Fishing; Pacific Coast Groundfish Fishery; Annual Specifications; and Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1996 groundfish fishery specifications for Pacific whiting and correction.

SUMMARY: NMFS announces the 1996 fishery specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch (ABC) and harvest guideline, including the distribution between domestic and foreign fishing operations. The intended effect of this action is to establish allowable harvest levels of Pacific whiting based on the best available scientific information. Corrections are also made to Table 1 in the annual specifications and management measures for the Pacific coast groundfish fishery.

EFFECTIVE DATE: May 15, 1996, until the effective date of the 1997 annual specifications and management measures, which will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that harvest guidelines or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the harvest guidelines or quotas be published in the Federal Register and made effective by January 1, the beginning of the fishing year. This was done for the 1996 groundfish fishery (61 FR 279, January 4, 1996), with one exception, Pacific whiting (whiting). Final specifications for whiting were not announced because the Pacific Fishery Management Council (Council), which makes management recommendations to NMFS, decided to delay its consideration until 1995 hydroacoustic survey information could be included in the assessment on whiting and the new results reviewed. Consequently, preliminary specifications for whiting were announced concurrent with the final specifications for other groundfish species. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

In 1994, the ABC for whiting was substantially higher than in previous years, primarily because it was based on data from the 1992 hydroacoustic survey that utilized new, more sensitive equipment, and extended farther offshore and farther north to encompass the species' range. To provide for cautious exploitation until the 1992 survey results could be confirmed, a conservative harvest rate policy was adopted in 1994 and 1995 to minimize the risk to the resource if the ABC is later found to be too high. Because initial results of the recent 1995 survey were favorable, the Council initially supported resumption of the moderate exploitation rate in 1996. When applied to the previous year's stock assessment, this resulted in a preliminary ABC recommendation of 123,000 metric tons (mt) for the U.S. and Canada combined. The Council also recommended that the preliminary U.S. harvest guideline continue at 80 percent (98,400 mt) of the ABC. When the preliminary specifications were announced, NMFS indicated that the final specifications could be higher or lower, depending on the information resulting from the new survey and stock assessment on whiting.

At its March 1996 meeting in Portland, OR, the Council reviewed the new stock assessment, which indicated that the biomass of 3-year-old whiting was 60 percent greater than expected, and that a moderate abundance of 2-year-old fish will be recruited to the fishery in 1996. However, the Council recommended delaying the return to the moderate exploitation rate until resolution of new questions concerning the correct hydroacoustic target strength used in estimating biomass. The target strength calibrates the hydroacoustic survey data into absolute biomass of whiting. Even so, by applying the conservative exploitation rate to the new stock assessment, the Council's final ABC recommendation (U.S. and Canadian combined) of 265,000 mt is 42,000 mt higher than the 1995 ABC of 223,000 mt and more than double the preliminary ABC of 123,000 mt. (Under the new stock assessment, a moderate exploitation rate would have led to a 1996 ABC of 369,000 mt.)

The Council also confirmed its preliminary recommendation to set the U.S. harvest guideline at 80 percent of the U.S.-Canadian ABC. Therefore, the final U.S. harvest guideline is 212,000 mt for 1996. If Canada adopts the same ABC and calculates its share as 30 percent of the total catch, as in the recent past, the U.S.-Canadian ABC will be exceeded by about 14 percent. These overages have not caused a biological problem, particularly given the large increase in the ABC in 1994 and use of the conservative exploitation rate in 1994–96. The total harvest will not reach the overfishing level. Bilateral discussions with Canada are expected to continue.

The whiting harvest guideline in 1996 is designated entirely for domestic harvesting and processing, and there is no surplus for joint venture or foreign fishing operations.

Public comments on the preliminary whiting specifications were requested through February 5, 1996, but none were received. Whiting caught in 1996

before the effective date of this action will be counted toward the new harvest guideline.

Other Changes to the Whiting Fishery

The start of the regular whiting season north of 42° N. lat. is changed from April 15 to May 15 (61 FR 16402, April 15, 1996). In addition, NMFS has proposed a framework regulation for implementing the treaty rights of certain Washington State coastal treaty Indian tribes and presented options for an allocation to the Makah tribe in 1996 (61 FR 10303, March 13, 1996). This proposal also appears in a separate Federal Register document, and is not yet approved. Other specifications and management measures announced at (61 FR 279, January 4, 1996) or at 50 CFR part 663 are not changed by this action except as corrected.

Correction of Publication

In the publication of the annual specifications and management measures on January 4, 1996 (I.D. 121295C), in the table on page 280, under ''roundfish,'' the entry for pacific whiting, under ''rockfish,'' the entries thornyheads, yellowtail, and the text of footnotes d and n at the end of the table are corrected as set forth. For the convenience of the user, the table is revised to include these changes to read as follows:

BILLING CODE 3510–22–W

Table 1. 1996 Specifications of Acceptable Biological Catch (ABC), Harvest Guidelines, and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) subareas

	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1,000 mt)						Harvest Guideline (x 1,000 mt)	Allocations (x 1,000 mt)			
								Limited Entry		Open Access	
Species	Vancouver a/	Columbia	Eureka	Monterey	Concep-tion	Total ABC		1000 mt	%	1000 mt	%
Roundfish:											
Lingcod b/	1.3		0.3	0.7	0.1	2.4	2.4	1.21	80.9	0.29	19.1
Pacific cod	3.2		c/	c/	c/	3.2	--	--	--	--	--
Pacific whiting d/	265.0					265.0	212.0	--	--	--	--
Sablefish e/ f/	8.7				0.425	9.1	7.8	6.557	93.4	0.463	6.6
Jack mackerel g/	52.6			--		52.6	52.6	--	--	--	--
Rockfish:											
POP h/	0.0	0.0	c/	c/	c/	0.0	0.75	--	--	--	--
Shortbelly	23.5					23.5	23.5	--	--	--	--
Widow i/	7.7					7.7	6.5	6.26	96.3	0.24	3.7
Thornyheads:	8.0				-	8.0	--	--	--	--	--
Shortspine e/j/	1.0				-	1.0	1.5	1.496	99.75	0.004	0.25
Longspine e/j/	7.0				-	7.0	6.0	--	--	--	--

(Table 1. continued)

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1,000 mt)						Harvest Guideline (x 1,000 mt)	Allocations (x 1,000 mt)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total ABC		Limited Entry		Open Access	
								1000 mt	%	1000 mt	%
Sebastes complex: k/	11.9		13.2			11.9 N 13.2 S	11.2 N 13.2 S	10.12 8.76	90.4 67.4	1.08 4.24	9.6 32.6
Bocaccio l/	c/	c/	1.7			1.7	1.7	1.01	67.4	0.49	32.6
Canary m/	1.0		0.25	c/	c/	1.25	0.85	0.78	91.2	0.07	8.8
Chilipepper	c/	c/	4.0			4.0	--	--	--	--	--
Yellowtail n/	1.19	2.97	2.58	c/	c/	6.74	3.59 N 2.58 S	3.25 2.33	90.4 90.4	0.35 0.25	9.6 9.6
Remaining rockfish	0.8	3.7	7.0			11.5	--	--	--	--	--
Flatfish:											
Dover sole e/o/	0.82-1.57	3.0	2.9	3.16-4.36	1.0	10.88-12.83	11.05 WOC 2.85 Col	--	--	--	--
English sole	2.0		1.1			3.1	--	--	--	--	--
Petrale sole	1.2		0.5	0.8	0.2	2.7	--	--	--	--	--
Arrowtooth flounder	5.8					5.8	--	--	--	--	--
Other flatfish	0.7	3.0	1.7	1.8	0.5	7.7	--	--	--	--	--
Other fish p/	2.5	7.0	1.2	2.0	2.0	14.7	--	--	--	--	--

a/ U.S. Vancouver only, except for Pacific whiting

b/ The lingcod stock assessment covers the entire Vancouver INPFC area, including Canada, and the Columbia subarea north of Cape Falcon. The U.S. ABC is based on 50 percent of the ABC for this assessment area plus 400 mt for the Columbia subarea south of Cape Falcon. The coastwide harvest guideline equals the sum of the ABCs and includes a recreational harvest of 900 mt. The limited entry and open-access percents are applied only the commercial portion of the harvest guideline, which is 1,500 mt (the 2,400 mt harvest guideline minus 900 mt for estimated recreational harvest).

c/ These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "remaining rockfish" category for the areas footnoted only.

d/ The ABC is coastwide, including Canadian waters. The U.S. harvest guideline is set at 80 percent of the U.S./Canada ABC. The allocation to Washington coastal treaty tribes will be determined in a separate rulemaking. The 40 percent reserve for shore-based processing will be based on the commercial portion of the harvest guideline (the U.S. harvest guideline minus the tribal allocation).

e/ Dover sole, thornyheads, and trawl-caught sablefish are managed together as the "DTS complex" (formerly called the deepwater complex). There is no harvest guideline for the DTS complex.

f/ The 7,800 mt sablefish harvest guideline is the 8,700 mt ABC north of the Conception subarea (north of 36° N. latitude) reduced by 900 mt for estimated discards. The 7,800-mt harvest guideline is reduced by 780 mt for the treaty tribes before dividing the remaining 7,020 mt between the limited entry (6,557 mt) and open-access (463 mt) fisheries. The limited entry allocation is further allocated 58 percent (3,803 mt) to the trawl fishery, and 42 percent (2,754 mt) to the nontrawl fishery, both of which are harvest guidelines.

g/ Only jack mackerel north of 39°00' N. latitude are managed by the FMP. The ABC and harvest guideline include area beyond 200 nm.

h/ The POP harvest guideline for landed catch applies to the Vancouver/Columbia subareas combined.

i/ The 6,500 mt harvest guideline for widow rockfish is derived by subtracting 16 percent for estimated discards (1,200 mt) from the ABC (7,700 mt).

j/ The thornyhead ABCs and harvest guidelines apply north of Point Conception, CA. The harvest guideline represents landed catch. Limited entry and open-access allocations are set for the first time for shortspine thornyheads because open-access harvest has exceeded traditional levels during the 1984-1988 window period.

k/ The Sebastes-North harvest guideline (11,200 mt) applies to the Vancouver and Columbia subareas and equals the sum of the ABCs as follows: canary (1,000 mt), yellowtail rockfish (6,740 mt coastwide minus 300 mt for the Eureka subarea), and remaining rockfish (4,500 mt), minus 720 mt for estimated discards (150 mt for canary rockfish and 570 mt for yellowtail rockfish north of Cape Lookout). Within the Sebastes-North harvest guideline are two small harvest guidelines for commercial harvest of black rockfish by the Makah, Quileute, Hoh, and Quinault Indian tribes: 20,000 pounds (9,072 kg) for the EEZ north of Cape Alava (48°09'30" N. latitude) and 10,000 pounds (4,536 kg) between Destruction Island (47°40'00" N. latitude) and Leadbetter Point (46°38'10" N. latitude). The Sebastes-South harvest guideline is the sum of the ABCs for the species in the Eureka/Monterey/Conception subareas: bocaccio (1,700 mt), canary (250 mt), chilipepper (4,000 mt), yellowtail rockfish (300 mt), and remaining rockfish (7,000 mt).

l/ The bocaccio harvest guideline applies to the Eureka, Monterey, and Conception subareas; as trip-limit induced discards are believed to be minimal, there is no deduction for discards. The open-access and limited entry allocation percentages for bocaccio are applied only to the commercial portion of the harvest guideline, which is 1,500 mt in 1995 (1,700 mt harvest guideline minus 200 mt estimated recreational harvest).

m/ The canary rockfish harvest guideline for the Vancouver/Columbia area is the sum of the ABCs minus 150 mt for estimated discards.

n/ The 1993 yellowtail rockfish assessment addressed three separate areas: U.S. Vancouver; Columbia north of Cape Falcon; and Columbia south of Cape Falcon plus Eureka. For this table, the 2,970 mt Columbia ABC is for north Columbia only, and the Eureka ABC is for the Eureka subarea plus south Columbia. The total ABC for yellowtail rockfish is divided into two harvest guidelines: 3,590 mt for the northern area (4,160 mt for Vancouver plus Columbia north of Cape Lookout, close to Cape Falcon minus 570 mt for discards) and 2,580 mt for the southern area (Eureka plus Columbia area south of Cape Lookout). The harvest guidelines for the Sebastes complex apply to different areas, north and south of the Columbia/Eureka border at 43°00'00" N. latitude. For calculating the Sebastes complex harvest guidelines, 300 mt of yellowtail rockfish is estimated for the Eureka subarea. Therefore, 300 mt of the yellowtail rockfish southern harvest guideline is included in the southern Sebastes complex harvest guideline, and the remainder of the yellowtail rockfish southern harvest guideline is included in the northern Sebastes complex harvest guideline.)

o/ The 11,050 mt coastwide harvest guideline for Dover sole (the upper end of the ABC range for the Vancouver subarea and the lower end of the ABC for the Monterey subarea (which are the recent average catches in those two subareas), plus the ABCs for the Columbia, Eureka and Conception subareas, minus 580 mt for estimated discards. The coastwide harvest guideline includes a 2,850 mt harvest guideline for the Columbia subarea (3,000 mt ABC minus 150 mt estimated discards).

p/ Includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

BILLING CODE 3510–22–C

Classification

The final specifications and management measures for 1996 are issued under the authority of the Magnuson Fishery Conservation and Management Act and are in accordance with 50 CFR parts 611 and 663, the regulations implementing the FMP.

NMFS finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive a portion of the 30-day delay in effectiveness, so that this rule may become effective before the fishery begins on May 15, 1996. The initial whiting specifications were announced January 4, 1996 (61 FR 27), and explained clearly to the public that the harvest guideline might be adjusted later by notice in the Federal Register. This final rule is that notice. Since this action has been publicized widely through the Council process, the industry is aware of the increase and would be hurt if the final specifications were not effective on May 15. Since the at-sea processing sector is capable of taking its share of the harvest guideline within less than a month, delaying full releases of the harvest guideline may cause an unnecessary disruption in fishing. Therefore, it would be contrary to the public interest to delay the effectiveness of the rule beyond the start of the fishery.

Dated: April 23, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–10663 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 61, No. 84
Tuesday, April 30, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes, Excluding Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, that currently requires repetitive visual inspections to detect cracks in the forward intermediate section skin at frame 30A where it joins stringer 30, and repair, if necessary. This action would add eddy current inspection(s) to detect cracks of the outer skin of the fuselage, which would terminate the repetitive detailed visual inspections. This action also would require repair of any cracked area and modification of the structure at certain frames. This proposal is prompted by in-service experience which has identified fatigue cracks in this area. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could result in rapid decompression of the airplane.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–263–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 15, 1990, the FAA issued AD 90–11–09, amendment 39–6611 (55 FR 21185, May 23, 1990), applicable to certain Airbus Model A300 B2 and B4 series airplanes, to require repetitive visual inspections to detect cracks in the forward intermediate section skin at frame 30A where it joins stringer 30, and repair, if necessary. That action was prompted by in-service experience which identified fatigue cracks in this area. The requirements of that AD are intended to prevent rapid decompression of the airplane, as a result of the problems associated with fatigue cracking.

In the preamble to that AD, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of New Service Information

Since the issuance of AD 90–11–09, Airbus has issued Service Bulletin A300–53–283, Revision 2, dated March 17, 1994. The service bulletin describes procedures for eddy current inspection(s) to detect cracks of the outer skin of the fuselage at frames 28A and 30A above stringer 30, which would eliminate the need for the repetitive detailed visual inspections. The service bulletin also describes procedures for repairing the cracked area with a filler and doubler installation. In addition, the service bulletin permits further flight, under certain conditions, with outer skin that is cracked within certain limits.

Airbus has also issued Service Bulletin A300–53–285, Revision 1, dated November 22, 1993, which describes procedures for modification of the structure at frames 28A and 30A between stringers 27 and 30 (left- and right-hand). The modification involves cutting the frames and installing strips, fillers, couplings, sections, sheets, and angles at the subject area. Accomplishment of the modification will eliminate possible cracking in the outer skin of the fuselage at frames 28A and 30A, and would positively address the unsafe condition identified as rapid

decompression of the airplane due to fatigue cracking.

The DGAC has approved these service bulletin and issued French airworthiness directive 90–093–110(B)R1, dated September 30, 1990, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 90–11–09 to continue to require repetitive detailed visual inspections to detect cracks of the forward intermediate section skin of the fuselage at the junction of frame 30A and stringer 30.

However, this proposal would add a requirement to accomplish eddy current inspections to detect cracks of the outer skin of the fuselage at frames 28A and 30A above stringer 30. This inspection action would constitute terminating action for the repetitive detailed visual inspections.

The proposed AD also would require repair of any cracked area, and modification of the structure at frames 28A and 30A between stringer 27 and 30 (left- and right-hand).

The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between Service Information and Proposed Rule

Operators should note that, unlike the procedures described in Airbus Service Bulletin A300–53–283, this proposed AD would not permit further flight with cracking detected in the outer skin within certain limits under certain conditions. The FAA has determined that, due to the safety implications and consequences associated with such cracking, the subject outer skin that is found to be cracked must be repaired.

Operators should also note that the proposed AD would differ from Airbus Service Bulletin A300–53–283 in that it would require the initial eddy current inspection to be accomplished prior to the accumulation of 14,100 total landings or 22,000 flight hours after the effective date of this AD, whichever occurs first. (The service bulletin recommends that the limited inspection be conducted prior to the accumulation of 18,000 flight or 24,000 flight hours, whichever occurs first.) In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the susceptibility of the outer skin of the fuselage to fatigue cracking, which could result in rapid decompression of the airplane. The FAA has also received reports of fatigue cracking on affected airplanes that had accumulated as few as 14,100 total flight cycles. In consideration of these items, the FAA finds that the initial eddy current inspection conducted at the proposed compliance time stated previously will better ensure that any detrimental effect associated with fatigue cracking will be identified and corrected prior to the time that it could adversely affect the outer skin of the fuselage.

Furthermore, the FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

There are approximately 24 Airbus Model A300 B2 and B4 series airplanes, excluding Model A300–600 series airplanes, of U.S. registry would be affected by this proposed AD.

The detailed visual inspections that are currently required by AD 90–11–09 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the detailed visual inspections currently required is estimated to be $1,440, or $60 per airplane, per inspection cycle.

The eddy current inspection that is proposed in this new AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed eddy current inspection requirements of this AD is estimated to be $1,440, or $60 per airplane, per inspection cycle.

The modification that is proposed in this new AD action would take approximately 270 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $7,200 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed modification requirements of this AD is estimated to be $561,600, or $23,400 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6611 (55 FR 21185, May 23, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 95–NM–263–AD. Supersedes AD 90–11–09, Amendment 39–6611.

Applicability: Model A300 B2 and B4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise 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 (f) 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.

Note 2: Airbus Model A300–600 series airplane are not subject to this AD.

To prevent fatigue cracking, which could result in rapid decompression of the airplane, accomplish the following:

(a) For airplanes on which Airbus All Operators Telex (AOT) 53/90/01, dated April 12, 1990 has been accomplished: Prior to the accumulation of 18,000 total landings or 24,000 total hours time-in-service, whichever occurs first, or within 100 landings after June 11, 1990 (the effective date of AD 90–11–09, amendment 39–6611), whichever occurs later, perform a detailed visual inspection to detect cracks of the forward intermediate section skin of the fuselage at the junction of frame 30A and stringer 30, in accordance with Airbus All Operators Telex 53/90/01, dated April 12, 1990.

(1) If no cracks are detected, repeat the detailed visual inspection thereafter at intervals not to exceed 2,000 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any crack is detected, prior to further flight, repair it in accordance with the AOT. After any crack is repaired, prior to the accumulation of 15,000 total landings or 20,000 total hours time-in-service, whichever occurs first, repeat the detailed visual inspection until the requirements of paragraph (b) of this AD are accomplished.

(b) For all airplanes: Perform an eddy current inspection to detect cracks of the outer skin of the fuselage at frames 28A and 30A above stringer 30, in accordance with Airbus Service Bulletin A300–53–283, Revision 2, dated March 17, 1994, at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the eddy current inspection terminates the repetitive visual inspection requirements of paragraph (a) of this AD.

(1) For airplanes on which the requirements of paragraph (a) of this AD have been initiated: Perform the eddy current inspection prior to the accumulation of 2,000 landings since the last inspection performed in accordance with paragraph (a) of this AD, or within 100 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes other than those identified in paragraph (b)(1) of this AD: Perform the eddy current inspection at the later of the times specified in paragraph (b)(2)(i) or (b)(2)(ii):

(i) Prior to the accumulation of 14,100 total landings or 22,000 total flight hours after the effective date of this AD, whichever occurs first; or

(ii) Within 100 landings after the effective date of this AD.

(c) If no crack is detected during the eddy current inspection required by paragraph (b) of this AD, repeat the eddy current inspection thereafter at intervals not to exceed 3,000 landings.

(d) If any crack is detected during any eddy current inspection required by this AD, prior to further flight, repair it in accordance with Airbus All Operators Telex 53/90/01, dated April 12, 1990, or Airbus Service Bulletin A300–53–283, Revision 2, dated March 17, 1994. After accomplishing the repair, within 15,000 landings or 20,000 flight hours after repair, whichever occurs first, modify the structure at frames 28A and 30A between stringers 27 and 30 (left- and right-hand), in accordance with Airbus Service Bulletin A300–53–285, Revision 1, dated November 22, 1993. Accomplishment of this reinforcement constitutes terminating action for this AD.

(e) Except for airplanes on which the repair required by paragraph (d) of this AD has been accomplished: Modify the structure at frames 28A and 30A between stringers 27 and 30 (left- and right-hand), in accordance with Airbus Service Bulletin A300–53–285, Revision 1, dated November 22, 1993, at the later of the times specified in paragraphs (e)(1) or (e)(2) of this AD. Accomplishment of this modification constitutes terminating action for the eddy current inspection requirements of paragraph (c) of this AD.

(1) Prior to the accumulation of 25,000 total landings or 40,000 total flight hours, whichever occurs first.

(2) Within 1,000 landings after the effective date of this AD.

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

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

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

Issued in Renton, Washington, on April 24, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10625 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes, and Model 747–100, –200, –300, and –SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 and 747 series airplanes. This proposal would require replacement of Waterman hydraulic fuse assemblies with modified assemblies. This proposal is prompted by reports of failure of hydraulic system A and the standby system due to corrosion on the magnesium piston of the hydraulic fuse and consequent failure of the fuse to close sufficiently to prevent the loss of hydraulic fluid from the system. The actions specified by the proposed AD are intended to prevent such failure of the fuse, which could result in the failure of one or more hydraulic systems and resultant reduced controllability of the airplane.

DATES: Comments must be received by June 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–

36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall 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 96–NM–36–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received two reports indicating that the hydraulic system A and the standby hydraulic system have failed on Model 737 series airplanes during flight. During subsequent emergency landings, these airplanes departed the end of the runway and sustained severe damage. On one of these airplanes, both actuator attach lugs on the support fittings of the No. 1 Krueger flap actuator were severed completely. The actuator separated from the front spar, and the adjacent hydraulic lines were severed. On another airplane, the No. 3 Krueger flap actuator separated from the fitting, and the hydraulic lines to the actuator were severed. Subsequently, the hydraulic fuse did not close sufficiently to prevent the loss of hydraulic fluid from the system. Results of a laboratory examination of the fuse indicated that corrosion existed on the magnesium piston of the fuse, which contributed to the failure of the fuse. Failure of the hydraulic fuse, if not corrected, could result in the failure of one or more hydraulic systems and, consequently, could result in reduced controllability of the airplane.

Hydraulic fuses are installed to prevent failure of the hydraulic system in the event of breakage of the hydraulic lines to leading edge devices such as the actuators. These fuses also preserve the flight control systems following a major failure such as an uncontained engine failure, and minimize the fire hazard in the event of a hydraulic line failure in the brake system. The FAA has determined that hydraulic fuses having magnesium pistons are installed on Model 737–100 and –200 series airplanes as well as Model 747–100, –200, –300, and –SP series airplanes. Therefore, the FAA finds that all of these airplane models are subject to the unsafe condition identified in this proposal.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Letter 737–SL–29–21, dated December 16, 1982 (for Model 737 series airplanes). This service letter describes procedures for replacement of the existing Waterman hydraulic fuse assemblies with modified assemblies having pistons made from aluminum. Accomplishment of this replacement will reduce the susceptibility of the piston to corrosion damage. The Boeing service letter references Imperial Clevite, Inc., Service Bulletins G838–80–4, G838–80–5, and G838–80–6, all dated April 15, 1982, as additional sources of service information for accomplishment of the replacement.

The FAA also has reviewed and approved Boeing Service Letter 747–SL–32–19, dated January 16, 1980 (for Model 747 series airplanes). This service letter describes procedures for an inspection of the existing Waterman Type II hydraulic fuse assemblies for corrosion of the piston, and replacement of Type II hydraulic fuse assemblies with improved Type I fuse assemblies. Waterman Type II fuses require reverse flow to reset, while Type I fuses have a manual reset lever. The improved fuses are manufactured by Pneudraulics, Inc.

Explanation of Requirements of Proposed Rule

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 replacement of Waterman hydraulic fuse assemblies with modified assemblies. The actions would be required to be accomplished in accordance with the service letters described previously.

Affected operators of Model 737 series airplanes should note that, although Boeing Service Letter 737–SL–29–21 recommends that subsequent periodic tests of the modified fuses be accomplished, the FAA has not included such a requirement in this proposed AD. The FAA has determined that procedures required by operators' individual maintenance programs will adequately address periodic inspections of the new fuse assemblies.

The FAA is considering the issuance of a separate rulemaking action to address fatigue and stress corrosion of the support fitting on the Krueger flap actuator for Model 737–100 and –200 series airplanes. (The Krueger flap actuator installed on Model 747 series airplanes has a different part number from that installed on Model 737 series airplanes.)

Cost Impact

There are approximately 1,145 Model 737 series airplanes and 727 Model 747 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 421 Model 737 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane (8 fuses per airplane; 2 work hours per fuse) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts that are modified by the vendor would be provided at no cost to operators. Based on these figures, the cost impact of the

proposed AD on U.S. operators is estimated to be $404,160, or $960 per airplane.

The FAA estimates that 208 Model 747 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 48 work hours per airplane (24 fuses per airplane; 2 work hours per fuse) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts that are modified by the vendor would be provided at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $599,040, or $2,880 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–36–AD.

Applicability: Model 737–100 and –200 series airplanes, as identified in Boeing Service Letter 737–SL–29–21, dated December 16, 1982; and Model 747–100, –200, –300, and –SP series airplanes, as identified in Boeing Service Letter 747–SL–32–19, dated January 16, 1980; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hydraulic fuse, which could result in the failure of one or more hydraulic systems and resultant reduced controllability of the airplane, accomplish the following:

(a) For Model 737–100 and –200 series airplanes: Within 3,000 flight hours after the effective date of this AD, replace Waterman hydraulic fuse assemblies, having Waterman part number (P/N) G838–8–40, G838–8–60, or G838–8–160, with modified assemblies having P/N G8381–8–40, G8381–8–60, or G8381–8–160, respectively; or with a Pneudraulics fuse specified in Boeing Service Letter 737–SL–29–21, dated December 16, 1982. Accomplish the replacement in accordance with the service letter.

Note 2: The Boeing service letter references Imperial Clevite, Inc., Service Bulletins G838–80–4, G838–80–5, and G838–80–6, all dated April 15, 1982, as additional sources of service information for accomplishment of the replacement.

(b) For Model 747–100, –200, –300, and –SP series airplanes: Within 3,000 flight hours after the effective date of this AD, replace Waterman hydraulic fuse assemblies, having Waterman P/N G905–120, with Pneudraulics assemblies having Pneudraulics P/N 6105, in accordance with Boeing Service Letter 747–SL–32–19, dated January 16, 1980.

(c) As of the effective date of this AD, no person shall install on any airplane Waterman hydraulic fuse assemblies having Waterman P/N G838–8–40, G838–8–60, G838–8–160, or G905–120 on any airplane.

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

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

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

Issued in Renton, Washington, on April 24, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10622 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AEA–04]

Proposed Establishment of Class E Airspace; Mitchellville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Mitchellville, MD. A Very High Frequency Omni-Directional Range (VOR) standard instrument approach procedure (SIAP) has been developed for Runway (RWY) 36 at Freeway Airport, Mitchellville, MD. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before May 30, 1996.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, System Management Branch, AEA-530, Docket No. 96–AEA–04 FAA Eastern Region, Federal Building #111 John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–04''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in 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 the 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 Office of the Assistant Chief Counsel, AEA–7 FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface at Mitchellville, MD. A VOR/DME RWY 36 SIAP has been developed for Freeway Airport. Additional controlled airspace extending upward from 700 feet above the surface is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: (49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, dated August 17, 1995, and effective September 16, 1994, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Mitchellville, MD [New]

Freeway Airport, MD
(Lat. 38°56′45″ N, long. 76°46′19″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Freeway Airport.

* * * * *

Issued in Jamaica, New York, on April 12, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–10671 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–05]

Proposed Amendment to Class E Airspace; Martinsville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Martinsville, VA. The development of a new Standard Instrument Approach Procedure (SIAP) at Blue Ridge Airport based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 96–AEA–05 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport Jamaica, NY 11430

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430

An informal docket may also be examined during normal business hours in the System Management Branch,

AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718)553–4521.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–05.'' 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 the 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 Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. 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 application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Martinsville, VA A GPS RWY 30 SIAP has been developed for the Blue Ridge Airport. Additional controlled airspace extending upward from 700 feet above the surface is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Martinsville, VA [Revised]

Blue Ridge Airport, VA

(Lat. 36°37′51″ N, long. 80°01′06″ W)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the 300° bearing from the Blue Ridge Airport extending from the 6.5-mile radius to 11 miles northwest of the airport.

* * * * *

Issued in Jamaica, New York, on April 15, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–10674 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–03]

Proposed Amendment to Class E Airspace; New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at New York, NY. The development of a new Standard Instrument Approach Procedure (SIAP) at Lincoln Park Airport, Lincoln Park, NJ, based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before May 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 96–AEA–03, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch

AEA–530, F.A.A. Eastern Region, Federal Building #100, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–03.'' 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 the 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 Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #100, John F. Kennedy International Airport, Jamaica, NY 11430. 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 application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at New York, NY. A GPS RWY 19 SIAP has been develop for the Lincoln Park Airport, Lincoln Park, NJ. Additional controlled airspace extending upward from 700 feet above the surface is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 New York, NY

Lincoln Park Airport, Lincoln Park, NJ (Lat. 40°56′51″ N, long. 74°18′52″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lincoln Park Airport, Lincoln Park, NJ.

* * * * *

Issued in Jamaica, New York, on April 15, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–10675 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

[Department of the Treasury Circular, Public Debt Series No. 3–72]

Regulations Governing United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Department of the Treasury is issuing this Advance Notice of Proposed Rulemaking to advise market participants in State and Local Government Series (SLGS) securities transactions of its intention to issue regulations designed to make the SLGS securities program more attractive and flexible to investors while still achieving policy and cost objectives of the Department. Many of the changes under consideration have been requested by market participants and state and local governments. We invite comments, advice and recommendations from interested parties regarding the changes under consideration as well as any additional changes not specifically covered by this notice.

DATES: Comments must be received on or before May 30, 1996.

ADDRESSES: Copies of this Advance Notice of Proposed Rulemaking have been made available for downloading from the Bureau of the Public Debt home page at the following address: http://www.ustreas.gov/treasury/bureaus/pubdebt/pubdebt.hmtl Comments should be sent to: Division of Special Investments, Bureau of the Public Debt, Department of the Treasury, 200 3rd St., P.O. Box 396, Parkersburg, WV 26101–0396.

Comments received will be available for public inspection and copying at the Division of Special Investments and at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220. Persons wishing to visit the library should call 202–622–0990 for an appointment. Comments may also be sent through the Internet to Fred Pyatt, Director, or Howard Stevens, Supervisory Program Analyst, Division of Special Investments at fpyatt@bpd.treas.gov or hstevens@bpd.treas.gov. When sending comments by Internet, please provide your full name and mailing address.

FOR FURTHER INFORMATION CONTACT: Fred Pyatt, Director, or Howard Stevens, Supervisory Program Analyst, Division of Special Investments, at 304–480–7752.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Treasury, Bureau of the Public Debt, desires to make the SLGS securities program more attractive and flexible for State and local government issuers of debt obligations that are subject to the arbitrage and rebate rules of the Internal Revenue Code. It is the Department's intent to do so in a manner consistent with tax policy objectives and in a manner that is cost effective.

In recent years, market participants have advised the Department that aspects of the existing SLGS securities regulations impose burdens that are not needed or cost-effective. Changes in the Internal Revenue Code since the inception of the SLGS securities program, specifically changes in the arbitrage and rebate restrictions under Section 148, make it possible to eliminate certain requirements that are now contained in the SLGS securities regulations. Section 148 restricts the use of proceeds of tax-exempt State and local bonds to acquire higher yielding investments. For example, Section 148(a) provides generally that interest on a State or local bond is tax-exempt only if the issuer invests bond proceeds at a yield that is not materially higher than the yield on the bond issue. Section 148(f) provides that interest on a State or local bond is tax-exempt only if the issuer rebates to the Federal government certain arbitrage earnings derived from investing gross proceeds at a yield exceeding the yield on the bond issue.

II. Set Forth Below Are Possible Changes in the SLGS Program That the Department is Studying

1. Eliminate the ''all or nothing'' certification which requires all yield restricted investments be invested either all in SLGS securities or all in open market Treasury securities.

2. Allow subscriptions for time deposit and special zero interest SLGS securities in increments of less than $100 above the $1,000 minimum investment and permit partial redemptions in multiples of less than $100.

3. Reduce the minimum maturity for zero interest time deposit and special zero interest certificates of indebtedness.

4. Reduce the time between the date of subscription and the date of issue for time deposit and special zero interest SLGS securities.

5. Make SLGS securities pricing more consistent with open market Treasury securities pricing by reducing the 1/8 of 1% (12.5 basis points) differential that now exists between SLGS securities prices and the then current estimated Treasury borrowing rate for a security of comparable maturity.

6. Permit SLGS securities to be purchased with funds subject to rebate as well as yield restriction by removing from the current SLGS securities regulations certifications which limit or prohibit investment. Certain of the limitations would be incorporated into the Internal Revenue Service regulations.

7. Revise the demand deposit program. Revisions being considered include adjusting the rate formula and eliminating certifications that are duplicative of current tax regulations or could be better administered through the tax regulations.

8. Change the formula for determining the redemption value of SLGS securities to one where the remaining interest and principal payments are discounted by the Treasury borrowing rate for the remaining term to maturity of the security being redeemed. This would result in a premium in cases where the Treasury borrowing rate is lower than the stated interest rate of the SLGS security.

9. Zero interest time deposit SLGS securities could be redeemed early at par.

10. Permit the purchase of SLGS securities with the proceeds of previously redeemed SLGS securities or open market Treasury securities.

These proposed changes to the SLGS securities program could be omitted, modified or additions made in light of any comments received or as a result of any internal Department decisions.

This advance notice of proposed rulemaking is being issued to secure the benefit of public comment. After receipt and consideration of responses to this advance notice of proposed rulemaking, the Department may issue a notice of proposed rulemaking or it may only issue a final rule amending 31 CFR Part 344. However, because any proposed or final rule will relate to matters of public contract and procedures for United States securities, as well as the borrowing power and fiscal authority of the United States, the notice, public comment and delayed effective date provisions of the Administrative Procedure Act are inapplicable pursuant to 5 U.S.C. 553(a)(2).

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Securities.

Authority: 31 U.S.C. 3102, *et seq.*, Pub. L. 99–514, 100 Stat. 2654, Sec. 1301(d).

Dated: April 25, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 96–10726 Filed 4–26–96; 10:23 am]

BILLING CODE 4810–39–W

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–94–017]

RIN 2115–AE48

Special Local Regulations; City of Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to better serve the boating public by providing advance notice of the regulated area established for the Festival On The Fourth celebrations in Charleston Harbor, and to avoid the reoccurring costs of publication related with temporary regulations. Since the publishing of the Notice of Proposed Rulemaking, the sponsor of the Festival on the Fourth has down-sized the event to such an extent that no federal regulations are required. Therefore, the Coast Guard is terminating further rulemaking under docket number [CGD07–94–017].

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, project officer, Coast Guard Group Charleston, SC at (803) 724–7621.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the Federal Register on August 19, 1994 (59 FR 42787), inviting comments for a proposed rulemaking which would create a regulated area on the Ashley River in Charleston, South Carolina for the Festival on the Fourth celebration. The day long event included personal watercraft demonstrations, aerial demonstration, ski jumping, and kite skiing throughout the day.

The proposed rulemaking would have created a regulated area between Brittle Bank Park and the main river channel. Entry into this regulated area would have been prohibited to all non-participants annually on July 4, from 11 a.m. to 10:30 p.m. Eastern Standard Daylight Time, unless otherwise specified in the Seventh Coast Guard District Local Notice to Mariners. Since the publication of the Notice of Proposed Rulemaking, the event has been down-sized to such an extent that no federal regulatory action is needed. Therefore, this rulemaking is no longer necessary, and the Coast Guard is terminating further rulemaking under docket number [CGD07–94–017].

Dated: April 22, 1996.

P.J. Cardaci,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 96–10659 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA153–2–7274b; FRL–5459–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District; Sacramento Metropolitan Air Quality Management Division; Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_x) emissions from natural gas-fired central furnaces, stationary internal combustion engines, and biomass boilers.

The intended effect of proposing approval of these rules is to regulate emissions of NOx in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 30, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

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

Sacramento Metropolitan Air Quality Management District, Rule Development Section, 8411 Jackson Road, Sacramento, CA 95826.

Placer County Air Quality Management District, Rule Development, 11464 B. Avenue, Auburn, CA 95603.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION: This document concerns the following district rules:

- Ventura County Air Pollution Control District (VCAPCD), Rule 74.22, Natural Gas-Fired, Central Fan-Type Furnaces;
- Sacramento Metropolitan Air Quality Management District (SMAQMD), Rule 412, Stationary Internal Combustion Engines Located at Major Stationary Sources; and
- Placer County Air Pollution Control District (PCAPCD), Rule 233, Biomass Boilers.

The rules were submitted to EPA on February 11, 1994, June 16, 1995, and October 19, 1994, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 1, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–10567 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[CA–095–0006b; FRL–5455–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District, El Dorado County Air Pollution Control District, Ventura County Air Pollution Control District, Yolo-Solano Air Quality Management District, and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from organic solvent degreasing, surface preparation and cleanup, motor vehicles and mobile equipment coating operations, wood coating operations, and graphic arts.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated

in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 30, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812–2815

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

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667

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

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

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Chief Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415)744–1185.

SUPPLEMENTARY INFORMATION: This document concerns Placer County Air Pollution Control District Rules 216, Organic Solvent Degreasing, and El Dorado County Air Pollution Control District Rule 235, Surface Preparation and Cleanup, submitted to EPA on October 13, 1995 by the California Air Resources Board; Placer County Air Pollution Control District Rule 236, Wood Products Coatings, submitted to EPA by the California Air Resources Board on May 24, 1995; El Dorado County Air Pollution Control District Rule 225, Organic Solvent Cleaning, and Rule 230, Automotive Refinishing, Yolo-Solano Air Quality Management District Rule 2.13, Organic Solvents, and Mojave Desert Air Quality Management District Rule 1104, Organic Solvent Cleaning, submitted to EPA by the California Air Resources Board on November 30, 1994; Ventura County Air Pollution Control District Rule 74.18, and Yolo-Solano Rule 2.26, Motor Vehicle and Mobile Equipment Coating Operations, submitted to EPA by the California Air Resources Board on February 24, 1995; Ventura County Air Pollution Control District Rule 74.30, Wood Products Coatings, and Mojave Desert Air Quality Management District Rule 1117, Graphic Arts, submitted to EPA by the California Air Resources Board on July 13, 1994; and Mojave Desert Air Quality Management District Rule 1114, Wood Products Coatings, submitted to EPA by the California Air Resources Board on March 31, 1995. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 26, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–10564 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 59

[AD–FRL–5463–6]

RIN 2060–AE35

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA proposes standards to reduce emissions of volatile organic compounds (VOC) from the use of automobile refinish coatings. The proposed standards are in the first phase of implementation of the portion of the Clean Air Act (Act) that requires the Administrator to control VOC emissions from certain categories of consumer and commercial products.

Exposure to ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. As required by section 183(e) of the Act, the Administrator conducted a study to determine the potential of consumer and commercial products to contribute to ozone levels that violate the National Ambient Air Quality Standards (NAAQS) for ozone. Because the automobile refinish coatings category is a significant source of VOC emissions, the EPA is proposing standards to reduce emissions from this source.

DATES: *Comments.* Comments must be received on or before July 1, 1996.

Public Hearing. A public hearing will be held, if requested. If anyone contacts the EPA requesting to speak at a public hearing by May 21, 1996, a public hearing will be held on May 30, 1996, beginning at 9:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact Ms. Marguerite Thweatt at the EPA by May 21, 1996.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–95–18, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Public Hearing. Persons interested in attending the hearing should notify Ms. Marguerite Thweatt, (919) 541–5607, to verify that a hearing will occur and for notification of the location of the meeting.

Request to Speak at Hearing. To present oral testimony contact Ms. Thweatt at the following address: Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607, FAX number (919) 541–3470.

Docket. Docket No. A–95–18, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 1st Floor, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, FAX (202) 260–4400. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

Background Information Document. The background information document (BID) supporting the proposed standards may be obtained from the docket or

from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to ''Automobile Refinish Coatings—Background Information for Proposed Standards,'' EPA–453/D–95–005a.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. Mark Morris at (919) 541–5416, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The regulatory text of the proposed rule is not included in this Federal Register notice, but is available in Docket No. A–95–18 (see **ADDRESSES** for information about the docket). The proposed regulatory language is also available on one of the EPA's Technology Transfer Network (TTN) electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. If more information on the TTN is needed, call the help desk at (919) 541–5384.

The information presented in this preamble is organized as follows:

I. Background
A. Clean Air Act Requirements
B. Legislative Authority
C. Regulatory Background
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I. Background

A. Clean Air Act Requirements

Exposure to ground-level ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. The most thoroughly studied health effects of exposure to ozone at elevated levels during periods of moderate to strenuous exercise are the impairment of normal functioning of the lungs, symptomatic effects, and reduction in the ability to engage in activities that require various levels of physical exertion. Typical symptoms associated with acute (1 to 3 hour) exposure to ozone at levels of 0.12 ppm or higher under heavy exercise or 0.16 ppm or higher under moderate exercise include cough, chest pain, nausea, shortness of breath, and throat irritation.

Ground-level ozone, which is a major component of ''smog,'' is formed in the atmosphere by reactions of VOC and oxides of nitrogen (NO_X) in the presence of sunlight. In order to reduce ground-level ozone levels, emissions of VOC and NO_X must be reduced.

Section 183(e) of the Act requires the Administrator to study and report to Congress on emissions of VOC into the ambient air from consumer and commercial products and their potential to contribute to ozone nonattainment levels. In addition, section 183(e) requires the Administrator to list those categories of consumer and commercial products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, in ozone nonattainment areas and establish priorities for their regulation. The list is to be divided into four groups, with one group regulated every 2 years until all four groups are regulated.

The EPA submitted the Report to Congress on March 15, 1995, and on this same date established the priority list for future regulation of the consumer and commercial products that account for 80 percent of VOC emissions, on a reactivity-adjusted basis, in nonattainment areas (published on March 23, 1995, at 56 FR 15264). Automobile refinish coatings are in the first group of products to be regulated by March 1997. This listing and prioritization are not final Agency actions, and EPA requests comment on the placement of automobile refinish coatings on the list and the priority assigned to these coatings. Further details about the study and the listing are available in the March 23, 1995, Federal Register.

B. Legislative Authority

Section 183(e) of the Act gives the EPA the authority to establish national standards to reduce VOC emissions from automobile refinish coatings. According to the Act, regulations developed under this section shall require best available controls (BAC). Best available controls are defined in section 183(e)(1)(A) as follows:

> The term ''best available controls'' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems, or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

Section IV.B describes the EPA's determination of BAC for the proposed regulation.

The EPA could satisfy the requirements of section 183(e) by issuing Control Techniques Guidelines (CTG) instead of a national rule for automobile refinish coatings.

Section 183(e)(3)(C) states:

> For any consumer or commercial product the Administrator may issue control techniques guidelines under this Act in lieu of regulations required under subparagraph (A) if the administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

In many cases, CTG's can be effective regulatory approaches to reduce emissions of VOC in nonattainment areas—with the advantage of not imposing control costs on attainment areas, where VOC emissions reductions may be less beneficial. On the other hand, rules based on CTG's may impose requirements and costs in nonattainment areas that are beyond those of a national rule. For example, State automobile refinish rules require recordkeeping by body shops, while the national rule does not.

The EPA can also use other systems of regulation. According to section 183(e)(4), EPA can consider ''any system or systems of regulation as the Administrator deems appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption or disposal of the

product.'' The EPA solicits comments on alternative approaches to regulation in section IV.H.

C. Regulatory Background

Automobile refinish coatings are included under the definition of consumer and commercial products since the definition under section 183(e) of the Act specifically includes paints, coatings, and solvents. Section 183(e) of the Act requires that the first group of consumer and commercial products (i.e., those with highest priority for regulation) be regulated within 2 years after publication of the regulatory schedule. As mentioned previously, automobile refinish coatings are in the first group of consumer and commercial products to be regulated. The regulation is required by March 1997. The criteria which contribute to the prioritization of automobile refinish coatings in the first group of consumer and commercial products to be regulated include the availability of alternatives, the cost-effectiveness of controls, and the VOC emissions in ozone nonattainment areas. Further details about the criteria used to prioritize consumer and commercial product categories for regulation are available in the Report to Congress.

Automobile refinish coating regulations are in place or under development in a number of States. For the companies that market automobile refinish coatings nationwide, trying to fulfill the differing requirements of State rules has created administrative, technical, and marketing problems. A Federal rule is expected to provide some degree of consistency, predictability, and administrative ease for the industry.

In addition, State representatives have recommended that the EPA develop and implement nationwide Federal control measures to enhance enforceability and conserve State resources.

D. Supporting Documentation for the Proposed Standards

The automobile refinish coating background information document (BID) (EPA publication number EPA–453/D–95–005a) contains supporting documentation for this proposal. It contains a product category description, an industry profile, a discussion of control measures and their associated costs, and a description of the expected emissions reductions. Other supporting information for this proposed regulation includes existing State regulations, meeting summaries, and the report to Congress on consumer and commercial products. This information is contained in the docket and is available to the public as described above.

II. Summary of Proposed Standards

The proposed standards are summarized below. The rationale for the regulatory decisions made in developing these standards is provided in section IV.

A. Applicability of the Standards

The provisions of this proposed rule apply to automobile refinish coatings that are manufactured or imported for sale or distribution in the United States.

The proposed standards do not apply to the following automobile refinish coatings:

(1) Coatings manufactured exclusively for sale outside the United States;

(2) Coatings manufactured or imported before the compliance date of the rule;

(3) Coatings manufactured for use by original equipment manufacturers for assembly-line coating operations; and

(4) Coatings supplied in nonrefillable aerosol containers.

B. Regulated Entities

Regulated entities are defined under section 183(e) to include manufacturers, processors, wholesale distributors, and importers. This proposed rule limits the VOC contents of coatings manufactured or imported for use in this country. Since the distribution of coatings has no effect on whether compliant coatings are used, distributors are not regulated entities under this proposed rule.

C. Standards

Coatings subject to this proposed rule shall comply with the VOC content standards listed in table 1. If a coating is marketed under more than one of the listed coating categories, the coating shall comply with the lowest applicable VOC content standard.

TABLE 1.—VOC CONTENT STANDARDS FOR AUTOMOBILE REFINISH COATINGS

Coating Category	VOC Content[a] (grams/liter)
Pretreatment Wash Primer.	780
Primer/Primer Surfacer	575
Primer Sealer	550
Single/2 Stage Topcoats	600
Topcoats of 3 or more stages.	625
Specialty Coatings[b]	840

[a]VOC content means the amount of VOC in a coating that has been prepared for application according to the manufacturer's mixing instructions, excluding water and exempt compounds.

[b]Specialty coatings include adhesion promoters, anti-glare/safety coatings, bright metal trim repair coatings, elastomeric materials, impact-resistant coatings, rubberized asphaltic underbody coatings, uniform finish blenders, and weld-through primers.

D. Compliance Requirements

The compliance date of the rule is 4 months after the promulgation date of the rule.

E. Labeling Requirements

Containers of all subject coatings must bear labels or lids that include the date of manufacture of the contents or a code indicating the date of manufacture.

F. Reporting

Manufacturers and importers of coatings subject to the proposed standards must file an initial report. The initial report must be submitted by the compliance date or within 180 days after becoming subject to the rule, whichever is later. The initial report must include the following information:

(1) The name and mailing address of the manufacturer or importer.

(2) In cases where codes are used to represent the date of manufacture, the manufacturer or importer shall submit an explanation of each date code to the Administrator. An explanation of any new date codes shall be filed with the Administrator no later than 30 days after it is first introduced into commerce.

G. Variance

The proposed rule allows manufacturers and importers of automobile refinish coatings to submit a written application to the Administrator requesting a variance if, for reasons beyond their reasonable control, they cannot comply with the requirements of the proposed rule. The application must include the following information:

(1) The specific grounds for which the variance is sought;

(2) The proposed date(s) by which compliance with the provisions of the rule will be achieved; and

(3) A compliance report reasonably detailing the method(s) by which compliance will be achieved.

Upon receipt of the variance application, the Administrator will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements of the proposed rule is necessary and will be permitted.

The Administrator may grant a variance if the following criteria are met:

(1) By complying with the proposed rule, the applicant would bear unreasonable economic hardship;

(2) The public benefit of avoiding hardship to the applicant outweighs the public interest in any increased emissions or air contaminants that would result from issuing the variance; and

(3) The proposed compliance schedule can be reasonably implemented, and compliance will be achieved as expeditiously as possible.

The approved variance order will designate a final compliance date and a condition that specifies increments of progress necessary to assure timely compliance. A variance shall end immediately upon the failure (of the party to whom the variance was granted) to comply with any term or condition of the variance.

H. Test Methods

For purposes of determining compliance with this rule, the VOC content of each coating product manufactured or imported must be determined using EPA's Reference Method 24—''Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings,'' found in 40 CFR part 60, appendix A. Analysis of waterborne coating VOC content determined by Reference Method 24 must be adjusted as described in section 4.4 of Reference Method 24.

The Administrator may approve, on a case-by-case basis, alternative methods of determining the VOC content of coatings if they are demonstrated to the Administrator's satisfaction to provide results equivalent to those obtained using Reference Method 24.

III. Summary of Impacts

A. Environmental Impacts

This section will discuss the incremental increase or decrease in air pollution, water pollution, and solid waste generation that would result from implementing the proposed standards.

1. Air Pollution Impacts

The proposed standards would reduce nationwide emissions of VOC from the use of automobile refinish coatings by an estimated 32,500 Mg (35,800 tons) in 1996. These reductions are compared to 1995 baseline emissions estimates. Since many regulated VOC species are also on the list of hazardous air pollutants (HAP) in section 112 of the Act, the proposed rule is expected to reduce some HAP emissions from the use of automobile refinish coatings.

2. Water and Solid Waste

There are no adverse solid waste impacts anticipated from compliance with this rule. It is not expected that the disposal of coatings as solid waste will increase as a result of this rule. In fact, because the compliant (higher solids) coatings are more concentrated, fewer containers will require disposal when the same volume of solids is applied.

In cases where conversion from solventborne to waterborne coatings is the method used to achieve compliance, an increase in wastewater discharge may occur if waste waterborne coatings are discharged to publicly owned treatment works.

B. Energy Impacts

There are no adverse energy impacts anticipated from compliance with this rule. Compliant coatings will not require different application equipment and no add-on controls are required.

C. Cost and Economic Impacts

The total cost of this rule includes coating manufacturer process modification costs, and costs for training coating manufacturer representatives, distributors, and body shop personnel. The EPA believes that coatings that meet the VOC content limits of this proposed rule do not have longer drying times than conventional coatings; therefore, the EPA has not included costs for lost productivity in this rule. The EPA requests comments and data regarding the drying times of coatings compliant with this proposed rule, and any information that indicates that there may be costs due to losses in productivity. The annual cost of this rule is 4.5 million dollars, or about $140 per megagram of VOC emissions reductions.

If the manufacturer and distributor costs are completely passed on as a coating price increase, the price of coatings is estimated to increase less than 10 cents per gallon (less than 0.2 percent). If the total cost of the rule is passed on as an increase in the price of a refinish job, the price is estimated to increase less than 30 cents per job (less than 0.05 percent).

D. Cost-Effectiveness

The EPA often compares the relative cost of different measures for controlling a pollutant by calculating the ''cost-effectiveness'' of the measures. Using EPA's traditional calculation methodology, the cost-effectiveness of a regulation that applies nationwide is based on a comparison of national costs and nationwide emission reductions. This comparison is expressed as the cost per megagram (or ton) of emissions reduced. Using cost and emission reduction figures presented earlier in this section of the preamble, the nationwide cost-effectiveness of the proposed regulation is $140/Mg ($130/ton).

Alternative ways to calculate a measure of the ''cost-effectiveness'' of the regulation have been suggested by others. One alternative would be to calculate cost-effectiveness on the basis of the nationwide cost of the regulation ($4.5 million for the proposed regulation) and the VOC reduction achieved in ozone nonattainment areas. The stated rationale for this approach is that cost-effectiveness measures should be designed in a way that best represents the objective of the regulatory action. In this case, for example, a major objective, though not the only objective, of these regulations is the control of ozone formation in nonattainment areas. By establishing nationwide standards, the cost of achieving emission reductions in ozone nonattainment areas during the ozone seasons requires nationwide expenditures during all seasons of the year, including expenditures year-round in areas currently in attainment with the current standard. These nationwide emission reductions—including emission reductions outside of nonattainment areas and out of the ozone season—may or may not contribute to efforts to limit ozone in nonattainment areas, depending on whether they participate in ozone transport from one area to another. One example of the application of this method is presented in a December 21, 1993, draft Regulatory Impact Analysis developed by the EPA's Office of Mobile Sources (OMS) in which control of emissions from refueling of light duty vehicles (i.e., onboard refueling vapor recovery, or ORVR) could viably be applied either nationwide or in nonattainment areas alone. In this example, regional regulation represented an important alternative to national regulation. The OMS calculated cost-effectiveness using (1) nationwide costs and nationwide emission reductions, as well as (2) nationwide costs and the emission reductions achieved in nonattainment areas.

Emissions from automobile refinish coatings used in nonattainment areas have been estimated. On a nonattainment area basis, the cost-effectiveness of the proposed automobile refinish coatings rule would be $300/Mg ($280/ton). A similar calculation could be done to account for the seasonality of ozone formation.

While such an approach offers a measure of the cost of emission reductions in nonattainment areas, EPA sees significant drawbacks to this approach. First, cost-effectiveness figures would no longer provide a consistent basis for comparison of the relative cost of different control measures or regulations considered at different points in time. Because the number and location of nonattainment areas changes frequently, the initial

calculation of the cost-effectiveness of a rule would depend upon when it was issued. The EPA believes it is important that cost-effectiveness be calculated in a consistent manner that allows for valid comparisons. Also, introducing new methodology would tend to make new control measures appear superficially to be less cost-effective than measures utilized in the past, simply because of a change in well-established terminology.

Second, this alternative approach attributes all costs of the rule to emission reductions achieved in nonattainment areas and no cost to emission reductions achieved in attainment areas. By not including emission reductions in attainment areas, the methodology assumes that emission reductions in areas which attain the NAAQS for ozone have no value. In fact, attainment areas often contribute to pollution problems in nonattainment areas through the transport of emissions downwind. Also, emission reductions in attainment areas help to maintain clean air as the economy grows and new pollution sources come into existence. Furthermore, measures to reduce emissions of VOC often reduce emissions of toxic air pollutants.

Another alternative that has been suggested would be to calculate not only the emission reductions but also the cost if the requirements applied only in ozone nonattainment areas, perhaps through issuance of a Control Techniques Guideline (CTG). The EPA has not estimated the cost of using a CTG to regulate only those products sold for use in ozone nonattainment areas.

The EPA is planning to review internally the generic question of the alternative approach to measuring costs against emission reductions. The results of this review are not available for incorporation into this rulemaking. Therefore, the EPA requests comments on the traditional and alternative methods discussed above to characterize the cost-effectiveness of this and other Section 183(e) regulations.

V. Rationale

The following sections explain the rationale for selecting the proposed standards.

A. Applicability

This proposed rule applies to automobile refinish coatings that are manufactured or imported for sale or distribution in the United States. Coatings that are currently used for automobile refinishing are also used outside the automobile refinish industry. In fact, some of these coatings are not labeled specifically as automobile refinish coatings, but are labeled generally as primers, basecoats, etc. This proposed rule applies only to those coatings that are marketed as automobile refinish coatings. Therefore, coating manufacturers define which of their coatings are automobile refinish coatings by the way they market them. All coatings marketed as automobile refinish coatings are subject to this proposed rule; all other coatings are not.

Automobile refinish coatings were determined to be a significant source of VOC emissions in nonattainment areas and were designated for regulation under the authority of section 183(e) of the Act. The proposed standards do not apply to some types of coatings. There are exemptions for exported coatings, coatings manufactured or imported before the compliance date, coatings that are sold in nonrefillable aerosol containers, and coatings that are manufactured for use by original equipment manufacturers (OEM's) for assembly-line coating operations.

The purpose of section 183(e) of the Act is to control VOC emissions that contribute to ozone nonattainment in the United States. Because exported coatings do not contribute to VOC emissions in the United States, and because EPA has no legal or factual basis to impose VOC control measures outside the United States, coatings manufactured for the explicit purpose of export, and which are in fact exported, are exempt from the requirements of the proposed rule.

An exemption for coatings sold in nonrefillable aerosol containers is included in the proposed rule because the EPA is developing a separate VOC regulation for these coatings under section 183(e) authority.

Coatings that are manufactured for use by OEM's for assembly-line coating operations are exempt from this proposed rule because such coatings are significantly different than refinish coatings; OEM's are covered by standards promulgated under section 111 of the Act, and will be covered by standards promulgated under section 112 of the Act.

Each coating manufacturer produces coating components, such as hardeners, reducers, additives, etc., necessary for the preparation of a ''ready-to-spray'' coating. Some coating manufacturers also produce components for use in the coatings of other manufacturers; some companies do not produce coatings at all, but produce only coating components for use in the coatings of other manufacturers. Although preparing a coating using only the components and suggested mixing ratio of one manufacturer may yield a compliant coating, preparing a coating with the components of several manufacturers may not. To be effective, this proposed rule may need to apply to all coating components; that is, if a coating component manufacturer suggests that a coating component may be used for automobile refinishing, and if its suggested use would result in the preparation of a noncompliant coating, then the coating component manufacturer would be out of compliance with the rule. Until recently the EPA was not aware of the extent to which coating users combined the components of multiple manufacturers. As a result, the EPA has not sufficiently examined how to enforce this proposed rule if its applicability were expanded to include all automobile refinish coating components, or the impacts that the rule would have on the manufacturers who would become affected by the rule if its applicability were expanded. The EPA has, therefore, limited applicability to coating manufacturers in this proposed rule, but is soliciting comments on whether to expand the applicability. Based on information received during the comment period, the EPA may expand the applicability in the promulgated rule.

The EPA is aware that the VOC content standards of this proposed rule would likely prohibit the manufacture or import of lacquer coatings. Lacquers are no longer used on new vehicles, and are mainly used by antique car restorers; therefore, the demand for lacquers is small and is likely to decrease. Although other coatings are compatible with lacquers and may be used to refinish an existing lacquer finish, some colors available in lacquer are not available in other coatings. Since the production of lacquer topcoats is small and not likely to increase, and since they may be necessary to fill a niche in automobile refinishing, the EPA is considering exempting lacquer topcoats from the proposed rule. Although lacquer topcoat use is not likely to increase, an exemption would not prevent it. Therefore, the EPA is also considering whether to include lacquer topcoats in the specialty coating category (described in section IV.B.) and limit their production to a small percentage of total automobile refinish coating production. The EPA solicits comments on these issues in section IV.H.; based on information received during the public comment period, the EPA may, in the promulgated rule, either exempt lacquer topcoats, or

categorize them as specialty coatings and limit their production.

B. Selection of BAC

The primary factors considered in determining best available controls (BAC) were technological and economic feasibility, and environmental impacts. Other impacts, such as nonair environmental impacts (solid waste and water) and energy impacts, are expected to be minimal. Health impacts are expected to parallel environmental impacts in terms of directional benefit (i.e., as environment improves, health improves). The EPA relied on existing State and local automobile refinish rules, coating product information, and input from the automobile refinish industry to determine the availability and technological and economic feasibility of coatings.

The BAC selection process involves both the selection of coating categories and the determination of VOC content limits for those categories. These components are linked in a determination of what degree of emissions reduction represents BAC. Decisions to subdivide a given category into more specific ''subcategories'' can be a direct consequence of the VOC content levels under consideration. For example, pretreatment wash primers etch bare metal surfaces to provide adhesion of the coating to the metal. According to coating product information there are no pretreatment wash primers that have VOC content levels as low as other primers. Therefore, a subcategory was created for this primer, along with a VOC content level different from the general primer category. Similarly, a subcategory was created for topcoats of three (or more) stages because coating information indicates that there are no such coatings with VOC content levels as low as those of other topcoats.

''Specialty coatings'' that serve specific functions and that either do not belong in other coating categories or are not available at the VOC content limits of those categories are included in a separate category. This category includes coatings that are designed for a specific use, and coatings of other categories that are modified by changing the components of the coating. In this proposed rule, all coatings that the EPA considers specialty coatings are defined. It may not be possible to determine all of the specialty coatings that may be needed in the future as new OEM coatings are developed; therefore, an open-ended definition of specialty coatings is desirable. However, such a definition could be abused by simply renaming existing coatings as specialty coatings. Even with a closed definition, the specialty coating category may have undesirable effects. For example, an elastomeric coating is a specialty coating. Some flexible topcoats, which are considered elastomeric coatings, are prepared simply by adding a flexible hardener in place of the normal hardener. In this case, the specialty coating category would allow topcoats to be used that exceed the VOC content standard for topcoats.

Limiting the production of specialty coatings to a small percentage of total automobile refinish coating production may be effective in minimizing the problems associated with this category. However, as mentioned above, some specialty coatings are just modifications of other coatings, and it is unclear what the EPA would be limiting. Limiting specialty coating production to a percentage of total production would adversely affect manufacturers that are mainly in the specialty coating business. The EPA is considering limiting the production of specialty coatings, and is soliciting comments on how to determine such limits and how they can be made enforceable. Based on information received during the public comment period, the EPA may include specialty coating production limits in the promulgated rule.

The process of determining BAC began with the examination of State and local automobile refinish rules. The EPA focused on existing coating categories and their associated VOC standards in State and local rules to determine which categories and VOC content limits might constitute the degree of emissions reduction that represents BAC. Specifically, California rules were analyzed because California has been regulating automobile refinish coatings for several years and generally has the most stringent VOC standards in the country.

The VOC limits of California rules are typically met with waterborne coatings. Coating manufacturers have stated that they would need to modify their production facilities to supply the entire country with waterborne coatings. Such modifications reportedly include the replacement of carbon steel equipment with corrosion-resistant materials. Although not usually necessary in the relatively dry climate of California, in some geographic areas of the country waterborne coatings would likely require forced drying with supplemental heating equipment (such as heated spray booths or infrared heating lamps) because of their longer drying times.

In geographic areas without existing automobile refinish rules, solventborne coatings are typically used that have relatively high VOC content levels; these coatings are sometimes referred to as ''conventional'' coatings. Conventional coatings are typically fast-drying and, therefore, do not need to be force-dried. There is not a continuous spectrum of coating VOC content levels; coatings with the lowest VOC content levels (such as waterborne coatings) were developed to comply with State and local rules. Conventional coatings (that have the highest VOC content levels) were developed to satisfy the demand for fast-drying coatings that are easy to use. However, between these extremes there exist coatings that have VOC content levels that are lower than those of conventional coatings, that are not significantly harder to use or slower to dry than conventional coatings, and that do not require the forced drying or extensive coating manufacturer process modifications of the coatings with the lowest VOC content levels. The VOC content limits that are being proposed as BAC in this proposed rule are based on such ''medium-solids'' coatings.

The EPA considered proposing a VOC content standard of 550 grams per liter for primers and primer surfacers. Coating product information indicates that coatings at this level are available. However, primers at this level are not tintable according to the information available to the EPA. Tintable primers are available with a VOC content of 575 grams per liter. When tintable primers are used, less topcoat needs to be applied because the tint of the primer assists in achieving the final color desired. Since less topcoat is used when tintable primers are used, and since the VOC content of topcoats are generally higher than 550 grams per liter, VOC emissions reductions are expected to be equal or greater when tintable primers are used. The EPA is therefore proposing a 575 grams per liter standard for primers and primer surfacers. Comments on the proposed standard for primers and primer surfacers are solicited in section IV.H.

Since most of the nation uses conventional coatings, these coatings provide a reference point from which to assess technological and economic feasibility. The emissions reductions and cost impacts of regulatory alternatives considered by the EPA are given in table 2.

TABLE 2.—IMPACTS OF REGULATORY ALTERNATIVES

Regulatory alternative	Emissions reductions* Mg/yr	Capital costs 10^6 $	Annual costs 10^6 $	Cost effectiveness $/Mg	Incremental cost effectiveness $/Mg
BAC	32,500	32	5	140	.....
Beyond BAC	36,800	240	34	930	6900

* Baseline emissions are 88,500 Mg/yr.

As previously mentioned, medium-solids coatings do not need to be force-dried, and the process modifications of coating manufacturing facilities necessary to produce such coatings nationwide are less extensive than those needed to produce waterborne coatings. The capital cost associated with the use of medium-solids coatings is about 4.5 million dollars; about 60% of the cost is for the training of coating manufacturer and distributor representatives and shop personnel in the use of lower-VOC coatings. The cost effectiveness of using medium-solids coatings is about $140 per megagram; the incremental emissions reductions that would be achieved by going beyond (or lower than) the VOC content limits of medium-solids coatings would cost about $6900 per megagram. Most of this cost (60%) is from the purchase by body shops of additional heating equipment necessary to speed the drying of the coatings to avoid losses in productivity. Because of these high incremental costs, the EPA selected the VOC content limits in Table 1 as BAC.

C. Selection of Regulatory Format

In contrast to traditionally regulated stationary sources that emit VOC at a specific fixed location (e.g., a manufacturing plant), VOC from automobile refinish coatings are emitted wherever the products are used. For this reason, regulating at the manufacturer and importer level is the most efficient and least burdensome method of regulating the VOC content of coatings, and would ultimately impact the VOC content of automobile refinish coatings at the distributor and end user level.

The framework EPA chose to implement BAC is VOC content standards. Coatings manufactured or imported on or after the effective date must comply with the VOC content standards. The EPA will continue to gather data with which to evaluate the potential for further emissions reductions or alternate frameworks for implementing BAC such as economic incentive-type approaches.

D. Labeling Requirements

The proposed regulation requires that containers for all subject coatings display on the label or lid the date of manufacture or a code indicating the date of manufacture. This information allows enforcement personnel to determine whether a coating was manufactured before or after the compliance date.

E. Selection of Reporting Requirements

The EPA evaluated what reported information would be sufficient to ensure compliance with VOC standards within the proposed rule. The reporting requirements proposed are necessary to allow determination of compliance, and the EPA believes they do not represent an undue burden on manufacturers or importers of automobile refinish coatings. Compliance with this rule will be determined by periodic random testing (EPA Reference Method 24, described below). Therefore, beyond the initial report, which serves to identify all manufacturers and importers of automobile refinish coatings, there are no reporting provisions in this rule (except for reports explaining any new date codes and for variances).

F. Variance

The proposed rule includes a variance provision whereby manufacturers and importers of subject automobile refinish coatings may apply to the Administrator for a temporary variance from compliance with the standards. A variance will be granted if the applicant demonstrates that compliance would result in economic hardship, and that granting the variance would better serve the public interest than would requiring continuous compliance under the conditions of economic hardship. The EPA intends for this provision to allow manufacturers and importers some flexibility in responding to unforeseen circumstances that may cause additional, unanticipated compliance burden. The EPA recognizes that certain interruptions in the availability of raw materials and or manufacturing processes may affect the manufacturer's or importer's ability to continuously comply with the standards. In particular, the EPA anticipates that this variance provision will help to mitigate impacts to small manufacturers. Small manufacturers are likely to have fewer research and development resources, and, therefore, will benefit from the allowed variance.

G. Test Methods

Under the proposed provisions, compliance with the VOC content standards is based on the EPA's Reference Method 24. This test method represents the EPA's approved protocol for determining the VOC content of coatings and is EPA's standard test method for determining the VOC content of coatings.

Standard language allowing use of alternative methods of determining VOC content subject to the Administrator's approval is also included in the proposed rule.

H. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or the referenced supporting documents. The proposed rule was developed on the basis of information available to the EPA. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach.

The EPA is requesting specific comments and data on several aspects of the proposed rule: (1) Alternative approaches to regulation; (2) expanding the applicability of the rule to include all automobile refinish coating components; (3) limiting production of lacquer topcoats, or exempting lacquer topcoats from the rule; (4) determining and enforcing specialty coating production limits; and (5) the technical and economic feasibility of VOC content levels that are higher or lower than the 575 grams/liter standard for primers and primer surfacers.

The EPA anticipates promulgating this rule on an expedited schedule. This will benefit States for which VOC reductions from automobile refinish coating are critical to their 15 percent rate-of-progress plans, and help minimize the patchwork of individual State automobile refinish coating rules across the country.

Comments submitted to the Administrator should contain specific proposals and supporting data to allow the EPA to fully evaluate the comments. Recommended changes to any of the VOC content standards presented in this proposal should include sufficient information for the EPA to evaluate the technological and economic feasibility associated with such changes. Applicable dates and addresses for the submission of comments are included at the beginning of this preamble.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed regulation in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed regulation for automobile refinish coatings should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section at the address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–95–18.

A verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of the preamble).

B. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, 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 entitlements, 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.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Any written comments from the OMB to the EPA and any written EPA response to those comments will be included in Docket No. A–95–18, listed at the beginning of this notice under **ADDRESSES.**

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. __) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M Street, S.W.; Washington, DC 20460, or by calling (202) 260–2740.

Pursuant to Section 183(e) of the Act, the proposed rule regulates VOC emissions from automobile refinish coatings. The only information collection requirements of the proposed rule are for labeling and reporting. To determine whether a coating is manufactured before or after the compliance date of the rule, the date of manufacture, or code representing the date, must appear on the coating container. Coating manufacturers currently include this information on coating containers. The proposed rule requires all coating manufacturers to submit an initial report containing their name and mailing address, and an explanation of coating date codes, if codes are used to represent the date of coating manufacture. Reporting beyond the initial report is required only for the explanation of any new date codes used by coating manufacturers, and for requests for variances. The information to be reported is not of a sensitive nature.

The EPA estimated the cost and hour burden of the information collection requirements of the proposed rule. 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.

The initial report must be submitted by all coating manufacturers. Averaged over a 3 year period, EPA estimates that the initial report will require 8 hours to complete, and will be submitted by 10 respondents annually. Beyond the initial report, EPA estimates that 3 respondents per year will spend 2 hours each reporting the explanations of any new date codes used. The total annual cost of the reporting requirements of the proposed rule is $3,200.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 30, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by May 30, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires EPA to consider potential impacts of proposed regulations on small business ''entities.'' A regulatory flexibility analysis (RFA) is required if preliminary analysis indicates ''a significant economic impact on a substantial number of small entities.''

Shops in the autobody refinish industry are classified as small by the U.S. Small Business Administration if the entity that owns the shop has total sales of less than $3.5 million. Most individual shops are small by this criterion if the owning entity has no other sales from other shops. Therefore, an RFA was performed and is contained in the docket for this proposed rule. Information on the size of manufacturers and distributors impacted by this rule is not available, but some small entities among manufacturers and distributors may also be affected.

Several industry trade associations, including the Automotive Service Association (ASA) that represents body shops, and the Automotive Service Industry Association (ASIA) that represents coating distributors, have submitted comments and provided information during the development of the national rule. Most of the members of these associations are small businesses. The main concerns of these associations deal with recordkeeping and VOC content limits. Some members of ASA are already subject to State rules that contain VOC content limits and recordkeeping at the body shop. The drying times of some coatings compliant with State rules are significantly longer than those of conventional coatings, which can result in losses in body shop productivity. Some shops report that the recordkeeping required under some rules is burdensome and time consuming.

The proposed national rule applies to automobile refinish coating manufacturers and importers only, not to body shops or any other users of the coatings. After the national rule is effective, only compliant coatings will be available for purchase by coating users in this country. Since the purpose of most State recordkeeping requirements is to demonstrate that body shops are using compliant coatings, some States may decide to remove such requirements from their rules after the national rule is effective.

Coatings compliant with the proposed rule do not take significantly longer to dry than conventional coatings; therefore, small shops will be able to apply compliant coatings without purchasing additional equipment.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because the proposed rule is estimated to result in expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Automobile refinish coatings, Consumer and commercial products, Ozone, Volatile organic compound.

Dated: April 19, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–10381 Filed 4–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–85, FCC 96–154]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted an Order and Notice of Proposed Rulemaking regarding implementation of the Cable Act reform provisions of the Telecommunications Act of 1996 (''1996 Act''). The Order segment of this action may be found elsewhere in this issue of the Federal Register. This Notice of Proposed Rulemaking (''NPRM'') solicits comment on several issues arising from the enactment of the 1996 Act. This NPRM solicits comment regarding possible revisions to the interim final rules established in the companion Order and requests comment on other issues critical to the 1996 Act's implementation. The intended effect of this action is to develop rules that fully implement the mandates of the 1996 Act with regard to cable television.

DATES: Comments filed in response to this NPRM must be filed by May 28, 1996. Reply Comments are due June 28, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before May 28, 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 July 1, 1996.

ADDRESSES: An original and six copies of comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Nancy Stevenson of the Cable Services Bureau, 2033 M Street, NW., Room 408A, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Tom Power, Paul Glenchur, or Nancy Stevenson, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of a Commission Notice of Proposed Rulemaking in CS Docket No. 96–85, FCC–154, adopted April 5, 1996 and released April 9, 1996. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

This NPRM contains either proposed or modified information collections. The Commission has obtained Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13), of the information collections contained herein. OMB approval is effective no later than the date that the summary for the NPRM appears in the Federal Register. The OMB control number for information collections contained in this rulemaking is 3060–0706. Emergency OMB approval for the information collections expires July 31, 1996. The Commission, as part of its continuing effort to reduce paperwork burdens and to obtain regular OMB approval of the information collections, invites the general public and OMB to comment on the information collections contained herein, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on this Order and NPRM; OMB notification of action is due 60 days after publication of the NPRM in the Federal Register. Comments should address: (a) Whether the proposed collections of information are 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: 3060–0549.

Title: FCC Form 329 Cable Programming Service Rate Complaint Form, 76.950 Complaints regarding cable programming service rates and 76.1402 CPST rate complaints.

Form No.: FCC Form 329.

Type of Review: Revision of existing collection.

Respondents: State, local and tribal governments; individuals.

Number of Respondents: 1,600.

Estimated Time Per Response: 45 minutes.

Total Annual Burden: 1,200 hours.

Estimated costs per respondent: $1,600. $1 per response for postage and stationery costs.

Needs and Uses: FCC Form 329 will be used by local franchise authorities to file cable programming service tier rate complaints, upon receipt of more than one subscriber complaint about such rates.

OMB Approval Number: 3060–0652.

Title: 76.309 Customer service obligations and 76.964 Notice to subscribers.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit entities.

Number of Respondents: 12,000.

Estimated Time Per Response: 2.91 hours.

Total Annual Burden: 34,917 hours.

Estimated costs per respondent: None.

Needs and Uses: This information collection accounts for the notifications requirements found in 76.309 and 76.964. Cable operators are no longer required to provide prior notice to subscribers of any rate change that is the result of a regulatory fee, franchise fee, tax assessment, or charge of any kind imposed by any Federal agency, State, or franchise authority. Eliminating this requirement reduces annual notification burdens imposed on operators by 30 minutes per operator, for an aggregate reduction of 6,000 hours. 12,000 systems×.30 minutes=6,000.

OMB Approval Number: 3060–0551.

Title: 76.1002 Specific unfair practices prohibited.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit entities.

Number of Respondents: 52 (26 proceedings×2 parties).

Estimated Time Per Response: Each proceeding has an average burden of 25 hours. 50% of respondents undergo a burden of 1 hour to instead coordinate information with outside legal assistance.

Total Annual Burden: 676 hours. (26×25 hours) + (26×1 hour).

Estimated costs for respondents: 50% of respondents will use outside legal assistance paid at $150 per hour. 26×25 hours per proceeding×$150 per hour=$97,500.

Needs and Uses: The information is used by the Commission to determine on a case-by-case basis whether particular exclusive contracts for cable television programming are in compliance with the statutory public interest standard of Section 628(c)(2)(D) of the Communications Act of 1934.

OMB Approval Number: 3060–0552.

Title: 76.1003 Adjudicatory proceedings.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit.

Number of Respondents: 24 (12 proceedings×2 parties).

Estimated Time Per Response: Each proceeding has an average burden of 20 hours. 50% of respondents undergo a burden of 1 hour to instead coordinate information with outside legal assistance.

Total Annual Burden: 252 hours. (12×20)+(12×1).

Estimated costs per respondent: 50% of respondents will use outside legal assistance paid at $150 hour. 12×20 hours per proceeding×$150 per hour=$36,000.

Needs and Uses: Information contained in the proceedings is used by the Commission to resolve disputes alleging unfair methods of competition and deceptive practices where the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to consumers.

OMB Approval Number: 3060–0706.

Title: 76.1401 Effective competition and local exchange carriers, 76.1403 Small cable operators, and 76.1404 Use of cable facilities by local exchange carriers.

Type of Review: New collection.

Respondents: Businesses and other for profit entities; state, local and tribal governments.

Number of Respondents: 300 petitions for determination of effective competition; 400 requests for certification of small cable operator status; 50 contract submissions.

Estimated Time Per Response: Petitions for determination of effective competition have an average burden of 20 hours. However, 75% of respondents (225) will undergo a burden of 1 hour instead to coordinate information with outside legal assistance. Requests for certification of small cable operator status have an average burden of 2 hours. However, 25% of respondents (100) will undergo a burden of 1 hour instead to coordinate information with outside legal assistance. LFAs will then undergo an average burden of 3 hours to review each request. Sending copies of contracts pertaining to use of cable facilities by local exchange carriers

along with explanations of how such contract is reasonably limited in scope and duration has an average burden of 1 hour.

Total Annual Burden: 3,675 hours. (75×20 hours)+(225×1 hour)+(300×2 hours)+(400×3 hours)+(100×1 hour)+(50×1 hour).

Estimated costs for respondents: $705,750. Outside legal assistance used to file petitions for determination of effective competition and requests for certification of small operator status will be paid at $150 per hour. 225 petitions×20 hours×$150 per hour=$675,000. 300 petitions×$1 for postage and stationery=$300. 100 requests for certification×2 hours×$150 per hour=$30,000. 400 requests for certification×$1 for postage and stationery=$400. 50 contract submissions×$1 for postage and stationery=$50.

Needs and Uses: Information collected in petitions for determination of effective competition will be used by the Commission to make such determinations for operators. Information collected in requests for certification of small operator status will be used by franchise authorities to make such determinations of small operator status. Information collected in contract submissions will be used by the Commission to determine whether the local exchange carrier's use of the transmission facilities is limited in scope and duration.

Notice of Proposed Rulemaking

1. In this NPRM, we propose final rules implementing certain provisions of the 1996 Act. We seek to adopt clear rules streamlining our processes, establishing certainty for cable operators, Local Franchise Authorities (''LFAs'') and subscribers, and effectuating the intent of Congress. A number of the issues discussed below are also the subject of a related Order. In commenting on such issues, parties should consider the discussion and treatment of them in the Order.

A. Effective Competition

1. Generally

2. The new test for effective competition requires that the LEC-delivered programming be ''comparable'' to that of the cable operator. The Conference Report to the 1996 Act, H.R. Rept. 104–458, states that video programming services are comparable if they ''include access to at least 12 channels of programming, at least some of which are television broadcasting signals.'' We tentatively conclude that this definition of comparable programming should be adopted. We note that after defining ''comparable'' in this manner, the Conference Report cites Section 76.905(g) of our rules which in fact has a slightly different definition of comparable. The rule defines ''comparable'' as meaning a minimum of 12 channels of programming, ''including at least one channel of nonbroadcast service programming.'' Commenters should consider this factor in addressing the meaning of ''comparable'' programming for purposes of the new test for effective competition.

3. In light of our tentative conclusion that ''comparable programming'' requires access to broadcast channels, commenters should address whether this could include satellite-delivered broadcast channels (e.g., ''superstations''). In the same context, commenters should address whether a multichannel multipoint distribution service (''MMDS'') subscriber should be deemed a recipient of ''comparable programming'' if the broadcast stations are received by way of an over-the-air antenna located at the subscriber's residence, rather than as part of the MMDS operator's microwave signals. Would it matter if the antenna was provided by the subscriber as opposed to the MMDS operator? We believe that a single definition of ''comparable programming'' should apply to both prongs of the effective competition test in which that term is used. Commenters who disagree with this conclusion should provide a justification for having a different definition of comparable programming in different prongs of the effective competition test.

4. We tentatively conclude that the new test for effective competition applies with equal force regardless of whether the LEC or its affiliate is merely the video service provider, as opposed to the licensee or owner of the facilities. We seek comment on this tentative conclusion. Further, we seek comment as to whether the type of service provided by, or over the facilities of, the LEC or its affiliate should be relevant. For example, we seek comment as to whether satellite master antenna television (''SMATV'') systems constitute direct-to-home satellite services and hence do not fall within the class of video providers that can be a source of effective competition under the new test.

5. We seek comment on whether we should follow the standards adopted in the companion Order for purposes of the permanent rule by which cable operators may show that the competing MVPD is offering service in the franchise area. We note that the new definition of effective competition, unlike the other three effective competition tests, does not include a percentage of homes passed or a specific penetration rate. We seek comment as to whether Congress intended effective competition to be found if a LEC's, or its affiliate's, service was offered to subscribers in any portion of the franchise area, or whether the competitor's service must be offered to some larger portion of the franchise area to constitute effective competition. In addressing this issue, commenters should consider what level of competition provided by a LEC or its affiliate is sufficient to have a restraining effect on cable rates. Commenters also should address the likelihood that an incumbent cable operator's response to the presence of a competitor may depend not just upon the current pass rate of the competitor, but also on its potential pass rate. That is, a LEC that offers service to 5% of the residents in a franchise area and that, due to technical constraints, will never exceed this reach would seem to pose less of a competitive threat than a LEC with a 5% pass rate that eventually will be able to offer service throughout the franchise area. We seek comment as to whether to take account of this factor in implementing the new test for effective competition.

6. In the companion Order, we have adopted interim filing procedures by which regulated operators may seek to establish the presence of effective competition under the new statutory test. We tentatively conclude that we should adopt these procedures as a final rule and conform our existing procedures accordingly, such that all tests for effective competition would be determined in a uniform manner. We seek comment on this tentative conclusion.

2. Definition of ''Affiliate''

7. With respect to the definition of ''affiliate'' for purposes of the new prong of the effective competition test, we note that the 1996 Act does not specifically alter the following definition of ''affiliate'' which remains applicable for purposes of cable regulation under Title VI of the Communications Act, § 602(2):

The term ''affiliate,'' when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

8. Although this definition remains unchanged, the following definition of ''affiliate'' is now found in Title I as a result of the enactment of the 1996 Act:

The term ''affiliate'' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term ''own'' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

9. As engrafted into Sec. 3 of the Communications Act, this definition of ''affiliate'' now applies ''[f]or purposes of this [Communications] Act, unless the context otherwise requires * * * .'' Commenters should address whether, for purposes of the new effective competition test, ''the context * * * require[s]'' a definition of ''affiliate'' other than the one now contained in Title I.

10. We tentatively conclude that the Title I definition of ''affiliate'' should be adopted for purposes of the new effective competition test. While we do not believe that Congress mandated the use of this definition for purposes of Title VI, incorporating the Title I definition for purposes of Title VI is not inconsistent with Congressional intent and would create some uniformity throughout the Commission's rules. We also tentatively conclude that both passive and active ownership interests are attributable and seek comment accordingly. We also seek comment on whether a beneficial interest in a cable operator would be ''equivalent'' to an equity interest under this proposed definition of ''affiliate'' and, if so, how ''beneficial interest'' should be defined. Commenters should address whether the affiliation standard has to be met by a single LEC or whether the interests of more than one LEC can be aggregated.

B. CPST Rate Complaints

11. Here we propose to adopt the interim rules regarding the filing of rate complaints by LFAs, adopted in the Companion Order, as final rules and solicit comment accordingly.

12. In addition to addressing the interim procedures, parties should comment on whether we should establish a deadline by which LFA complaints must be filed. Although Section 301(b)(1)(C) permits the LFA to file a CPST rate complaint with the Commission only if the LFA has received subscriber complaints within 90 days of a CPST rate increase, it specifies no deadline for the LFA complaint. Commenters should propose possible deadlines, taking into account the steps that a LFA may be required to undertake following the close of the 90-day window on subscriber complaints in order to file its own complaint with the Commission. Finally, because Section 301(b)(1)(C) alters the rate complaint process, we propose eliminating the requirement contained in Section 76.952 of our rules that operators must include the name, mailing address, and telephone number of the Cable Services Bureau of the Commission on monthly subscriber bills.

C. Small Cable Operators

1. National Subscriber Count

13. Here we propose specific rules to clarify implementation of Section 301(c) which provides for greater deregulation of small cable operators. We first must determine the method by which we will establish the total number of cable subscribers in the United States, since only operators serving fewer than 1% of all subscribers qualify as small cable operators. We propose to establish such a number on an annual basis and to have that number serve as the applicable threshold until a new number is calculated the following year. While the number of subscribers varies daily, we tentatively conclude that fixing a number on an annual basis will produce certainty and reduce administrative burdens for operators, LFAs, and the Commission. Commenters should address these tentative conclusions and propose any reasonable alternatives.

14. As noted, the method we select to count the total number of subscribers should minimize administrative burdens as well as ensure a subscriber count that is as accurate and reliable as is reasonably possible. We are aware that industry groups, trade journals, and other private concerns already attempt to track subscriber figures. We tentatively conclude that using the most reliable of these figures, or perhaps some average of these figures, would best further our goals. We solicit comment on this tentative conclusion and on what data would be the most reliable for this purpose.

2. Definition of ''Affiliate''

15. In addition, we seek comment on the proper definition of ''affiliate'' for purposes of the small operator provisions. We already have discussed the separate definitions of ''affiliate'' contained in Title I and Title VI. We note that the Title I definition of ''affiliate'' does not strictly apply to matters under Title VI, since Title VI contains a separate definition of that term that, unlike the Title I definition, does not set a percentage threshold as to what constitutes ownership. We believe this gives us discretion to establish a percentage ownership threshold other than 10% for purposes of Title VI.

16. As for the precise threshold we should establish here, we note that last year in applying the Title VI definition in the context of our small system rules, we concluded that a 20% ownership interest, active or passive, would be deemed affiliation. There we observed: ''Relaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress * * *.'' We believe that Congress had a similar intent when it crafted the small cable operator provisions of the 1996 Act and, therefore, we tentatively conclude that the affiliation standard applicable under our small system cost-of-service rules also should be applied for present purposes. Under this approach, an entity would be affiliated with a cable operator if the entity held an ownership interest of 20% or more, either active or passive, in the cable operator. De facto control also would constitute affiliation. We seek comment on this proposed definition.

3. Definition of ''Gross Revenues''

17. Once a cable operator identifies its affiliates under whatever rule we adopt, it will have to calculate the gross annual revenues of those affiliates. We have defined ''gross revenues'' in other contexts, such as determining eligibility for certain licenses for frequencies devoted to personal communications services:

Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

18. We tentatively conclude that this definition should be applied under the small cable operator provisions of the 1996 Act, although we do not intend to require that all entities produce audited financial statements. If an entity maintains such statements as a matter of course, they would seem to be the best record of its gross revenues. However, we realize that some smaller business may not go to the expense of having their financial statements audited; certainly they should not be required to do so on the basis of legislation intended to minimize burdens for smaller businesses. Therefore, we propose to adopt the definition of ''gross revenues'' quoted above, as modified to eliminate any requirement that the operator or its affiliates produce audited

financial statements. Commenters should address the propriety of this definition for establishing operator eligibility for small cable operator treatment. We also seek comment as to how the revenues of natural persons should be measured and verified under this rule.

19. The plain language of the statute appears to require an operator with multiple affiliates to aggregate the gross annual revenues of all of the affiliates and to compare this aggregate figure to the $250 million threshold. We tentatively conclude that if the gross revenues of all affiliates, when aggregated in this manner, exceed $250 million, the operator does not qualify as small, even if no single affiliate has revenues in excess of that amount. We also solicit comment as to whether the statute should be read to exclude the revenues of the operator itself for purposes of applying the $250 million threshold. Finally, we solicit comment on whether only affiliates of the cable operator that are also cable operators should be included when aggregating gross annual revenues with respect to the $250 million threshold.

4. System and Franchise Area Subscribers

20. Rate regulation is reduced or eliminated for a small cable operator ''in any franchise area in which that operator services 50,000 or fewer subscribers.'' Although a single cable system can serve more than one franchise area, deregulation under this provision of the 1996 Act appears to be determined on a franchise area-by-franchise area basis, without regard to the total number of system subscribers. Under this analysis, a system serving well over 50,000 subscribers spread over multiple franchise areas could qualify for deregulation throughout the entire system as long as no individual franchise area contained more than 50,000 subscribers. Likewise, a single system could be subject to regulation in one franchise area but not in another because its subscriber counts are over and under the 50,000 mark in the two areas, respectively. We seek comment on our tentative conclusion that system size is irrelevant for purposes of this provision.

21. In other contexts in which subscriber counts are important, such as determining whether effective competition exists in a franchise area, we have directed operators how to measure subscribership to take account of various circumstances, such as in vacation areas that experience seasonal shifts in population. However, in limited circumstances we have allowed operators to count subscribers residing in multiple dwelling units (''MDUs'') based on the equivalent billing unit methodology. We seek comment on the proper methodology to be used for purposes of the 50,000 subscriber limit under Section 301(c).

5. BST and CPST deregulation

22. The 1996 Act plainly eliminates CPST rate regulation for systems that qualify under the revenue and subscriber criteria. For qualifying systems that do not offer a CPST, the statute eliminates BST regulation if that tier ''was the only service tier subject to regulation as of December 31, 1994 * * *.'' With respect to qualifying systems that had only a single tier subject to regulation as of that date, we seek comment as to whether Congress intended the BST to be deregulated even if the operator has created a CPST since then or creates a CPST hereafter. In other words, can a qualifying system with both a BST and a CPST be exempt from rate regulation on both tiers, as long as it had only a single tier as of December 31, 1994? Assume, for example, that as of December 31, 1994 an operator had only a single regulated tier, consisting of all of the channels that an operator is required to carry on its BST plus a large number of additional channels. Thereafter, the operator creates a CPST and migrates from the BST to the new CPST some or all of the channels that are not mandatory BST channels, including all of the most popular satellite-delivered cable networks. Arguably, the system's resulting BST would be exempt from regulation on the grounds that the BST ''was the only service tier subject to regulation as of December 31, 1994 * * *.'' It is also arguable, however, that the resulting BST should be subject to regulation because the fundamental nature of the original BST was significantly altered after December 31, 1994.

23. We tentatively conclude that the scope of deregulation depends solely upon the number of tiers that were subject to regulation as of December 31, 1994. Under this construction of the statute, a system currently offering two or more tiers would be deregulated on all tiers if the BST was the only tier subject to regulation as of December 31, 1994, but would be deregulated only on its CPST(s) if it had more than one tier subject to regulation as of December 31, 1994. We seek comment on this construction of the statute.

6. Procedures

24. As for procedures, we seek to design a mechanism by which an operator can obtain a prompt determination of small operator status with a minimum of paperwork, while still giving LFAs and the Commission the ability to verify, when necessary, the subscriber and revenue data relied on by the operator in seeking such status. We understand that a large number of operators entitled to deregulation under the 1996 Act have subscriber and revenue figures that fall far below the statutory thresholds. We tentatively conclude that the procedures we adopt in this regard should be such that these systems can obtain a prompt declaration of their deregulatory status without having to comply with the rules that may be necessary for systems whose eligibility is not so certain. Accordingly, we propose to adopt on a permanent basis the interim procedures described above.

25. While designed to simplify the process in the case of operators who clearly meet the statutory criteria, this process could be applied to all operators, even though further scrutiny may be required for operators that come closer to those statutory criteria. We seek comment on this approach and invite commenters to propose other mechanisms that would minimize the administrative burdens on operators and franchising authorities, particularly in cases where there will be no dispute as to the operator's eligibility for deregulation. We further seek comment as to the procedures to be followed where a determination of the operator's status will require further examination.

26. We also must determine the treatment of systems that qualify for deregulation now, but later exceed the subscriber or revenue thresholds. We tentatively conclude that the plain language of the statute indicates that a deregulated system would become subject to regulation upon exceeding the statutory thresholds. Under this approach, would a system that qualifies for deregulation instantly lose that status the moment its subscriber base exceeds 50,000 in the franchise area, or at the moment its operator starts to serve more than 1% of subscribers nationwide? Is deregulated status lost immediately upon the accumulation of annual revenues above $250 million? We tentatively conclude that an instantaneous shift from complete deregulation to full regulation may not be in the public interest because it could be disruptive to consumers and operators. The addition of subscribers by a system or operator would seem to indicate that the company is responding to consumer demand. We would not want to discourage such responsiveness on the part of cable operators.

Nevertheless, we tentatively conclude that the language of the 1996 Act requires the transition into regulation to begin as soon as the system no longer qualifies under the subscriber or revenue criteria. We seek comment on these issues.

27. We note that last year the Commission adopted rules streamlining cost-of-service rate regulation for any system serving fewer than 15,000 subscribers, as long as the system is not owned by an operator serving more than 400,000 subscribers. Once a system qualifies under these criteria, it remains subject to the relaxed rules for so long as the system serves fewer than 15,000 subscribers. When the system exceeds 15,000 subscribers, it may maintain its current rates, but it is then subject to our standard rate rules applicable to systems generally, and therefore cannot seek an increase until such an increase is permitted under our standard rate rules. We seek comment as to whether this transition mechanism could be applied to systems when they exceed the statutory criteria, or whether some other approach would be more appropriate.

D. Definition of ''Affiliate'' in the Context of Open Video Systems and Cable-Telco Buy Outs

28. We recently initiated a rulemaking to implement the provisions of Section 302(a) of the 1996 Act establishing open video systems [61 FR 10496 (March 14, 1996)]. Open video systems represent a new medium for the provision of video programming to subscribers. The 1996 Act specifically authorizes a LEC to provide cable service over an open video system within its own telephone service area. The 1996 Act also provides that, to the extent permitted by Commission regulation, a cable operator or any other person may provide video programming through an open video system. As with other portions of the 1996 Act, Section 302(a) requires that we define the term ''affiliate'' in order to implement its provisions. Although Section 3 of the 1996 Act defines ''affiliate,'' Congress did not alter the separate definition of ''affiliate'' set forth in Title VI. Thus, we solicit comment regarding the definition of ''affiliate'' in the context of the new statutory provisions governing open video systems.

29. The cable-telco buy out provisions of Section 302 of 1996 Act also refer to the ''affiliates'' of such entities. We request comment regarding the definition of ''affiliate'' in this context as well.

E. Uniform Rate Requirement

30. As discussed above, Section 301(b)(2) of the 1996 Act amends the pre-existing requirement that a cable operator maintain a uniform rate structure throughout its franchise area by, among other things, exempting from that requirement bulk discounts offered to multiple dwelling units. We have amended the rule to comform with the exact statutory language. Here we solicit comment on the meaning of several terms in the statutory language.

31. We tentatively conclude that the bulk rate exception does not permit a cable operator to offer discounted rates on an individual basis to subscribers simply because they are residents of a multiple dwelling unit, but rather requires a ''bulk discount[ ],'' to use the language of the statute, that is negotiated by the property owner or manager on behalf of all of the tenants. We seek comment on this tentative conclusion. We also seek comment as to whether the bulk discounts permitted under Section 301(b)(2) include discounts offered to MDU residents who are billed individually, or should only be permitted where the discount is deducted from a bulk payment paid to the cable operator by the property owner or manager on behalf of all of its tenants.

32. We further seek comment as to the meaning of the term ''multiple dwelling units'' as used in Section 301(b)(2). The Commission has a long-standing definition of ''multiple unit dwellings'' that historically has been significant in determining whether certain cable facilities fell within the private cable exemption to the definition of a cable system. As noted above, prior to the passage of the 1996 Act the definition of a cable system excluded facilities serving subscribers ''in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right of way * * *.'' In that context, we defined a multiple unit dwelling to include a single building that contains multiple residences, and to exclude developments consisting of detached single-family residences, such as mobile home parks, planned and resort communities, and military installations. Congress now has expanded the private cable exemption to include all facilities located wholly on private property, without regard to the nature or common ownership of the property served. Thus, operators of private cable systems (e.g., SMATV systems) now may serve mobile home parks and planned developments without being subject to regulations applicable to cable systems. Since Section 301(b)(2) clearly authorizes a cable operator to deviate from its standard rate structure in order to respond to competition at multiple dwelling units, commenters should address whether we should interpret ''multiple dwelling units'' to correspond to the expanded private cable exemption to the cable system definition.

33. Substantively, we believe that allegations of predation should be made and reviewed under principles of federal antitrust law as applied and interpreted by the federal courts. Commenters should address what standards should be applied to determine whether a complainant has made out a prima facie case ''that there are reasonable grounds to believe that the discounted price is predatory * * *.'' Because complaints in this connection are likely to involve some measure of discovery, we propose the adoption of procedures set forth in our rules for the adjudication of program access complaints. Commenters should address whether that section, or some modified version of procedures set forth in that section, should apply on a permanent basis.

F. Technical Standards

34. The Commission has adopted technical standards that govern the picture quality performance of cable television systems. The rules generally have preemptive force in situations where there is any conflict between the Commission's requirements and those that might be imposed by state or local governments. Section 624(e) of the Communications Act, as adopted in the 1992 Cable Act, provided that the Commission should prescribe minimum technical standards.

35. Current Commission rules dictate specific technical standards and provide for enforcement by LFAs. For example, the Commission's rules provide that, upon request by a LFA, an operator must be prepared to demonstrate compliance with the Commission's technical standards. In addition, the rules provide that, in some instances, an operator may negotiate with its LFA for standards less stringent than otherwise prescribed by the Commission's rules. Section 76.607 of the Commission's rules require an operator to establish a process for receiving signal quality complaints, and subscriber complaints must be referred to the franchising authority and the operator before being referred to the Commission.

36. Here, we seek comment on the overall scope and meaning of new Section 624(e) of the Communications

Act, as amended by Section 301(e) of the 1996 Act. For example, how does this provision affect the Commission rules cited above? How does the 1996 Act's amendments to Section 624(e) affect the scope of the cable franchising, renewal or transfer process in the area of the technical considerations allowed in those situations? Commenters should bear in mind that the 1996 Act did not amend the franchising or the renewal provisions of the Communications Act. Specifically, Section 626 of the Communications Act provides that, ''subject to Section 624'' an operator's proposal for franchise renewal ''shall contain such material as the franchising authority may require, including proposals for upgrade of the cable system.'' In addition, Section 626 provides for franchising authority consideration of the ''quality of the operator's service, including signal quality'' during the course of a renewal under Section 626. Section 621 provides, in part, that a franchising authority awarding a franchise ''may require adequate assurance that the cable operator has the * * * technical * * * qualifications to provide cable service.''

G. Prior Year Losses

37. Section 301(k)(1) of the 1996 Act amends Section 623 of the Communications Act by adding the following provision:

(n) Treatment of Prior Year Losses.—Notwithstanding any other provision of this section or of section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

38. This amendment was effective upon enactment and ''shall be applicable to any rate proposal filed on or after September 4, 1993, upon which no final action has been taken by December 1, 1995.''

39. We note that this provision is similar to a rule change we recently made in the Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking (''Final Cost Order''), found at 61 FR 9361 (March 8, 1996) and 61 FR 9411 (March 8, 1996). The Final Cost Order established final rules applicable to operators that establish regulated rates in accordance with our cost of service rules, one of the two general approaches we have implemented with respect to rate regulation. The other, and primary, method of rate regulation is the benchmark approach. The cost of service rules, intended as a safety valve for operators unable to generate reasonable revenues under the benchmark mechanism, involve a detailed analysis of an operators investment, expenses, and revenues. One of the issues in such an analysis is the extent to which an operator should be permitted to recover ''start up losses'' incurred by the system. Start up losses occur in the early years of operation when rates are set more to attract customers than to fully cover the significant capital and operating costs that an operator incurs before and in the first years after initiating service. Prior to adoption of the Final Cost Order, we presumptively limited the recovery of start up losses to those losses incurred in the first two years of operation. We eliminated this presumption in the Final Cost Order and now permit operators to recover start up loses over whatever period of time such losses were actually incurred.

40. We tentatively conclude that the statutory requirement of Section 301 (k)(1) is applicable to an operator's cost-of-service justification, but differs somewhat from the rule adopted in the Final Cost Order. First, our rule permitting the recovery of start up losses applies to all cable operators, while the recovery of prior year losses under Section 301(k)(1) is limited to ''a cable system that is owned and operated by the original franchisee of the system.'' Second, under our existing rule, reasonable start up losses may be recovered regardless of when they were incurred, while Section 301(k)(1) permits the recovery only of losses incurred prior to September 4, 1992. Third, while start up losses are those incurred in the early years of a system's operation, Section 301(k)(1) contains no such limitation. We seek comment on these tentative conclusions. Further, we seek comment as to whether Congress intended to permit the recovery of prior year losses attributable to imprudent or unreasonable expenditures.

H. Advanced Telecommunications Incentives

41. Subsection 706(a) of the 1996 Act requires the Commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' We seek comment on how we can advance Congress' goal within the context of our cable services regulation. The Commission has solicited such information in other proceedings and reserves its right to address the implementation of Subsection 706(a) in a consolidated action.

I. Cable Operator Refusal To Carry Certain Programming

42. Here we solicit comment on the proper interpretation of the term ''nudity'' as used in Sections 506 (a) and (b) of the 1996 Act. We tentatively conclude that the term ''nudity'' should be interpreted in accordance with the decision of the Supreme Court in *Erznoznik* v. *City of Jacksonville*. In that decision, the Supreme Court found invalid a city ordinance that prohibited showing films containing nudity at drive-in theaters visible from public places. The Court found the restriction overly broad because it was not directed against sexually explicit nudity or otherwise limited. Accordingly, we tentatively conclude that the term ''nudity'' as used in Sections 506 (a) and (b) of the 1996 Act should be interpreted to mean nudity that is obscene or indecent. We seek comment on this tentative conclusion.

J. Other Matters

43. We recognize that the cable reform subsections of the 1996 Act that we address in this NPRM are broad in scope, and that there may be additional issues regarding those subsections that we have not specifically addressed in the NPRM. Commenters may submit proposals or concerns regarding the implementation of these cable reform subsections, including their impact on other parts of the 1996 Act that are to be addressed in separate proceedings. We also seek proposals to ease the burdens of regulation for interested parties.

Regulatory Flexibility Analyses

44. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

45. *Reason for action:* The Commission is issuing this NPRM to seek comment on various issues concerning implementation of the 1996 Act.

46. *Objectives:* To provide an opportunity for public comment and to provide a record for a Commission decision on the issues discussed in the NPRM.

47. *Legal Basis:* The NPRM is adopted pursuant to Section 301 of the 1996 Act; and sections 4(i), 602, 614, 617, 623, 624, 628, 632, of the Communications Act of 1934, as amended, 47 U.S.C. 154, 522, 534, 537, 543, 544, 548, 552, and 548.

48. *Description, potential impact, and number of small entities affected:* Amending our rules will directly affect entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. The 1996 Act reduces or eliminates rate regulation for many such entities.

49. *Reporting, recordkeeping, and other compliance requirements:* None.

50. *Federal rules which overlap, duplicate, or conflict with the Commission's proposal:* None.

51. *Any significant alternatives minimizing the impact on small entities and consistent with state objectives:* The NPRM seeks to minimize burdens on small entities in conformance with the 1996 Act.

52. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Procedural Provisions

53. Pursuant to applicable procedures set forth in Sections 1.415 and §§ 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 28, 1996 and reply comments on or before June 28, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Nancy Stevenson of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

54. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Nancy Stevenson of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

55. Written comments by the public must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the Order and NPRM 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. 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain____t@al.eop.gov.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–10172 Filed 4–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–093, Notice 02]

RIN 2127–AF76

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, NHTSA proposes to change the scope of the Federal motor vehicle safety standard on accelerator control systems. The current standard prohibits uncontrolled engine speed in the event of a disconnection or severance of the accelerator control system at a single point, and it also specifies return-to-idle times for the normal operation of accelerator control systems. The agency has tentatively decided that it not necessary to regulate the normal operation of accelerator control systems. Vehicles with return-to-idle times too great for safe driving would be unacceptable to prospective vehicle buyers regardless of a regulation. The standard will continue to require fail-safe performance of accelerator control systems in the case of a single point disconnection or severance. This proposed action is part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative.

DATES: Comments are due June 14, 1996.

ADDRESSES: Comments should refer to the docket number and notice number cited at the beginning of this notice, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.) It is requested that 10 copies of the comment be provided.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance Standards, NPS–21, telephone (202) 366–6346, FAX (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, (202) 366–2992, FAX (202) 366–3820.

Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590. Comments should not be sent or FAXed to these persons, but should be sent to the Docket Section.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the President's March 4, 1995 directive, ''Regulatory Reinvention Initiative,'' to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of this review, the agency identified rules that it could propose to eliminate as unnecessary or to amend to improve their comprehensibility, application or appropriateness. As described below, NHTSA has identified Federal Motor Vehicle Safety Standard No. 124 *Accelerator control systems* (49 CFR 571.124) as one rule that may benefit from amendments.

Prior Request for Comments and Public Response

The agency published a request for comments (60 *FR* 62061) on December 4, 1995 to initiate a discussion of the accelerator control issues frequently raised by manufacturers in requests for interpretation and other technical questions. The questions involved two general areas. In one area of concern, manufacturers sought assurance that the presence of locking engine controls to facilitate the use on parked trucks of auxiliary equipment for dumping, mixing, compacting, etc. would not be considered violations of the return-to-idle timing requirements. Manufacturers had similar concerns over the degree of repeatability of idle speed necessary for compliance with the return-to-idle provisions. The document raised this area of discussion because the agency wanted to clarify the language of the standard to eliminate concern that the normal operation of accelerator controls could be confused with instances of failure.

The second area of discussion involved the emerging technology of electronic accelerator control systems. The agency had received requests for interpretation expressing the belief that electronic accelerator control systems were exempt from the fail-safe requirement applied to mechanical accelerator controls, namely that the engine return to idle in the event of a single point disconnection or severance of the system. The document cited a 1988 interpretation letter to Isuzu confirming that FMVSS No. 124 applies to both electronic and mechanical accelerator controls, and it discussed the possible need for language in the standard clarifying the fail-safe requirement as it applies to electronic accelerator controls.

Most auto industry commenters voiced a preference for rescinding the standard, and the American Trucking Associations (ATA) expressed the belief that loss of engine control is not a safety problem for medium and heavy trucks because they accelerate more slowly than cars. The auto industry commenters suggested that market forces and litigation pressure are sufficient to assure fail-safe accelerator controls without Federal motor vehicle safety standards. But, they also commented that, should the agency disagree about recision, a standard specifying fail-safe performance in the least design-specific terms would be preferable to the solution suggested in the notice. The document had discussed clarifying the existing standard's language with specific performance requirements for enumerated types of disconnections and severances of mechanical and electronic accelerator controls.

Notice of Proposed Rulemaking

NHTSA tentatively agrees with the commenters that market forces are likely to prevent the introduction of accelerator controls whose normal mode of operation is a threat to safety. Consequently, NHTSA proposes to eliminate section S5.3 of Standard No. 124 which contains return-to-idle timing tests for the normal operation of accelerator controls. The NHTSA standards compliance test program has revealed no non- compliances with S5.3 for at least the past eight years. With the elimination of this section, Standard No. 124 will be concerned solely with fail-safe requirements for engine controls. The effort to define idle speed tolerances and the normal operation of controls for operating special equipment would no longer be necessary.

Two other amendments are necessary for consistency with the proposed elimination of S5.3. The fail-safe performance requirements of S5.1 and S5.2 cite S5.3 to establish response times for a return-to-idle position in the event of a severance. Those citations would be replaced by a fixed time limit of 3 seconds in order to establish that a fail-safe response must be rapid. A time limit of 3 seconds is consistent with the least restrictive limit under S5.3. The other amendment would be a modification of the scope statement of S1 to remove normal operation from the scope of the standard.

However, the market force argument cannot be made for the fail-safe performance of accelerator controls. The normal operating characteristics of a vehicle's accelerator control system is immediately and constantly apparent to the buyer and user. An unsatisfactory design will be met with criticism and rejection. However, the vehicle owner has no way to evaluate the consequences of severances of the control circuits on loss of engine control and little motivation to do so. In fact, a comment from the Flxible Corporation, a major bus manufacturer, indicates that engine manufacturers may be hesitant to adequately inform even vehicle manufacturers about the fail-safe performance of their electronic accelerator controls in the mistaken belief that the devices are exempt from Standard No. 124. Flxible's comment also cast some doubt on the adequacy of the fail-safe design of some electronic accelerator controls by observing that moisture from the steam cleaning of an engine with an electronic accelerator control system caused runaway engine speed.

The agency is not persuaded by ATA's contention that loss of engine control of a heavy commercial vehicle should be regarded less seriously than the same failure of a light vehicle. It also does not believe that the substitution of tort litigation for federal safety standards, as suggested by some commenters, serves the public interest. Therefore, the agency intends to hold a public technical meeting, as suggested by most of the commenters, to hear ideas for achieving a fail-safe performance standard for accelerator controls without design specific language. The time and place of the meeting will be announced in a future notice.

Proposed Effective Date

The proposed elimination of S5.3 from Standard No. 124 would not compromise safety and would not add burdens to manufacturers. NHTSA has tentatively determined that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest. Accordingly, the agency proposes that, if adopted in a final rule, the amendments would have an effective date of 45 days after the publication of the final rule in the Federal Register.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has analyzed the impact of this rulemaking action and determined that it is not ''significant'' under the Department of Transportation's regulatory policies and procedures. NHTSA believes that these

proposed amendments, if made final, would not impose any additional costs and would not yield any savings because this rule would not change the design or equipment of vehicles. Since there would not be any impacts, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. It does not affect any costs associated with the manufacture or sale of vehicles. Accordingly, an initial regulatory flexibility analysis has not been prepared.

National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that it would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would 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.

Procedures for Filing Comments

Interested persons are invited to submit written comments on the amendments proposed in this rulemaking action. It is requested but not required that any comments be submitted in 10 copies.

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in concise fashion. Necessary attachments, however, may be appended to those comments without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission including the purportedly confidential business information should be submitted to the Chief Counsel, NHTSA at the street address shown above, and 7 copies from which the purportedly confidential information has been expunged should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public inspection in the docket. NHTSA will continue file relevant information in the docket after the closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Motor vehicle safety, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue 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 571.124 would be amended by revising S1., S5.1 and S5.2 and removing S5.3 to read as follows:

§ 571.124 Standard No. 124, Accelerator control systems.

S1. *Scope.* This standard establishes requirements for the return of a vehicle's throttle to idle position in the event of a severance or disconnection in the accelerator control system.

* * * * *

S5.1 There shall be at least two sources of energy capable of returning the throttle to the idle position. In the event of failure of one source of energy by a single severance or disconnection, the throttle shall return to the idle position within 3 seconds from any accelerator position or speed whenever the driver removes the opposing actuating force.

S5.2 The throttle shall return to the idle position from any accelerator position or any speed of which the engine is capable whenever any one component of the accelerator control system is disconnected or severed at a single point. The return to idle shall occur within 3 seconds measured either from the time of severance or disconnection or from the first removal of the opposing actuating force by the driver.

Issued on: April 25, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–10667 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 84
Tuesday, April 30, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV96–981–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Almonds Grown in California, Marketing Order 981.

DATES: Comments on this notice must be received by July 1, 1996, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2530–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 720–1509, Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order 981.

OMB Number: 0581–0071.

Expiration Date of Approval: August 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee the orders' operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California almond marketing order program, which has been operating since 1950.

The California almond marketing order authorizes the issuance of quality and market allocation regulations, as well as inspection requirements. Regulatory provisions apply to almonds shipped within and outside of the production area, except those specifically exempt. The order also has authority for production and marketing research and development projects, including paid advertising. Handlers who advertise may receive credit for their advertising expenses according to specific guidelines.

The order, and rules and regulations issued thereunder, authorize the Almond Board of California (Board), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to almond supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. As shipments of California almonds are normally year-round, these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the marketing order. In addition, almond growers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the Secretary.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.2549 hours per response.

Respondents: California almond growers, handlers and accepted users of inedible almonds.

Estimated Number of Respondents: 7,658.

Estimated Number of Responses per Respondent: .7714.

Estimated Total Annual Burden on Respondents: 2,345 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the California almond marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0071 and the California Almond Marketing Order No. 981, and be sent to USDA in care of Kathleen Finn at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 23, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–10646 Filed 4–29–96; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. STD–96–0002]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of its regulations, Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR Part 110).

DATES: Comments on this notice must be received by July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Chief, Pesticide Records Branch, Science and Technology Division, AMS, 8700 Centreville Road, Suite 200, Manassas, VA 20110, (703) 330–7826.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides.

OMB Number: 0581–0164.

Expiration Date of Approval: August 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The regulations, ''Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides,'' require certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of 2 years. The regulations also provide for access to pesticide records or record information by Federal or State officials, or by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions.

The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624; 7 U.S.C. 136i–1), referred to as the FACT Act, directs and authorizes the Department to develop regulations which establish requirements for recordkeeping by all certified applicators of federally restricted use pesticides. A certified applicator is an individual who is certified by the Environmental Protection Agency (EPA) or a State under cooperative agreement with EPA to use or supervise the use of restricted use pesticides.

Section 1491 of the FACT Act directs and authorizes the Secretary of Agriculture to ensure compliance with regulations as the Secretary may prescribe, including levying penalties, for failure to comply with such regulations.

Because this is a regulatory program with enforcement responsibility, USDA must ensure that certified applicators are maintaining restricted use pesticide application records for the 2 year period required by the FACT Act. To accomplish this, USDA must collect information through personal inspections of certified applicator's restricted use pesticide application records.

The information collected is used only by authorized representatives of the USDA (AMS, Science and Technology Division's national staff, other designated Federal employees, and designated State supervisors and their staffs), which are designated access to the record information through section 1491, subsection (b) of the FACT Act. The information is used to administer the Federal Pesticide Recordkeeping Program. The Agency is the primary user of the information, and the secondary user is each designated State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated as follows:

(a) Approximately 760,000 certified private applicators (recordkeepers) apply restricted use pesticides. It is estimated that on an average certified private applicators have a total annual burden of .35 hours per recordkeeper.

(b) There are approximately 384,000 certified commercial applicators nationally who are required to provide copies of restricted use pesticide application records to their clients. It is estimated that certified commercial applicators have a total annual burden of 1,892,352 hours.

(c) It is estimated that State agency personnel who work through cooperative agreements with AMS, to inspect certified private applicator's records have a total annual burden of 9,280 hours.

Respondents: Certified private and commercial applicators, State governments or employees, and Federal agencies or employees.

Estimated Number of Respondents: 1,144,064—The total number of respondents includes approximately 384,000 certified commercial applicators, 760,000 certified private applicators (recordkeepers) and designated state agency personnel utilized to inspect certified private applicator's records.

Estimated Number of Responses per Respondent: The estimated number of responses per respondent is as follows:

(a) It is estimated that certified private applicators (recordkeepers), record on an average 5 restricted use pesticide application records annually.

(b) It is estimated that certified commercial applicators provide 616 copies of restricted use pesticide records to their clients annually.

(c) State agency personnel, who work under cooperative agreements with AMS to conduct restricted use pesticide record inspections have approximately 4,832 responses annually.

Estimated Total Annual Burden on Respondents: 2,171,712 hours.

Copies of this information collection can be obtained from Bonnie Poli, Pesticide Records Branch, at (703) 330–7826.

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 the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to: Bonnie Poli, Chief, Pesticide Records Branch, Science and Technology Division, AMS, U.S. Department of Agriculture, 8700 Centreville Rd, Suite 200, Manassas, VA 20110. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 24, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–10647 Filed 4–29–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 96–017–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of regulations and standards issued under the Voluntary Scrapie Flock Certification Program.

DATES: Comments on this notice must be received by July 1, 1996 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 96–017–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 96–017–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information on the regulations and standards for the Voluntary Scrapie Flock Certification Program, contact Dr. Daniel Harpster, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231, (301) 734–4931; or e-mail: DHarpster@aphis.usda.gov. For copies of the proposed collection of information, contact Ms. Cheryl Jenkins, APHIS' Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION

Title: Voluntary Scrapie Flock Certification Program.

OMB Number: 0579–0101.

Expiration Date of Approval: August 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: To control scrapie in the United States, we have promulgated regulations establishing the Voluntary Scrapie Flock Certification Program. It consists primarily of identifying and eliminating infected animals and herds in order to prevent the disease from spreading. This process requires that participating flock owners communicate vital information to us (via mail or telephone) concerning the health of their animals.

Generally, the presence of the disease cannot be detected until the animal becomes clinically ill. Due to the lack of a live animal diagnostic test for scrapie, efforts to control and eliminate the disease depend upon the cooperation of flock owners and veterinarians in reporting clinically ill animals.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed information collection 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 our 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, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 3.050 hours per response.

Respondents: Flock owners, State animal health officials, accredited veterinarians, State or Federal veterinary medical officers, and State or university diagnostic laboratory directors.

Estimated Number of Respondents: 1,180.

Estimated Numbers of Responses per Respondent: 4.402.

Estimated Total Annual Burden on Respondents: 15,846 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection.

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

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10648 Filed 4–29–96; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 96–018–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the National Animal Health Monitoring System.

DATES: Comments on this notice must be received by July 1, 1996 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 96–018–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 96–018–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information on the National Animal Health Monitoring System, contact Mr. David Cummings, Program Manager, Centers for Epidemiology and Animal Health, VS, APHIS, 555 South Howes, Suite 100, Fort Collins, CO 80521; (970) 490–7895. For copies of the proposed collection of information, contact Ms. Cheryl Jenkins, APHIS' Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System.

OMB Number: 0579–0079.

Expiration Date of Approval: September 30, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the National Animal Health Monitoring System (NAHMS) program of the Animal and Plant Health Inspection Service (APHIS) is to deliver statistically-valid and scientifically-sound animal health information to consumers, animal health officials, private practitioners, animal industry groups, policy makers, public health officials, media, educational institutions, and others. Information is derived from data voluntarily collected on a national basis from producers in the dairy, beef, poultry, aquaculture, sheep, swine, and equine industries. In addition, information may be collected from individuals or groups with industry knowledge of the scope, causes, and public health and/or economic consequences of new and emerging animal health issues. The information collected is used to identify baseline trends in health management practices and disease, determine risks for new and emerging animal health issues, and assess the economic impact of animal diseases and management practices.

The APHIS Strategic Plan formalized the Agency's initiative to have in place a proven national monitoring system that is capable of defining and certifying the health and safety status of the Nation's animal commodities and objectively assessing the economic, environmental, and public health implications of animal health. The National Animal Health Monitoring System is implementing the action plan by collecting data and disseminating information that is not available from other sources on the prevalence and economic importance of livestock and poultry health and disease. Emerging issues and disease outbreaks involving interrelationships among animal health, public health, economic productivity, and global trade are also being addressed through short-term data collection, risk assessments, and situation analyses.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed information collection 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 our 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 choose to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.46 hours per response.

Respondents: Animal agriculture producers, veterinary practitioners, State and private diagnostic laboratories, State departments of agriculture, and animal-related industries.

Estimated Number of Respondents: 7,110.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4,868 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection.

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

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–10649 Filed 4–29–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–843]

Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson at (202) 482–4929, Shawn Thompson at (202) 482–1776, or James Terpstra at (202) 482–3965, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Rounds Agreements Act (URAA).

Final Determination

As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, the Department of Commerce (the Department) has exercised its discretion to toll all deadlines for the duration of the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 16, 1995, through January 6, 1996. Thus, the deadline for the final determination in this investigation has been extended by 28 days, *i.e.*, one day for each day (or partial day) the Department was closed. As such, the deadline for this final determination is no later than April 22, 1996.

We determine that bicycles from the People's Republic of China (PRC) are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on November 1, 1995 (60 FR 56575, November 9, 1995), the following events have occurred:

On November 6, 1995, Bo An Bike Co., Ltd. (hereinafter Bo An), CATIC Bicycle Co., Ltd. (hereinafter CATIC), Shenzhen China Bicycles Co. (Holdings) Ltd. (hereinafter CBC), Giant China Co., Ltd. (hereinafter Giant), Hua Chin Bicycle Co., Ltd. (hereinafter Hua Chin), Merida Industry (Hong Kong) Co., Ltd./ Merida Bicycle Co., Ltd. (hereinafter Merida), Shenzhen Overlord Bicycle Co., Ltd. (hereinafter Overlord), and Universal Cycle Corp. (hereinafter Universal) requested a postponement of the final determination pursuant to 19 CFR 353.20. On November 9, 1995, Chitech Industries, Ltd. (Hong Kong) (and affiliated parties Tandem Industries, Ltd. (Hong Kong), Magna Technology Corp. (Taiwan), Taiwan Tandem Co., Ltd. (Taiwan), and Shun Lu Bicycle Co. (aka Shunde Tandem Bicycle Parts Company) (hereinafter Chitech) made a similar request.

On November 9 and 20, 1995, respondents alleged clerical errors in the preliminary determination. Also, on

November 20, 1995, petitioners and all respondents, except Chitech, requested a hearing. On December 4, 1995, the Department amended the preliminary determination and postponed the final determination. (*See, Amendment to Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bicycles from the People's Republic of China,* 60 FR 64016 (December 13, 1995)).

In December, January, and February, we verified the respondents' questionnaire responses. Additional published information (PI) on surrogate values was submitted by petitioners and respondents on March 6, 1996. Petitioners and respondents submitted case briefs on March 26, 1996, and rebuttal briefs on April 2, 1996. A public hearing was held on April 3, 1996.

On January 31 and February 5, 1996, Chitech and CBC, respectively, requested that the Department reconsider its decision not to publish an amended preliminary determination with respect to these two companies. On February 9, 1996, these requests were denied.

Finally, the respondents have made numerous submissions requesting that the Department rescind the investigation (*See,* Comment 7 in the *General Comments* section below).

Scope of Investigation

The product covered by this investigation is bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the Harmonized Tariff Schedule of the United States (HTSUS): (1) The term ''unassembled'' means fully or partially unassembled or disassembled; (2) the term ''incomplete'' means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and (3) the term ''unfinished'' means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame, finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components: (a) The rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin.

The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

Complete bicycles are classifiable under subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the 1995 HTSUS. Incomplete bicycles, as defined above, may be classified for tariff purposes under any of the aforementioned HTSUS subheadings covering complete bicycles or under HTSUS subheadings 8714.91.20–8714.99.80, inclusive (covering various bicycle parts). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is April 1, 1994, through March 31, 1995.

Separate Rates

Four of the responding exporters in this investigation are located outside the PRC. They are Merida, Giant, Hua Chin and Chitech. Further, there is no PRC ownership of any of these companies. Therefore, we determine that no separate rates analysis is required for these exporters because they are beyond the jurisdiction of the PRC government. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359, 22361, (May 5, 1995)).

The remaining five respondents are either joint ventures between Chinese and foreign companies or are Chinese-owned companies publicly traded on the Shenzhen stock exchange. They are CATIC, CBC, Overlord, Universal, and Bo An. For these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, (May 6, 1991) (*Sparklers*) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in non-market-economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondent have placed on the administrative record a number of documents to demonstrate absence of *de jure* control, including laws, regulations, and provisions enacted by the State Council of the central government of the PRC. Respondents have also submitted documents which establish that bicylcles are not included on the list of products that may be subject to central government export constraints. The Department has reviewed these and other enactments in prior cases and has previously determined that these laws indicate that the responsibility for managing state-owned enterprises has been shifted from the government to the enterprise itself (*See, Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alchohol from the People's Republic of China,* 60 FR 22544. (May 8, 1995) (*Furfuryl Alcohol*)). In addition, as discussed in the *Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625, (November 9, 1994) (*Pencils*), the laws governing share companies have not altered the devolution of control.

However, as stated in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (*See Silicon Carbide* and *Furfuryl Alcohol*). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether

the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*See, Silicon Carbide* and *Furfuryl Alcohol*).

Each respondent has asserted and we verified the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. Regarding personnel decisions, we reviewed such evidence as the discussion of the selection of the board of directors in contracts between joint venture companies and minutes from the board of director meetings. This information supports a finding that there is a *de facto* absence of governmental control of export functions. Consequently, we have determined that the above-mentioned respondents have met the criteria for the application of separate rates.

China-Wide Rate

Six of the mandatory respondents did not respond to the questionnaire. Hence, we are applying a single antidumping rate to these exporters as well as all other exporters of PRC-manufactured bicycles based on our presumption that the export activities of these respondents who failed to completely respond and to establish that they meet the criteria for a separate rate are controlled by the PRC government. (*See,* Comments 8 and 9 in the *General Comments* section below).

Facts Available

Pursuant to sections 776(a) and (b) of the Act, we have based the China-wide rate on facts available, using adverse inferences, because the non-responding companies have failed to cooperate to the best of their ability. Given that this margin involves data contained in the petition, we are required to corroborate this data, to the extent practicable, pursuant to section 776(c) of the Act. (*See,* also, Statement of Administrative Action (SAA) at 200). We have identified several major items (*i.e.,* depreciation, interest, and profit, as well as the factor values for frames, forks, and rims) contained in the petition which individually comprise a significant portion of the normal value (NV) calculations. We compared the data in the petition to secondary data which includes but is not limited to the same type of data used as the basis for the petition and the audited financial reports of two of the largest Indian bicycle producers.

As a result of our analysis, we found that, with the exception noted immediately below, the secondary information for these factor values are comparable to those provided in the petition. Accordingly, this petition information has been corroborated.

However, after analyzing the figure contained in the petition for depreciation, interest and profit, we found, as did both petitioners and respondents, that this figure does not reflect usual cost and profit in the Indonesian bicycle industry. Specifically, the 1992 figure of 57.91 percent provided in the petition does not correspond with the 1993 figure of 22.84 percent and the 1991 figure of 22 percent provided by respondents on September 19 and 25, 1995. (For further discussion *see* Memorandum to Barbara R. Stafford re: Factors Valuation dated November 1, 1995). Therefore, we find that the 57.91 percent figure is not corroborated (*i.e.,* has no probative value in determining depreciation, interest, and profit).

We have used the 1991 figure for depreciation, profit, and interest in recalculating the margins in the petition. We did not use the more current 1993 figure because the study containing it was issued only in draft form.

Fair Value Comparisons

To determine whether sales of bicycles from the PRC to the United States were made at LTFV, we compared Export Price (EP) and/or Constructed Export Price (CEP) to the NV, as specified in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For all responding exporters, with the exception of CATIC, which had only CEP sales, we based United States Price (USP) on EP in accordance with section 772(a) of the Act, as the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

In addition, for Giant, CBC, CATIC, and Chitech, where sales to the first unaffiliated purchaser took place after importation into the United States, we based USP on CEP, in accordance with section 772(b) of the Act.

We corrected respondents' data for errors and omissions found at verification. *See,* Concurrence Memorandum and company-specific calculation memoranda for details. In addition, we made company-specific adjustments as follows:

1. Bo An

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight and brokerage and handling (which includes containerization, documentation fees, the Hong Kong terminal handling charge and PRC brokerage costs) and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

2. CBC

We calculated EP and CEP based on packed, delivered prices to unaffiliated customers. Where appropriate, we made deductions from the starting price for discounts and rebates and credit notes. We also made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, Hong Kong duty, U.S. freight and warehousing expenses, ocean freight and marine insurance, and U.S. duty and harbor fees. With the exception of foreign inland freight, movement charges were provided by market-economy suppliers and paid for in market-economy currency. Regarding foreign inland freight, this service was provided by a PRC supplier. Accordingly, we valued this expense in India.

Further, we made additions to CEP for interest revenue received from the unaffiliated customers. In accordance with section 772(d)(1) of the Act, we deducted from CEP the following expenses that related to economic activity in the United States: commissions, direct selling expenses, including advertising, warranties, and credit expenses, and indirect selling expenses, including inventory carrying costs. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. (*See,*

Comments 1 and 2 in the *General Comments* section below.)

3. CATIC

We calculated CEP based on packed, FOB U.S. warehouse prices, or delivered prices, to unaffiliated customers. We made deductions from the starting price for discounts, where appropriate. We also made deductions for foreign brokerage and handling, freight expenses, ocean freight and marine insurance, U.S. brokerage and handling, and U.S. duty and harbor fees. We deducted from CEP the following expenses that related to economic activity in the United States: commissions, direct selling expenses, including advertising, warranty, credit, and repacking, and indirect selling expenses, including inventory carrying costs. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. (*See,* Comments 1 and 2 in the *General Comments* section below.)

4. Giant

We calculated EP and CEP based on packed, FOB PRC port or CIF U.S. port or delivered prices to unaffiliated purchasers. We made deductions from the starting price, where appropriate, for the following: foreign brokerage and handling, U.S. brokerage, international freight (which includes U.S. inland freight), U.S. duty, loading and containerization, and marine insurance (which also includes U.S. inland insurance, harbor maintenance fees and merchandise processing fees). All of the above expenses were provided by market-economy carriers and paid for in market-economy currencies. We also deducted an amount for foreign inland freight but since this service was provided by a PRC supplier, we valued this expense in India. We also deducted from the starting price, where appropriate, discounts and rebates.

In accordance with section 772(d)(1) of the Act, we deducted from CEP the following expenses that related to economic activity in the United States: direct selling expenses, including warranties, advertising, and credit expenses, and indirect selling expenses, including inventory carrying costs. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. (*See,* Comments 1 and 2 in the *General Comments* section below.)

5. Hua Chin

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight and Hong Kong terminal handling fees. As all foreign inland freight and handling fees were provided by PRC suppliers, these services were valued in India.

6. Merida

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight and brokerage and handling (which includes containerization, documentation fees, the Hong Kong terminal handling charge and PRC brokerage costs) and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

7. Overlord

We calculated EP based on packed. FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight, brokerage and handling and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

8. Chitech

We calculated EP based on packed. FOB Hong Kong prices and CEP based on packed, duty-paid, FOB U.S. warehouse prices to unaffiliated customers. Were appropriate, we made deductions from the starting price for various discounts. We also made deductions for foreign brokerage and handling, freight, Hong Kong import and export fees, terminal handling fees, ocean freight and marine insurance, U.S. brokerage and handling, and U.S. duty and harbor fees.

In accordance with section 772(d)(1) of the Act, we deducted from CEP the following expenses that related to economic activity in the United States: commissions, direct selling expenses, including advertising, warranties, and credit expenses, and indirect selling expenses, including inventory carrying costs. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. (*See,* Comments 1 and 2 in the *General Comments* section below.)

9. Universal

We calculated EP based on packed, FOB Hong Kong or FOB Huangpu port prices to unaffiliated purchasers in the United States. We made deductions from the starting prices for foreign inland freight, which was provided by a PRC supplier and therefore was valued using Indian surrogate values. In addition, we deducted from the FOB Hong Kong prices terminal handling charges, document fees, import/export declaration fees, handling fees and courier fees.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the responding exporters. Where an input was sourced from a market economy and paid for in market-economy currency, we have used the actual price paid for the input to calculate NV, when possible, in accordance with Department practice. *See, Lasko Metal Products v.* United States, 437.3d 1442, 1443 (Fed. Cir. 1994) (*Lasko*).

In instances where inputs were sourced domestically, we valued the factors using PI from India where possible. Where appropriate Indian values were not available, we used PI from Indonesia.

Valuation of Bicycle Parts and Components

As in our preliminary determination, we valued certain parts and components purchased by some respondents in the PRC, using the average market-economy prices reported by other respondents for the same part or component, as discussed below. However, unlike in our preliminary determination, we used the average actual market-economy price reported by the other respondents rather than the ranged public version of those prices. We did this because we determined that the manner in which the actual prices were ranged, *i.e.,* either higher or lower, could potentially introduce distortion into the calculation. (*See,* Comment 3 in the *General Comments* section below).

The nine responding exporters reported that they purchased a large number of different components (*e.g.,* brake sets) and sub-components (*e.g.* brake arms) for use in assembling finished bicycles. The vast majority of these purchased inputs are sub-components. These inputs, both components and sub-components, vary in terms of material composition (*e.g.,* carbon steel versus aluminum), size, design (*e.g.,* cantilever versus side-pull brakes), and other relevant physical characteristics.

Some inputs were purchased from market-economy suppliers and paid for in convertible currency. Following our normal practice, we used the actual price paid for these inputs, where

possible. However, where the input was not purchased from a market-economy supplier and paid for in a market-economy currency, it was necessary to develop a surrogate value.

For certain components and sub-components, differences in material content and design result in large price differentials. For example, there is a substantial difference in the price of a frame tube made from high-tensile steel versus one made with chrome-molybdenum; therefore, using a surrogate value for a frame tube of high-tensile steel would unreasonably distort the calculation of NV for a bicycle with a chrome-molybdenum frame. In reality, for certain components, a specific design or material composition can result in a distinctly different input.

With respect to the factors of production methodology, the Court of Appeals has noted that ''there is much in the statute that supports the notion that it is Commerce's duty to calculate margins as accurately as possible and to use the best information in doing so.'' *See, Lasko.* Therefore, to minimize distortions and ensure the most accurate margin calculation possible, we developed a hierarchy for selection of surrogate values for parts and components based on the need for specificity with respect to design or material composition or both. Our first choice under that hierarchy is to use data from India (*e.g.*, the component prices from the Delhi Market Report) or Indonesia (*e.g.*, the average unit values from the Indonesian study) if it is specific with respect to design and material composition or if we could not determine, based on the evidence, whether significant variations in the price data stemmed from design or material composition. Where design or material composition appeared to have a significant impact on price but design or material-specific data was not available in a surrogate country, we used the average actual market-economy prices from market-economy suppliers to the PRC. However, we used this data strictly as a second alternative to design- or material-specific data from India or Indonesia, where available.

In one instance, a respondent reported factors of production for a number of piece-parts produced by its affiliated supplier, *e.g.*, fork arms. We did not value those subcomponents because we had no factor values for fork arms. Instead, we valued the smallest component that incorporated these sub-components, *e.g.*, completed fork set.

Other Factor Valuations

Where possible, we used public information for the surrogate values. The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of surrogate values, see the Factors Calculation Memorandum to Barbara R. Stafford from the team, dated April 22, 1996.

To value caustic soda, methylene dichloride, zinc hydroxide, oxalic acid, sulfuric acid, nitric acid, chromic nitric acid, tartaric acid, and sodium carbonate we used public information from POI issues of the Indian publication *Chemical Weekly.* For chromic anhydride, various phosphates, various chromates, sodium bichromate, dimethyl benzene, and acetylene and carbon dioxide, we relied on POI import prices contained in *Monthly Statistics.*

Regarding sodium bichromate, sodium chromate, and potassium chromate, we could not find POI prices for these exact inputs. Therefore, we used a POI import price based on a basket category containing chromates and dichromates in *Monthly Statistics* to value these inputs. For dimethyl benzene, we obtained a price for a similar chemical from *Monthly Statistics.*

To value argon gas and oxygen, we relied on 1994 Indonesian price data in the *Statistical Bulletin* because we could not locate a price from Indian publications.

With regard to hydrochloric acid, we relied on a 1993 Indian export price quote from *Chemical Weekly* because the prices for this input in other known Indian publications are based on an Indian import category that is not exclusive to hydrochloric acid (*See, Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China,* 59 FR 66895 (December 28, 1995.))

We valued degreaser using information from the only known Indian publication which contained such a price, *The Analyst's Import Reference 1993, Chemical & Pharmaceutical Products (The Analyst).*

We valued paint using Indian price data from *Monthly Statistics.* We could not find a material price for solvent (thinner) from publicly available information. Therefore, we used Indian price data from *Monthly Statistics* for a similar chemical, which also dilutes paint.

To value diesel fuel, we used a POI Indian price from the publication *AP Worldstream.* To value liquefied petroleum gas, we used a POI price from the periodical *Financial Times of India.*

For the valuation of electricity, we used an average 1992 industrial rate from the publication *Current Energy Scene in India* because this publication contained data more contemporaneous to the POI than other known publications.

With regard to labor, we used data from the United Nations' publication *Yearbook of Labor Statistics.* Following the method established in the *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the PRC,* 61 FR 14062 (March 29, 1996) (*PVA*), we find no basis to assume the skill level of the surrogate value, nor do we have agreement among parties regarding use of this labor rate for skilled and unskilled labor rate assumptions. Thus, we applied a single labor value to all reported labor factors, including indirect labor (*See* Comment 18 below for further discussion).

To value scrap metal, we relied on Indian data from *Monthly Statistics.* We treated the scrap metal as a by-product and deducted its value from the cost of manufacture (COM) for CBC, Chitech, Giant, Merida, and Overlord. This adjustment was not appropriate for the remaining respondents.

For nuts and bolts and screws, we used product-specific published prices contained from the Indonesian publication *Indonesian Foreign Trade Statistics for Imports* (*See* Comment 17 below for further discussion).

For certain subcomponents we had no published prices or publicly ranged market prices from which to choose. Therefore, we valued these specific components based on the content of material (*e.g.*, steel , plastic or rubber). To value components made of steel, we used an average tax-exclusive 1994 domestic steel price from the Indian publication *Statistics for Iron and Steel.* For components made of plastic and/or rubber, we used Indian price data from *Monthly Statistics.*

To value factory overhead, SG&A, and profit, we calculated simple average percentages based on the data from the four financial statements of Indian surrogate producers which are contemporaneous with the POI, *i.e.*, Atlas, Hero, Gujurat and TI. We made certain adjustments to the percentages calculated as a result of reclassifying

expenses contained in the financial reports. We calculated a simple average of the profit ratios for the three Indian surrogate producers which were profitable during the POI. We also included the profit ratio of a fourth company; however, we set this additional profit ratio to zero because this company was not profitable during the POI (*See* Comment 15 below for further discussion).

Finally, to value the packing materials, corrugated cartons, uncorrugated cartons, bubble wrap/foam paper, staples, adhesive tape, rope, packing paper, polypropylene, polyethylene, recycled plastic cups, inner recycled paper boxes, and plastic bags, we relied on Indian data from *Monthly Statistics.* To value glue, we used an average price based on Indian price data for two types of glue products from the publication *Chemical Weekly.*

Critical Circumstances

For purposes of the preliminary determination, we determined that critical circumstances existed only with respect to Hua Chin. However, the margin for Hua Chin in the amended preliminary determination was *de minimis*; in effect, making this issue moot for Hua Chin. Since this amended determination we have not received any information which would cause us to reconsider our analysis. Because Hua Chin's final margin is also *de minimis*, this issue continues to be moot.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

General Comments

Comment 1: CEP Deductions and COS Adjustments

According to petitioners, the plain language of Section 772(d) of the Act requires the deduction of all selling expenses from CEP in the calculation of USP. Petitioners assert that the CEP deduction is not contingent upon whether circumstance of sale (COS) adjustments or an offset to NV can be made. Moreover, petitioners note that CEP offsets are no longer automatic under the new law. In line with this argument, petitioners claim that no level of trade (LOT) adjustment or CEP offset is warranted in the instant investigation because the record does not demonstrate that NV is at a more advanced LOT than CEP. However, should the Department decide to make an adjustment, petitioners provide their own calculation showing that this should equal 0.096 percent of COM.

Furthermore, petitioners contend that the Department should make COS adjustments for EP sales, and assert that the Department can differentiate between direct and indirect selling expenses in both the United States and surrogate data if certain assumptions are made. However, petitioners maintain that, if the Department believes that it is difficult to segregate all direct from indirect expenses for EP sales, at a minimum the Department should adjust for U.S. commissions.

Respondents argue that no deduction for CEP selling expenses should be made. Respondents state that such a deduction would blatantly disregard the Department's stated policy concerning selling expenses in non-market-economy (NME) cases. Specifically, respondents contend that, as in past cases, the financial statements used to determine surrogate SG&A do not distinguish between direct and indirect selling expenses. Consequently, respondents assert that any adjustment made for purposes of calculating an offset would require an arbitrary division of these expenses among direct and indirect selling, G&A, and manufacturing expenses. As precedent on this issue, respondents cite *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55271, (October 25, 1991); *Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide From the People's Republic of China*, 57 FR 6801 (Feb. 28, 1992); and *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China,* 58 FR 48833 (Sept. 20, 1993).

However, respondents state that, if a CEP deduction is made, the Department should not add selling expenses to NV. Respondents maintain that the Department has the authority to disregard selling expenses because the language of the NME provision of the statute only requires an addition for *general* expenses. Nonetheless, respondents maintain that, if selling expenses are added to NV, the Department should make a corresponding offset, capped by the amount of the CEP deductions.

Finally, for the same reasons that the data on the record of this case is not suitable for calculating adjustments to NV, respondents contend that this data is likewise unusable for purposes of making COS adjustments.

DOC Position: Regarding the necessity of making CEP deductions, we have reevaluated our practice in this area and have concluded that CEP deductions are required by the plain language of the statute, which states in section 772(c)(2)(d) that CEP ''shall be reduced'' by the selling expenses associated with economic activity in the United States. The statute provides no exception for cases involving non-market-economy countries. Consequently, we have made deductions to CEP for all selling expenses associated with economic activity in the United States, in accordance with our practice. (*See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Pasta from Italy*, 61 FR 1344, (January 19, 1996)) (*Pasta*). However, we disagree with petitioners that we should deduct those U.S. selling expenses incurred in third country markets which are not associated with selling activity occurring in the United States. The SAA makes it clear that we only adjust for selling expenses associated with economic activity in the United States. SAA at 153.

Regarding making an offset to NV, we disagree with respondents that an offset to NV is required in this case. While the statute requires certain adjustments to USP, corresponding adjustments to NV are only required upon a sufficient showing that differences exist justifying the adjustment. *See* section 773(a)(7). In this case, the only information we have about selling expenses is the financial statements of the Indian producers. These do not specify whether Indian home market sales are at any particular LOT or include any particular selling expenses. Therefore, we do not have any basis upon which to determine whether any adjustment to the surrogate expenses is appropriate.

We disagree with petitioners' argument that COS adjustments are required by the statute. Rather, section 773(a)(6)(C) allows NV to be increased or decreased for differences in circumstances of sale as long as ''it has been established to the satisfaction of the administering authority'' that such adjustments are warranted. Given the imprecise nature of the information about selling expenses in the record in this case, we have no basis to conclude that such adjustments are warranted in this case.

Finally, regarding respondents' argument that we should not add selling expenses to NV because the statute only references *general* expenses, we disagree. We have always interpreted

the term general expenses to refer to selling, general, and administrative expenses. Accordingly, we included selling expenses in NV, as is our normal practice.

Comment 2: Profit Deduction from CEP Sales

In addition to deducting selling expenses from CEP, petitioners contend that the plain language in section 772(d) of the Act also requires that profit be deducted from CEP. Petitioners suggest that this deduction be based on the profit of the surrogate producers and the ratio of CEP deductions to total U.S. expenses.

The record of this investigation does not contain sufficient information to calculate actual total profit because, according to respondents, there is no information on actual manufacturing costs and overhead. Accordingly, respondents argue that no deduction for profit should be made.

DOC Position: We agree with petitioners. Section 772(d) of the Act requires the Department to make a deduction for profit associated with CEP selling expenses. Section 772(f) of the Act specifies that, in general, this calculation involves both U.S. and home market total sales, costs, and expenses. In making this calculation in market-economy cases, we have included respondent's home market sales, cost, and expense data in this calculation, *See, e.g., Pasta.* However, in this case we have no home market sales upon which to base this calculation. Instead, we only have usable financial statements of four Indian surrogate producers. In attempting to perform this calculation, we found that there were numerous difficulties in accurately combining the total sales, total cost, and total expense data from these financial statements. This is because these data are expressed in different ways on each financial statement, making any attempt to combine them problematic. Given these difficulties, we determined that petitioners' approach is the most reliable and consistent with the manner in which this calculation is performed in market-economy cases. This approach avoids the difficulties in combining data from the financial statements because the variables are consistently and readily identifiable across the four financial statements. See also ''Concurrence Memo'' for a complete discussion of this issue.

Comment 3: Publicly Ranged Market-Economy Prices

Petitioners agree with the basic methodology used by the Department in the preliminary determination for valuing bicycle components. However, petitioners maintain that the Department's use of average publicly-ranged market-economy prices had the effect of allowing respondents to introduce ''distortions'' into the factor values in the manner in which the prices were ranged. Petitioners argue that the Department should use prices for valuing bicycle components that allow the most accurate margin calculation possible. Petitioners maintain that no proprietary information will be disclosed as long as the Department releases margin calculations under administrative protective order (APO), as was done for the preliminary determination.

Chitech argues that an adjustment to the publicly ranged market-economy prices would violate confidentiality. The other respondents argue that petitioners' suggestion would violate 19 CFR 353.32(f) because it would result in the unauthorized release of data to companies that did not submit that information. Respondents further argue that parties would be denied their right to disclosure because the Department could not disclose such information to them.

Moreover, respondents contend that the current publicly-ranged market-economy prices used by the Department already penalizes companies. Respondents assert that some companies would purchase a component from a domestic source, rather than a market-economy source, if the domestic source offered the identical component at a lower price. However, for these domestic purchases, the Department, by assigning such prices, *i.e.*, the public versions of presumably higher market-economy prices, as used in the preliminary determination, ascribes to that component a higher price than the companies may actually incur. Respondents maintain that using petitioners suggestion to value Chinese-sourced components would only increase this penalty.

In addition, respondents state that the Department has developed a preference for using PI to derive factor prices. Respondents maintain that they have submitted publicly ranged versions of their proprietary factors of production databases in accordance with the Department's instructions and 19 CFR 353.32(b)(1). Finally, respondents argue that neither the Department nor petitioners claimed that the publicly-ranged prices did not conform to the regulations.

DOC Position: We agree with petitioners that the use of respondents—publicly-ranged prices allows the possibility of distortions caused by the manner in which respondents ranged these prices. Respondents were aware of our intention to use the public versions of these prices in our factor valuations prior to the preliminary determination. We discussed this issue with them when explaining the requirements of our additional request for information related to the special coding instructions for parts and components. We agree with petitioners that it is appropriate to use actual average prices for the margin calculations. However, before determining whether the average of the actual prices could be released publicly, we analyzed the data sources to satisfy ourselves that no proprietary information would be released.

For each input price under analysis, we considered the number of companies reporting a price for that input and whether one or two companies' relative volume of market-economy purchases were significant. These factors allowed us to determine to our satisfaction whether any one company could derive the actual prices reported by other respondents (*i.e.*, proprietary data). In performing this analysis, we considered, among other things, the approach to this issue employed by the International Trade Commission (ITC).[1] However, we modified this approach to fit the unique circumstances of this investigation. We took this approach because there are instances in which proprietary data would be divulged and it would be too burdensome to make public versions of all documents which incorporate the proprietary prices. Accordingly, we classified all the average market-economy price data as proprietary and will release it to the appropriate parties under APO.

Comment 4: Transfer Prices

At verification we discovered that three respondents, Hua Chin, Universal and Overlord, had reported the transfer prices of their affiliates (which included a markup for freight, expenses, and profit) instead of the price paid to the unrelated supplier. Respondents contend that because the transfer prices were always higher then the prices paid to the unrelated supplier, it follows that these prices must be considered by the

[1] According to the ITC approach, generally, it would not be feasible for any one company to determine the actual price as long as three or more respondents purchase the same component from market-economy suppliers. However, in situations where one respondent accounts for 75 percent of the quantity of a given component, the data is considered proprietary. In addition, in situations where two respondents account for 90 percent of the quantity of a given component, that data is considered proprietary. See, memo from analyst to file regarding this practice dated April 8, 1996.

Department to have been made at arm's length and should not be adjusted.

Although three respondents reported transfer prices, petitioners only addressed Overlord. Petitioners argue that the component prices reported by Overlord do not include those general and administrative expenses incurred by Overlord Taiwan and NaiYu, its other affiliate, in purchasing the same components. As such, petitioners maintain that Overlord understated the actual costs of components from these suppliers by not accounting for these expenses. Therefore, petitioners argue that the Department should not adjust these prices downward to account for the mark-up.

DOC Position: We agree with both petitioners and respondents. Hua Chin, Universal, and Overlord each reported the price paid to an affiliate which had purchased certain parts from unaffiliated suppliers. Regarding Hua Chin, it pays its Taiwan affiliate a service fee for certain component purchases to cover freight, expenses, and profit. However, company officials were unable to provide separate freight invoices showing how much of the service fee was attributable to freight, other expenses, or profit. Regarding Universal and Overlord, we found at verification that the prices reported by both companies were conservative, in that they cover the price from the unaffiliated supplier plus the affiliated supplier's freight costs and profit, if applicable. However, we do not know the exact amount of the price that is applicable to freight costs, expenses, and profit. Therefore, we made no adjustment to the transfer prices reported by Hua Chin, Universal, and Overlord, and have used them in our margin calculations.

Comment 5: Third Country Selling, General, and Administrative Expenses (SG&A)

Regarding the SG&A expenses incurred by the Hong Kong and Taiwan affiliates of respondents, petitioners argue that such expenses cannot be used to build NV because their use would result in an understatement of these expenses. Petitioners argue that the respondents also incur significant expenses selling at the factory in the PRC. Because such expenses are incurred in RMB, they cannot be combined with market-economy currency expenses incurred by the affiliates. If the Department used the affiliates' SG&A, it could not also use the PRC-incurred selling expenses. Therefore, petitioners argue that the Department must use the SG&A expenses of the Indian surrogate producers. However, petitioners argue that COS adjustments must be made for particular line items in affiliates' financial statements, such as commissions, which they argue should be considered as direct selling expenses.

Chitech argues that the Department cannot lawfully use the SG&A expenses of the offshore affiliates because these do not fit into the statutory scheme. Chitech argues that the statute requires the Department to value SG&A in a surrogate country.

DOC Position: We agree that the SG&A expenses of the offshore affiliates should not be used for calculating NV. In non-market-economy cases our practice is to value factors of production using the prices actually paid by a respondent for inputs purchased from a market-economy producer and paid for in a market-economy currency. This practice has been used primarily to value material inputs. However, at the outset of this investigation, we considered using the ''actual'' market-economy expenses of the Hong Kong and Taiwan affiliates to calculate NV. We also considered using the selling portion of the affiliates' SG&A to make COS adjustments to NV in both CEP and EP situations. On September 28, 1995, prior to the preliminary determination, we issued supplemental SG&A questionnaires to the respondents and subsequently verified the information contained in the responses. After analyzing and verifying this SG&A information, we have identified several problems, discussed below, which cause us to conclude that use of such data would not enhance the accuracy or fairness of our calculations.

The first problem involves double counting SG&A. Each of the nine respondents incur SG&A expenses at their factories in the PRC. Therefore, in addition to using the affiliates' market-economy SG&A expenses to construct NV, we would also have to use surrogate data to value the portion of SG&A incurred in the PRC. To do so, we would have to determine the appropriate portion of the surrogate SG&A ratio to use (*i.e.*, that portion concerning the PRC factory incurred selling expenses) to avoid over-valuing the SG&A element in NV. Although we can identify both the SG&A ''activities'' performed at the respondents' factories and the SG&A ''activities'' performed by the respondents' affiliates, we are not able to use this information to identify the portion of total surrogate SG&A expenses that should be used to value SG&A expenses incurred at the factories.

The second problem is in finding the appropriate cost of sales over which to allocate SG&A. The Department's practice is to express the SG&A element in NV as a percentage of the cost of sales. In order to derive this percentage from the affiliates, we used the affiliates' cost of goods sold. However, we encountered several problems with this methodology. We were not able to compute an SG&A ratio for one of the affiliates because it did not report any product costs (cost of sales) in its financial statement. In addition, the product costs of the other affiliates include both costs incurred to purchase the product from the factory in China (costs generally denominated in RMB) and costs incurred in market economies. Thus, the SG&A ratios derived from the affiliates are not ratios solely of market-economy expenses and, therefore, it may not be appropriate to use these ratios.

The Department uses actual market-economy inputs wherever possible in NME cases because we believe this enhances the accuracy of our calculations. Given the numerous difficulties described above, we do not believe the use of these expenses would enhance the accuracy of our calculations in this case. Therefore, we did not use the affiliates' SG&A information to construct NV, and instead, used the Indian producers' surrogate data. In addition, we find that the affiliates' data is also not usable for making COS adjustments as suggested by petitioners, for the same reasons discussed above (*See*, Comment 1 above. *See*, also, Concurrence Memorandum, dated April 22, 1996, for further discussion.)

Comment 6: Price Averaging

Respondents state that the Department's preliminary determination limited averaging to an inappropriately narrow range of products. Respondents claim that the illustration cited in the SAA regarding averaging NVs for ''each size of television...'' demonstrates that the Department's use of control numbers for averaging NV was too narrow of a basis. The Department should calculate average prices over ''comparable merchandise'' as defined by bicycles of identical type, wheel size, and number of gear speeds. Respondents claim that these factors were identified by the ITC as the most important determinants of price differences among bicycles. Respondents further state that petitioners used the above factors to segregate different classes of bicycles for purposes of alleging dumping margins.

Furthermore, respondents argue that control numbers are not an acceptable method for determining ''comparable merchandise'' for purposes of averaging

because of the many working components contained on a bicycle. Respondents state that using control numbers to define ''comparable merchandise'' nullifies the intent of the averaging provision because it limits its application to instances in which prices would not vary in the first place.

Petitioners contend that the SAA language cited by respondents actually expresses concern that televisions of different physical characteristics not be subject to a single average, but rather, be averaged separately. Petitioners state that the proposed regulations identify averaging groups as consisting of ''subject merchandise that is identical or virtually identical in all physical characteristics....'' Petitioners state that, for the preliminary determination, the Department followed the approach described by the proposed regulations, the statute, and the SAA in averaging products by control numbers.

Further, petitioners suggest that the Department narrow the averaging categories even further for the final determination. Petitioners state that the mass merchandisers should be segregated from the independent bicycle dealers (IBDs) in the averaging groups, based on the customer codes set forth in the computer program, in order to ensure that the sales with the same physical characteristics and same class of customer are averaged together. However, petitioners also state that, by averaging U.S. prices based on a number of discrete, physical characteristics, the Department has to a large extent ensured that it is also comparing bicycles in the same customer class because bicycles sold to mass merchandisers often will be of lower specifications than bicycles sold to IBDs.

DOC Position: We agree with petitioners. It has been long-standing Department practice to average NV using as specific a basis as available (*i.e.*, control numbers). *See, Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14065 (March 29, 1996) and *Pasta*. Respondents' argument is that we should ignore differences in material composition and/or quality level of components. Respondents would have us average the prices of a 21-inch bicycle with a chrome-molybdenum frame with the same size bicycle with a carbon steel frame. Similarly, respondents would have us average the price of a bike with an expensive, sophisticated Shimano derailleur with a bike with an inexpensive derailleur. Clearly, the different costs associated with frame material composition and componentry are important to consider in price averaging. Furthermore, we are unable to confirm petitioners' assertion that there is more than one LOT or class of customer due to lack of evidence on the record. Therefore, we averaged NV by control number, as in the preliminary determination.

Comment 7: Initiation of This Investigation

In previous submissions to the Department, respondents' claim that petitioners had access to Indian data and information on export prices of bicycles which was more accurate than the Indonesian data and U.S. retail pricing data provided in the petition. As such, they claim that, pursuant to instructions of the U.S. Court of International Trade, the Department was told to ''continue to explore'' whether the initiation of this investigation was proper and to develop ''a final reviewable record'' on this issue.

Respondents state that the Department failed to develop a complete administrative record of the circumstances surrounding the initiation of this antidumping investigation as directed by the U.S. Court of International Trade instructions in *China Bicycle Co. (Holdings) Ltd., et. al.* v. *United States, et. al.* (Ct. No. 95–11–01426). Specifically, respondents state that the Department should have reexamined the retail price calculations alleged in the petition as well as the export price information in the possession of petitioners at the time the petition was filed.

DOC Position: We disagree with respondents. Respondents' requests for termination of this investigation is based on a fundamental misunderstanding of the initiation process in the context of the overall antidumping statutory scheme. The evidentiary standard for initiation is ''information reasonably available to the petitioner supporting those allegations.'' 19 U.S.C. 1673a(b)(1)(1995). Inherent in this standard is the understanding that petitioners generally will have very limited access to foreign firms' pricing practices. As a result, petitioners will not usually be in a position to determine if foreign firms, on an overall weight-averaged basis, are dumping. Pursuant to the statute and regulations, petitioners merely have to support their dumping allegations with evidence that any sale is dumped in order for the Department to initiate an investigation. The statute assigns the task of performing the overall weight-averaged dumping calculations to the Department. The Department has the authority, pursuant to the statute, to request and analyze respondent's actual data to determine if the respondents are dumping. Respondents, in turn, have the opportunity to provide their information to demonstrate that on a weight-averaged basis they are not dumping.

This does not mean, however, that petitioners need merely allege dumping in order for the Department to initiate an antidumping duty investigation. The Department's regulations state that the petition shall contain ''[a]ll factual information (particularly documentary evidence) relevant to the calculation of the United States price of the merchandise and for the foreign market value of such or similar merchandise.'' 19 C.F.R. 353.12(b)(7). We interpret this regulation consistent with the evidentiary standards in the statute, i.e., the petition must contain evidence reasonably available in support of the allegation. Thus, all information ''relevant to the calculation of USP and NV'' is interpreted to mean evidence supporting each element of the calculation in the petition. This regulation is not interpreted as imposing a stricter evidentiary standard than is provided for in the statute. As discussed below, the petition met that statutory standard. In this case, the Department determined that the information in the petition constituted a reasonable basis upon which to initiate. Moreover, the Department carefully examined respondents' subsequent challenges to the petition data and, as a result, has made some adjustments to the petition calculations. However, none of the respondents' allegations justified termination of the investigation on the basis that the petition was inadequate.

In calculating the export prices contained in the petition, petitioners obtained U.S. retail prices and made adjustments for retailer's gross margin, importer selling expense, and movement charges, to estimate an ex-factory price. Respondents have not provided, and the Department has not encountered, any evidence to indicate that any of the retail prices and subsequent adjustments were in anyway flawed or inaccurate.

Instead, respondents' challenge rests on the fact that petitioners did not include in the petition the actual export price for one of the petitioner's few purchases of Chinese bikes. However, as discussed above, the fact that some sales may not have been sold at LTFV does not invalidate the petition evidence that other sales were. In addition, these purchases were not of the same types of bikes upon which the petition calculations were based and, therefore,

do not challenge the data upon which the dumping allegation was based.

Respondents' further argument that certain FOB Hong Kong prices contained in the petition should have been used instead of the retail price information is not persuasive. As petitioners point out in their submissions, there are significant problems with these figures, not the least of which is that the record does not indicate the models with which those prices are associated.

On the NV side of the margin allegation, the Department examined respondents' allegations that the factors of production were improperly valued. Respondents argued that petitioners should and could have reasonably provided data from India instead of Indonesia because the Indian data was reasonably available, and in respondent's view, India was a more appropriate surrogate. Once again, respondents' argument is unpersuasive. The statute does not require petitioners to investigate and supply in the petition all possible surrogate data from all potential surrogate countries. Petitioners are required to base their factors of production analysis on values in an appropriate surrogate country as defined by the statute. Petitioners selected Indonesia as the primary surrogate based on their analysis that Indonesia was economically comparable and a significant producer of bikes. The Department reviewed their analysis and determined that Indonesia was an appropriate surrogate country for the basis of a petition. In fact, when the Department conducted its own surrogate country analysis, it determined that both Indonesia and India were appropriate surrogate countries. Although the Department did ultimately select India as the primary surrogate (*see,* Factors Valuation Memo dated November 1, 1995), that does not invalidate Indonesia as an appropriate surrogate. Indeed, in this final determination, as in the preliminary determination, the Department resorted to Indonesian values when Indian values were not available.

Respondents also challenged the validity of certain factor values, including the Indonesian depreciation, interest, and profit (value added) figures. During the course of the investigation, updated information demonstrated that the Indonesian depreciation, interest and profit percentage used in the petition was aberrant and, as a result, the Department adjusted these Indonesian figures. The original depreciation, interest, and profit figures in the petition was substantiated by a 1992 Indonesian Survey of the Indonesian bike industry. The updated figures for 1993, which demonstrated that the 1992 figure was aberrational, were not available at the time of filing. Thus, the 1992 figure was relevant information reasonably available to the petitioner at the time of filing and provided a valid basis upon which to initiate. We further note that the adjustment to the depreciation, interest and profit figures did not eliminate the petition margins. The Department was able to corroborate the other petition data challenged by the respondents and, thus, made no adjustment to them. *See, Facts Available* section above.

Finally, contrary to respondents' argument, the Department's actions have been consistent with its statutory obligations as noted by the Court during the hearing for respondents' interlocutory appeal of the initiation issue. In reaching its final determination, the Department has examined all of the submissions of both respondents and petitioners on this subject and determined that none of the information or arguments submitted by respondents provide a basis upon which the Department should initiate a further investigation of the petition or terminate the investigation.

Comment 8: China-Wide Rate—Adverse Facts Available

Respondents argue that the Department resorted to sampling in this investigation and, therefore, the Department should apply the provisions of Section 735(c)(5) of Act to calculate an antidumping duty rate for all uninvestigated firms. Section 735(c)(5) of the Act, ''Method for determining all other rate,'' provides that this rate should be the weighted average of margins established for exporters and producers investigated individually, excluding margins that are *de minimis* and margins that are based on ''facts available.'' Respondents assert that the law precludes the Department from applying punitive rates to uninvestigated firms, except in certain limited circumstances that are not applicable in this investigation. According to respondents, the Department's preliminary determination violated Section 735(c) of the Act because it based the ''all others'' rate for uninvestigated firms on adverse information from the petition.

Furthermore, respondents contend that the fact that this investigation involves a non-market economy does not change the prohibition against the use of punitive rates for uninvestigated firms. Respondents argue that the Department has never informed the Chinese government, industry representatives or any uninvestigated exporters that they have failed to cooperate. According to respondents, uninvestigated firms in non-market-economy cases are entitled to the same fair treatment as uninvestigated firms in market-economy cases. Respondents state that neither the sampling provision of the Act nor Section 735(c) provides an exception for non-market economies. Moreover, respondents argue that the Court of International Trade has directed in *UCF America, Inc.* v. United States (No. 92–01–00049, Feb. 27, 1996) (*UCF*) that the ''all others'' calculation be applied without distinction to market or non-market-economy investigations.

Petitioners argue that, contrary to respondents' claim, the Department did not apply an ''all others'' rate. Rather, petitioners note that the Department applied a ''China-wide'' rate, in accordance with its well-established methodology in NME cases, including basing the rate on adverse facts available.

DOC Position: We disagree with respondents. Respondents' statement with respect to the Department's method of respondent selection is incorrect. As noted in the respondent selection memorandum (*see* the June 30, 1995, Memorandum to Barbara R. Stafford), the Department did not resort to sampling when choosing mandatory respondents for this investigation. Accordingly, the sampling provision of the Act regarding uninvestigated firms does not apply here.

The Department acknowledges a recent decision of the Court of International Trade, *UCF America Inc.* v. *United States,* Slip Op. 96–42 (CIT February 27, 1996), in which the Court affirmed the Department's remand results for reinstatement of the relevant cash deposit rate, but expressed disagreement with use of the ''PRC-wide'' rate as the underlying basis for reinstatement.

The Court suggested that the Department lacks authority for applying a ''PRC-wide'' rate in lieu of an ''all others'' rate. We note, however, that section 777(A)(c) requires the Department to determine individual dumping margins for each known exporter or producer. Pursuant to this authority, the Department implements a policy in NME cases whereby all exporters or producers are rebuttably presumed to comprise a single exporter under common government control, the ''NME entity.'' The Court has upheld our NME policy in previous cases. *See e.g., UCF America, Inc.* v. United States, 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp. V. United States,* 841 F.

Supp. 1255, 1266–67 (CIT 1993); *Tianjin Machinery Import & Export Corp. V. United States*, 806 F. Supp. 1008, 1013–15 (CIT 1992).

The ''NME-wide'' rate is consistent with section 735(c)(1)(B)(i)(I). This provision directs the agency to assign a dumping margin for each exporter or producer individually investigated. As discussed above, in NME cases, all producers and exporters comprise a single exporter. Thus, we assign a single NME rate to the NME entity just as we assign a single rate to exporters or producer in a market economy that are deemed to comprise a single enterprise. Also, as in all cases in which multiple exporters are treated as a single entity, the response normally must include data for all companies that comprise the collapsed entity. If any company fails to respond, the entire entity receives a rate based on facts available.

To qualify for a separate rate, an NME exporter or producer must provide a complete questionnaire response, including evidence showing both *de jure* and *de facto* absence of government control. *See Silicon Carbide*. Until such evidence is presented, a company is presumed to be part of the NME entity and receives the ''NME-wide'' rate. Consequently, whenever the NME enterprise has been investigated or reviewed, calculation of an ''all others'' rate under section 735(c)(1)(B)(i)(II) is unnecessary because all exporters or producers either qualify for a separate company-specific rate, or are part of the NME enterprise, and receive the ''NME-wide'' rate. Thus, normally in an NME case, there can be no exporters or producers who have not been investigated or reviewed. Only when the respondents in an investigation account for all exports and all respondents qualify for a separate rate is an ''all others'' rate required. *See PVA*. Under those circumstances, the NME entity has not been investigated and, pursuant to the statute, would be entitled to an ''all others rate.''

Application of our NME policy to the instant investigation is consistent with the Department's standard practice in NME cases. The official copy of the questionnaire was sent to MOFTEC, an agency of the PRC government. The cover letter of the questionnaire stated our long-standing policy that the Department presumes that a single antidumping margin is appropriate for all exporters in an NME country. However, because of the large number of companies potentially comprising the NME entity, we requested that the response include only the nine largest companies. We issued the questionnaire to those nine largest exporters. We also notified the government that we might be able to investigate a limited number of voluntary respondents wishing to claim separate rates treatment, but only if they submitted complete questionnaire responses. We provided courtesy copies of the questionnaire to law firms and companies who contacted us. In addition, the cover letter also laid out our policy on voluntary respondents (see below), and we enclosed with the questionnaire a copy of our respondent-selection memorandum.

Regarding our position on voluntary respondents, the Department informed respondents at the onset of this investigation that due to a lack of resources, we would only be able to investigate nine individual producers/exporters. We addressed the issue of voluntary responses in our respondent-selection memorandum, stating we would investigate and verify voluntary responses on a ''space available'' basis, up to the number of any non-responding firms from the list of the nine mandatory respondents. We further indicated that if the number of voluntary respondents was larger than the Department could investigate, we would select randomly from the pool of voluntary respondents the additional exporters to be investigated.

On August 7, we received responses from only three of the nine exporters named as mandatory respondents. We also received only six full voluntary questionnaire responses. All of the participating companies established that they qualified for separate rates and have received their own dumping margins for purposes of the final determination. Because the six non-responding mandatory respondents are presumed to be part of the single NME enterprise, that entire NME enterprise is deemed to be uncooperative and it received a rate based on adverse facts available. Any company that did not submit a full questionnaire response, including information establishing entitlement to a separate rate, is also deemed to be part of the NME enterprise and, therefore, is subject to that rate.

Comment 9: *China-Wide Rate—Submission of Section A by Exporters*

Respondents contend that, even if the Department finds that the amendment of Section 735(c) of the Act does not change the Department's practice in NME cases, the presumption of control has been rebutted successfully by a group of 12 uninvestigated Chinese exporters. They argue that these 12 exporters have cooperated with the Department, and have expressed their intention to provide any information the Department requires in order to determine a separate rate for them. Respondents believe that it would be unfair and contrary to law for the Department to apply punitive margins against the 12 uninvestigated companies.

In addition, respondents argue that the Department should accept as timely submissions made by the 12 exporters showing their entitlement to a separate rate. According to respondents, these submissions were timely because the Department did not establish any specific deadline for the submissions and, therefore, the general deadlines of 19 C.F.R.353.31 should apply.

Even assuming the 12 exporters' voluntary submissions were untimely, respondents argue that the Department has no grounds to use adverse information against these companies. Respondents assert that Section 735(c)(5) of the Act does not require a company to request to be a voluntary respondent in order to avoid the application of an adverse rate. Furthermore, respondents argue that Section 735(c) of the Act and the Court's ruling in *UCF* require that these exporters receive a rate based on the weighted-average margin of investigated companies.

Finally, respondents argue that the lack of guidance in this investigation stands in contrast to the instructions issued in the antidumping duty investigation on honey from the PRC (*see, Preliminary Determination of Sales at Less Than Fair Value: Honey from the PRC*, 60 FR 14725, March 20, 1995, (*Honey*)) where the Department requested MOFTEC to transmit the questionnaire to ''all companies that process honey for export to the United States and to all companies that were engaged in exporting honey to the United States during the period of investigation. . . .'' Respondents claim that the Department did not issue these instructions in the instant investigation.

Petitioners assert that, contrary to respondents' claim, the 12 exporters have not cooperated in this investigation because they ignored the Department's clear directive and submitted only partial and untimely questionnaire responses. In addition, petitioners assert that respondents have mischaracterized the Court's decision in *UCF*, stating that the Court in that case did not rule on the issue of whether the Department is allowed to use an adverse ''PRC-wide'' rate in an investigation, but rather whether, in the course of an administrative review, the Department was required to apply to unreviewed PRC exporters the ''all others'' rate established in the original investigation. In addition, petitioners note that *UCF*

concerned pre-URAA law. Petitioners assert that under the URAA, the Department may apply a China-wide rate to companies that have not established their entitlement to separate rates in an investigation.

DOC Position: We disagree with respondents. The information submitted by the 12 exporters at issue was not a sufficient basis upon which the Department could determine that these companies should receive rates separate from the China-wide rate. The companies merely provided volume and value data through a China Chamber of Commerce. This submission did not include a request for separate rates treatment from any of these exporters, nor did it provide information sufficient to demonstrate that they were entitled to separate rates. Moreover, although these exporters subsequently filed full Section A questionnaire responses which included explicit claims for separate rates treatment, these Section A responses were submitted two months late. The cover letter to the questionnaire clearly identified the deadline for submission of section A responses from any party wishing to participate in the investigation as August 7, 1995. Because no request for extension of this deadline was made by these parties, their Section A responses were untimely under 19 C.F.R. 353.31.

Furthermore, in order to perform a separate rates analysis, the Department needs to have not only the Section A separate rates questionnaire response but also complete pricing data from each exporter. The separate rates analysis focuses on the relationships between exporters and the government, export prices and who sets them, and control over export revenue. While the Section A response may contain information on the ownership and control structures of the entities being examined, the Department must also have complete pricing data in order to analyze whether export pricing and business decisions of a NME exporter are being made at the direction of the NME government. As we stated above, the Department has never granted a separate rate to any exporter without first receiving a full questionnaire response. *See e.g.*, *Honey*.

Therefore, by not submitting complete questionnaire responses in a timely manner, these exporters failed to provide the Department with the information necessary to perform a separate rates analysis. In addition, by not placing the necessary pricing information on the record, petitioners were denied the opportunity to examine the responses and comment on whether it was appropriate for these exporters to obtain separate rates. As a result, the 12 companies at issue do not qualify for separate rates and therefore are considered to be part of the single NME enterprise.

Similarly, the exporters' argument that the Department should base their margin on a weighted-average of the margins calculated for the responding companies is without merit. *See* Comment 8. The only situation where the Department would apply a weighted-average margin to an NME exporter not specifically investigated is one in which the exporter provides a complete questionnaire response and makes a claim, and establishes eligibility, for separate rates. (*See e.g.*, *Honey*.) In *Honey*, unlike in this case, the Department received 28 *complete* questionnaire responses. The Department only had the resources to fully analyze and verify four of those companies selected from the pool of exporters which submitted complete responses. Thus, petitioners had the opportunity to comment on all 28 responses. The Department applied the weighted-average rate calculated for the four selected respondents to the other 24 exporters which the Department did not have the resources to fully investigate. The Department explained that:

> This change in methodology was necessitated by the particular circumstances of this case. The parties who responded but were not analyzed have applied for separate rates, and provided materials for the Department to consider in this request. Although the Department is unable, due to administrative constraints, to consider the request for separate rates status, and to calculate a separate rate for each of these named parties, there has been no failure on the part of these firms to provide requested information. Because it would not be appropriate for the Department to refuse to consider an affirmative documented request for an examination of whether these companies were independent of any non-respondent firms and then assign to the cooperative firms the rate for the noncooperative firms, which in this case is an adverse margin based on best information available, the Department has assigned a special single rate for these firms.'' *See*, *Honey* at 14729.

In this case, as discussed above, the 12 companies at issue did not provide complete questionnaire responses and therefore do not qualify for separate rates.

Regarding the exporters' arguments that the Department did not provide sufficient guidance on this issue, we find that this argument is contrary to the evidence in the record. In the cover letter to the questionnaire and respondent selection memorandum, we stated explicitly the Department's long-standing practice of treating all NME exporters or producers as part of the NME government unless otherwise demonstrated. In addition, all communications from the Department to the PRC government and counsel for respondents clearly states all deadlines and instructs respondents to contact the Department if they have any questions regarding deadlines or any data requested. Courtesy copies of the questionnaire, the cover letter, and the respondent selection memorandum were provided to counsel for the 12 exporters. The Department, with the *Honey* case in mind, further indicated in the respondent selection memorandum that, even though we did not have the resources to investigate more than nine companies, if mandatory respondents did not respond we would be able to examine additional exporters randomly selected from the voluntary responses received. In the respondent selection memorandum we clearly stated that if we received more responses than we could reasonably investigate and verify we would have to address the issue of what rate to apply to the responses we were unable to investigate. However, in this case, we were able to investigate and verify all of the responses received and, accordingly, did not have to address this issue.

By not providing complete questionnaire responses, the 12 exporters did not make themselves available for analysis in the event that a mandatory respondent did not respond. It was not reasonable for those exporters at issue to assume that they should receive special treatment separate from other companies presumed to be part of the NME entity when the record demonstrates that they were informed of the consequences of not requesting a separate rate in a timely manner.

Finally, the exporters' assertion that they provided all the information requested by the Department and thus qualify for a rate other than the country-wide rate misinterprets the Department's non-market economy single entity presumption. As explained above, the Department assumes that all companies are part of the NME entity unless the companies satisfy the Department that they qualify for a separate rate. The burden is on the exporters to come forward and demonstrate that they are entitled to separate rates. It is not incumbent upon the Department to ask for separate rates responses, as these exporters' arguments seem to suggest. It is up to each company to decide whether it wishes to seek a separate rate. In this case, these

companies did not submit a separate rates claim until well after the deadline for doing so had passed. Based on the above analysis, we are treating these exporters as part of the government controlled entity.

Comment 10: Calculation of Antidumping Rate for Uninvestigated Exporters on Facts Available in the Petition

If the Department bases the antidumping rate for uninvestigated exporters on facts available in the petition, respondents assert it should use only Indian surrogate values for overhead, SG&A, and profit. Respondents argue that the Department should not use any of the Indonesian surrogate values used in the petition because the Department has rejected Indonesian in favor of Indian surrogate values. Respondents argue that the Department had no justification for using the rejected Indonesian information for these cooperating exporters, and that for purposes of the final determination the Department should apply the most recent Indian data in any calculations based on facts available for other uninvestigated shippers.

Petitioners agree with respondents that in the event the Department does apply facts available to these exporters, it should use only Indian surrogate values for overhead, SG&A, and profit.

DOC Position: As discussed above in the *Facts Available* section, Indonesia is an appropriate surrogate and, with the exception of depreciation, interest and profit, the Indonesian factor values in the petition have been corroborated. Therefore, the petition rate, as adjusted, is appropriate for use as adverse facts available.

Comment 11: Business Taxes Paid on Exports

At verification, we found that Tandem Hong Kong (Tandem HK), Chitech's Hong Kong affiliate, pays a fee to the Shunde government for operating within the Shunde township. This fee is based on a percentage of the value of all sales.

According to petitioners, this fee should be considered an export tax and deducted from USP, in accordance with 772(a)(2)(B) of the Act.

Chitech maintains that the Department should make no adjustment for this fee because the statute requires the Department to disregard the costs of goods and services provided by NME suppliers. In addition, Chitech points out that the Department has never treated payments to the PRC government as selling expenses.

DOC Position: We disagree with petitioners that this fee should be considered an export tax or that it should be deducted. In fact, our analysis of Chitech's questionnaire response and review of this expense at verification suggests that this fee is more analogous to a business license fee or an income tax, rather than a tax levied solely on exports. We do not adjust for intra-NME transfers.

Factor Valuations

Comment 12: Indian Producer Financial Statements

Petitioners argue that the Department should not use the financial reports of Hero or Atlas because, according to the publication *Cycle Press*, Hero and Atlas produce primarily roadster-type bicycles rather than the MTB and ATB bicycles which PRC producers ship overwhelmingly to the United States. In addition, Hero and Atlas only export 10 and 13 percent of their production, respectively. Petitioners point out that under the Statute and Department's proposed antidumping regulations, the Department is required to use surrogate value data from only those market-economy firms that are significant producers of merchandise that is identical or the most similar to that produced by the respondents under investigation. Therefore, petitioners maintain that the Department should use only the financial reports of Gujarat, TI Cycles (TI) and Roadmaster because these companies are largely export-oriented companies and predominately manufacture MTB and ATB bicycles.

Respondents maintain that the Department should use the combined financial reports of Hero, Atlas and Gujurat. Respondents point out that the Department cannot use the financial data of Gujurat without using the data of Hero and Atlas because Gujurat (1) is considered a ''sick industrial'' company by the Indian government; (2) receives subsidies from the Indian government; and (3) is not representative of the Indian industry as a whole.

Respondents contend that the Department should reject TI's financial report because TI only receives 50 percent of its income from the sale of bicycles and because it produces a wide range of other products, notably steel tubes. Respondents also maintain that the Department should not rely on Roadmaster's financial report because the report is not contemporaneous with the POI and because the Department has financial reports it can use which are contemporaneous with the POI. Respondents also argue that the Department should ignore the submitted statement of a Hero company official because (1) it is not public information; (2) it lacks credibility; and (3) it is self-serving.

DOC Position: We disagree with respondents and petitioners and have used the financial statements of the four Indian producers which are contemporaneous with the POI—Atlas, Hero, Gujurat, and TI. This case is unique in that there is a wealth of high-quality surrogate data, particularly with respect to factory overhead, SG&A and profit. The parties have argued, for a variety of reasons, that we should reject certain companies' from consideration. However, we find that on balance, the financial statements of four of the India surrogate producers are usable for our factor valuations. We rejected the fifth company's report, Roadmaster, because it was not contemporaneous with the POI and because we already have four good sources which contain data within the POI.

Regarding similarity of the merchandise produced by the Indian producers to that of the PRC respondents, we find insufficient evidence that any producer *clearly* produces the most comparable merchandise. It is possible that the Hero, Atlas and Gujurat models shown in *Bicycle Guide* may not be of as high a quality as those models produced by TI (as alleged by petitioners). However, these models do contain basic components, designs and features associated with BMX and ATB models which resemble, or are exactly the same, as those in the PRC models produced by respondents. Therefore, based on data in *Cycle Press* and *Bicycle Guide*, we conclude that all five companies to some extent manufacture the type and quality of bicycles produced by the respondents during the POI.

With regard to the issue of who exports the highest percentage of its merchandise, we disagree with petitioners that the amount of exported production of each Indian producer is a clear indication of which company is a significant producer of the merchandise under investigation. The information in *Cycle Press* does not allow the identification of the specific quantity of bicycle types exported by each Indian producer for overseas sale. However, we can establish from this publication that each of the five companies exports its full line of products to foreign markets. Although we do not know for certain whether these companies export all of the BMX, ATB, and/or MTB bicycles that they produce, it is reasonable to conclude that these models produced in India are designed primarily and/or exclusively for export markets and that the number of these bicycles sold in

India's domestic market is minimal. Therefore, there is no basis in the record to conclude that one company produces more comparable merchandise. As such, this data is not relevant to our choice of surrogate values.

With regard to the financial condition of the companies, Gujurat was not profitable during the POI based on its financial report. We know that the other Indian producers were profitable based on their financial reports. Whether or not a company is profitable, however, is not necessarily a reason for rejecting that company's data for purposes of surrogate valuations for factory overhead and SG&A expenses. *See, also* Comment 16.

In addition, we disagree with respondents that TI's data is unusable because it produces some non-subject merchandise. The other Indian producers also produce non-subject merchandise, albeit to a lesser extent. Most Indian producers, like TI, produce steel tubes (a bicycle input). Given these facts, we cannot conclude that the use of TI's data is inappropriate.

Based on the above analysis, we have used the 1994–1995 financial data of Hero, Atlas, TI, and Gujurat. We have excluded from our analysis Roadmaster's data because it is not contemporaneous with the POI and other contemporaneous data is available.

Comment 13: Average Method for Calculating Surrogate Percentages

Respondents claim that the Department should calculate a weighted-average factory overhead, SG&A and profit of each Indian producer. Respondents contend that, unlike in *PVA*, there is a clear correlation between the costs and production quantities for all of the Indian bicycle producers.

Petitioners maintain that using a weighted- average method would imply that the production experience of larger producers like Hero and Atlas would be more relevant than that of smaller producers like Gujurat or Roadmaster. Instead, petitioners claim that it is the experience of the smaller producers that is more representative of, and better reflects, the factors of production for the products made by the PRC respondents. Petitioners also point out that in *PVA*, the Department found no indication that one factor (*i.e.*, sales volume or production) was so important that it would require the use of weighted-average methodology.

DOC Position: We agree in part with petitioners. The use of production quantities from the financial data to derive weighted-average percentages will take into account the differences between the production capacity and sales associated with the largest Indian producers (Hero, Atlas and TI) and the capacity and sales of significantly smaller operations such as Gujurat. The respondents show data suggesting the factory overhead percentages for the largest producers, Hero and Atlas, are measurably lower than the percentages for the significantly smaller producer (Gujurat) and that there may be inverse relationship between the factory overhead, SG&A and profit ratios and production. However, a myriad of other factors could also be affecting these ratios. For example, the age of the factory, the quality of the merchandise being produced, and the relative capital intensivity of the manufacturing process could all affect the ratios under consideration. Moreover, not all of the PRC respondents are large-scale producers like the Indian producers Hero and Atlas. In fact, we find that the total production of the largest PRC producer is significantly less than the total production amount of either Hero or Atlas.

Finally, we do not know the relative amount of MTB or ATB production included in each Indian producer's total bicycle production, as compared with the production of utilitarian roadsters. This is important because the PRC respondents produce predominantly MTB or ATB bicycles for export to the United States.

Given these facts, there is no basis to conclude that a weighted-average calculation would be a more accurate measure of the costs of Indian surrogate producers of comparable merchandise. Therefore, we used a simple average of these financial statements consistent with our normal practice because, barring evidence to the contrary, we assume that all of these surrogate values are equally representative of the surrogate experience.

Comment 14: Calculating Surrogate Percentages from TI's Financial Data

Respondents maintain that the Department should exclude from TI's financial report the expense data separately reported for two TI subsidiaries which do not produce bicycles and which are consolidated into TI's report. Alternatively, respondents argue that the Department should use a ratio based on the amount of bicycle sales in terms of total sales to determine the allocable factory overhead, SG&A, and profit associated with bicycles exclusively. Finally, respondents urge the Department to remove the excise duty amounts from TI's SG&A expense calculation because the tax is a neutral item, bicycles are exempt from the tax, and Indian law allows any Indian producer to recover this duty amount.

Petitioners maintain that TI's financial data reasonably reflects the performance of its bicycle division and is corroborated by the similar financial experience of other Indian producers such as Gujurat and Roadmaster. Moreover, petitioners maintain that the Department should not make an adjustment to the expense data in TI's financial report because TI's report is unconsolidated and therefore does not include expense data from its two subsidiaries. Finally, petitioners maintain that the Department should not exclude the excise duty from the factory overhead or SG&A calculation because TI records this expense in its financial report as an expense and that other Indian producers such as Hero, Roadmaster and Gujurat account for the excise duty liability in their financial reports by treating the duty as an expense.

DOC Position: Respondents' claim that we should deduct the ''separately reported'' expenses of TI's subsidiaries is unsupported. We examined the financial statements for TI's two subsidiaries and found that expenses of TI's subsidiaries are not provided separately. In addition, there is no evidence establishing that TI's report is a consolidated statement that includes the subsidiaries. Indian Generally Accepted Accounting Principles (GAAP) do not require Indian companies to consolidate financial reports. Moreover, it appears from PI we obtained that, in general, Indian companies do not prepare consolidated financial statements (*See World Accounting* (1995) (page 44) and *International Accounting Summaries* (1993) (page 5)). Therefore, we are using the data in TI's financial report without any adjustment for the subsidiaries' expenses.

Regarding the excise tax amount, we are removing the duty and/or tax amount listed in TI's financial report when calculating its surrogate percentages because it is the Department's practice to use, if possible, tax exclusive values as surrogates in NME cases (*See, Final Determination of Sales At Less Than Fair Value: Disposable Pocket Lighters from the PRC*, 60 FR 22359 (May 5,1995) and *Final Determination of Sales At Less Than Fair Value: Sebacic Acid from the PRC*, 59 FR 280053 (May 31, 1994)). Moreover, we have found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the

producer by the Indian government (*See, Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994)). Therefore, we have not only removed the amount of excise duty and/or tax from TI's financial data, but also from the financial data of the other Indian producers, where possible, which we have used to calculate surrogate percentages.

Comment 15: Gujurat's Profit Percentage

Petitioners maintain that the Department should not use the profit percentage derived from Gujurat's financial data in the overall profit percentage calculation because Gujurat's profit percentage is negative.

Respondents assert that the Department should calculate a weighted average profit percentage using Gujurat's actual financial data.

DOC Position: Consistent with how constructed value (CV) is calculated in market-economy cases, we conclude that in selecting a surrogate value for profit under section 773(c)(1), it is inappropriate to use data from sales made below the cost of production. Gujurat's negative profit indicates that the company may be selling its product below the cost of production. Therefore, we have treated Gujurat's negative profit ratio as zero, but have included the zero amount when calculating the overall surrogate profit average.

Comment 16: Treatment of Pre-Painting Chemicals

In the preliminary determination, we valued all chemicals used to produce the subject merchandise because we considered such materials to be direct inputs and not part of factory overhead. Respondents argue that the chemicals it uses to pre-treat parts prior to painting are not material inputs, but rather factory overhead costs (i.e., consumables). Respondents point out that it is Department practice to treat such chemicals, which act as a cleaning detergent, as part of factory overhead because these chemicals are not physically incorporated into the subject merchandise (*see Final Results of Administrative Review: Heavy Forged Handtools, Finished or Unfinished, With or Without Handles, from the People's Republic of China*, 60 FR 49251 (September 22, 1995)(*Hand Tools*). Alternatively, respondents state that an amount for ''consumables'' is noted in the financial reports of the Indian producers used to calculate percentages for factory overhead, SG&A and profit and that if the Department includes the ''consumables'' amount in its factory overhead calculation, then the Department should not value the chemical inputs reported in the Section D database because it would be double-counting.

Petitioners maintain that the chemicals the respondents use are not detergents applied to the parts to remove oxidation or dirt but chemicals used to pre-treat parts prior to painting which are incorporated into the subject merchandise. Therefore, petitioners maintain that these chemicals are direct materials and should be valued accordingly. Petitioners are silent on whether valuing the chemicals would be double-counting if the Department included in its factory overhead calculation an amount for ''consumables.''

DOC Position: We agree with petitioners. We examined all of the respondents' production processes at verification and found that the chemicals in question are essential for producing the finished product and are incorporated into the product (*i.e.*, in pre-treating the components, the chemicals permeate the components and are not completely washed off). These chemicals appear to be significant inputs into the manufacturing process rather than miscellaneous or occasionally used materials, *i.e.*, cleaning supplies which might normally be included in consumables. Moreover, the chemicals which we would be valuing are chemicals such as hydrochloric acid, sulfuric acid, and caustic soda (to name a few) which we have routinely valued in prior NME cases involving the production of non-chemical finished products (*e.g.*, lock-washers). Therefore, we treated these chemicals as direct material inputs. We considered that such significant material inputs would not normally be considered consumables and, therefore, no double counting would occur.

Comment 17: Fasteners and Chainguard Screws

In the preliminary determination, we valued fasteners and chainguard screws using an average import value from the HTS subcategory ''other screws and bolts with nuts or washers threaded'' from *Monthly Statistics* (April 1993–March 1994).

Respondents claim that the average value we used from *Monthly Statistics* was aberrational as it is based on a basket category of import statistics which includes other products. Therefore, respondents urge the Department to use Indonesian surrogate values for nuts and bolts. The respondents cite *Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers From the People's Republic of China*, 60 FR 54472, 54477 (October 24, 1995) (*Drawer Slides*) and the *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the PRC*, 58 FR 7537, 7540 (1993) in support of their argument.

Petitioners claim that the respondents have not demonstrated that the average value the Department used from *Monthly Statistics* is aberrational, or why the statistical category for ''other screws and bolts with nuts or washers threaded'' is not the best information available. Moreover, petitioners assert that the per kilogram average price of the material to value the chainguard screws and fasteners should not be used without accounting for the labor, overhead, and other costs necessary to produce the finished part, *e.g.*, a screw. Therefore, petitioners contend that the Department should continue to use the value from *Monthly Statistics* to value chainguard screws and fasteners.

DOC Position: We agree with respondents that the value used in the preliminary determination was a basket category. We have recently found two sources of Indonesian PI which are more specific to these two different inputs, fasteners and screws. These sources are contemporaneous with the POI and are more specific to the factor inputs we are trying to value. Accordingly, we used these sources to value fasteners and screws for purposes of the final determination. *See*, Factor Valuation Memo dated April 22, 1996.

Comment 18: Labor

In the preliminary determination, we used a 1990 labor rate applicable for laborers working in the Indian transport equipment sector noted in *Yearbook of Labor Statistics (YLS)* to value skilled, unskilled and indirect labor. Respondents claim that the Department should use instead the labor rate applicable for Indian laborers working in the sector called ''manufacture of fabricated metal products, except machinery and equipment.''

DOC Position: We disagree with respondents. We have no reason to believe that the Indian transport equipment sector does not include bicycle production and, therefore, that the rate we used in the preliminary determination does not capture the wages paid to the laborers in the Indian bicycle industry.

Fabricated metal products could include a host of products other than bicycles. Moreover, since the respondents have not provided concrete evidence that bicycle production is included in the fabricated metal

products sector or not included in the transport equipment sector, there is no basis to change our calculation.

Common Company-Specific Comments

Unreported Sales

Comment 19: Unreported EP Sales—CBC

At verification, we discovered that CBC failed to report a small number of EP sales to the United States. Petitioners argue that the Department should base the final margin for these sales on facts available. They state that CBC had sufficient time to amend the U.S. sales listing, but did not do so. As facts available, they advocate using the highest reported amounts for charges and expenses contained in CBC's EP sales listing. (The price information is contained in a verification exhibit.)

CBC agrees that the Department should apply facts available to these sales. However, CBC maintains that the Department should use the average, rather than the highest, amount for charges and expenses that CBC reported for its other EP sales. CBC states that the sales in question were omitted from the sales listing because the company had to file its response prior to their shipment. Therefore, CBC characterizes this omission as attributable more to the company's attempt to comply with the response deadline rather than as a deliberate failure to respond to a Departmental request.

DOC Position: We disagree with both parties. In an investigation, the Department is not required to examine every sale made during the POI. In this case, the sales at issue represent an insignificant portion of CBC's total sales by volume and value. Consequently, we have excluded them for purposes of our final determination.

Comment 20: Unreported EP Sales—Chitech

The petitioners argue that the Department should assign the highest margins to EP sales not included in the sales database because of Chitech's date of sale methodology. The petitioners argue that these unreported sales are subject to this investigation because even though the invoice date is outside the POI, the sales were actually confirmed and booked during the POI.

The respondent points out that it consistently applied its date of sale methodology to report its POI sales of subject merchandise. In addition, the respondent points to its submissions showing where the terms of sale changed from the order up to the invoice. Respondents note that the alternative date of sale proposed by the petitioners is merely the date that the respondent receives payment from its bank.

DOC Position: We disagree with petitioners that there were any unreported EP sales. Chitech consistently applied our date of sale methodology for reporting its U.S. sales of subject merchandise during the POI. Chitech used the invoice date to report its POI sales because the terms of sale can and do change up to the invoice date. We examined Chitech's date of sale methodology at verification and found no discrepancies.

Comment 21: Unreported CEP Sales—Dynacraft

The petitioners argue that Dynacraft should not be rewarded for its failure to report these sales and suggest that these sales should be based on adverse facts available.

The respondent points out that the Department's practice is to generally disregard an inadvertent omission of a minor amount of sales. Alternatively, if the Department elects to calculate margins on these sales, the Department has all of the required information (except for credit expenses) to calculate margins using actual and verified expense data for these sales.

DOC Position: Dynacraft inadvertently omitted these sales from its U.S. sales database because it had incorrectly considered this group of sales as being non-subject merchandise produced in Taiwan. We did not collect the sales invoices for these unreported sales at verification. The sales were all for one specific model sold at the same price. This model also happens to be one of the higher priced models reported by Chitech. We determined that including these sales in our calculations would have no effect, or a negligible effect, on the margin calculated for Chitech. Moreover, this situation does not appear to warrant the use of adverse facts available. Therefore, we have not included these sales in our analysis.

Warranty and Bad Debt Expenses

Comment 22: Accrued vs. Actual Warranty and Bad Debt Expenses

Giant USA (GUSA) sets aside a budgeted amount for warranty and bad debt expenses each fiscal year and reported the actual amount in its section C database. The petitioners argue that the Department should use these accrued amounts as the basis for calculating these expenses rather than the actual expenses GUSA incurred in warranty and bad debt expenses during the POI because the accrued amounts are based on the historical experience of the company and are not influenced by distortions such as fluctuations in volumes of sales.

Giant argues it is Department practice to deduct actual, rather than accrued, expenses from USP. The respondent cites to *Final Results of Administrative Review: AFBs (Other Than TRBs) and Parts Thereof From France,* 60 FR 10900, 10917 (February 28, 1995) and *Final Results of Administrative Reviews: Roller Chain, Other Than Bicycle, From Japan,* 57 FR 46535 (October 9, 1992) in support of its argument. In addition, respondent contends that the Department should treat GUSA's bad debt expenses as indirect selling expenses, in accordance with its normal practice. In support, respondent cites *Certain Cut-to-Length Carbon Steel Plate From Germany; Final Results of Antidumping Administrative Review,* 61 FR 13834 (Mar. 28, 1996).

DOC Position: With respect to warranty expenses, we disagree with respondents that we always use actual expenses. Our practice is normally to use historical expenses unless our analysis of the actual expenses suggests that historical expenses are inappropriate. (*See, Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan,* 52 FR 44171 (November 18, 1987)). Giant's accrued amounts are reflective of historical experience. As such, we used the accrued amounts. The actual POI amounts only reflected a short period of GUSA's warranty experience, whereas the accrued expenses were reflective of Giant's actual historical experience. Regarding the issue of whether bad debt should be classified as a direct or indirect expense, we agree with respondent. Accordingly, we have classified bad debt as an indirect selling expense and have treated it as such for purposes of the final determination.

Comment 23: Warranty Expenses

Petitioners argue that the Department should use the historical average warranty costs incurred by Motiv, CATIC's affiliated reseller in the United States, rather than the reported POI costs as the basis for its warranty expense adjustment. Petitioners assert that Motiv's POI warranty costs may be aberrational and historical warranty costs take into account fluctuations in sales volume.

Respondent argues that because petitioners use a historical average warranty amount reported as a dollar amount per bicycle, and the reported POI warranty costs are reported as a percentage of each gross sales dollar, they are making an apples to oranges comparison. Respondent states that,

although Motiv's total warranty costs change from year to year, there is nothing on the record to suggest that there is any fluctuation in Motiv's historical warranty costs as a percentage of gross sales dollars. Moreover, respondent argues that to impute to each bicycle the same per-unit cost would create distortions because Motiv's other expenses are allocated by value, not by volume.

DOC Position: We agree with petitioners. Our examination of Motiv's historical warranty costs indicate that the reported POI warranty costs may not be reflective of what Motiv's true warranty expenses will be on its POI sales. Accordingly, we used the historical warranty expenses.

Findings at Verification

Comment 24: Discrepancies in Weights and Distances

At verification, we found a number of discrepancies in the weights and distances reported by Overlord and used in the calculation of surrogate freight on components. Petitioners assert that the Department should correct the reported data, based on the findings at verification. In addition, petitioners argue that the Department should impute these findings to all of Overlord's components not examined at verification by adjusting the reported weights and distances by the average percentage difference observed at verification.

Overlord maintains that the Department should only correct for the errors found at verification.

DOC Position: We agree with respondent. At verification, we found no consistent pattern of under-reporting. For example, we found that the weight differences ranged from an over-reporting of 200 percent to an under-reporting of 23 percent. Given the wide range of observed differences, adjusting the weights and distances of unexamined components would only affect the margin several points to the right of the decimal. Consequently, we corrected Overlord's database to account only for errors found at verification.

Comment 25: Unreported Market-Economy Movement Expenses

Petitioners maintain that Universal was not forthcoming in providing to the Department prior to verification a clear picture of how it incurred its movement expenses in Hong Kong. Because these expenses were not reported, the petitioners insist that the Department should now assign adverse amounts to each of the Hong Kong incurred movement expenses rather than rely on the actual expense data noted in the verification report. Petitioners recommend that the Department use the highest rates found for any respondent for each movement expense or use the highest rates from the data examined at verification and apply them on a container basis, using the lowest quantity figure per container provided by Universal.

Respondent claims that the Department's practice is to not use the movement expenses incurred by a PRC respondent if it sourced its transportation services from a company that was located in the PRC and affiliated with a Hong Kong company. The respondent cites to *Drawer Slides* and *Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation*, 60 FR 27957, 27962 (May 26, 1995) (*Ferrovanadium*) in support of its argument. In addition, the respondent states that if the Department intends to use expenses incurred in Hong Kong, then the Department should not apply adverse facts available in this situation because it has the actual expenses.

DOC Position: At verification, we found that Universal pays its customs broker in Hong Kong, in Hong Kong dollars, for five services: (1) terminal handling charges; (2) handling fees; (3) document fees; (4) courier fees; and (5) import and export fees. Universal did not report these expenses because the Hong Kong broker is a subsidiary of a PRC company. Universal assumed that this data could not be used by Department. The NME questionnaire requests a respondent to report all movement expenses paid to a market-economy supplier.

We used the average rates established at verification for each expense noted above and the quantity amounts per container for each U.S. model provided in the October 2, 1995, submission to calculate the Hong Kong incurred model-specific expenses for those expenses that are incurred on a container basis. For Hong Kong import & export fees, we used the rate found among the other respondents. The fact that Universal failed to report these expenses is not a basis for adverse inference because Universal's interpretation of the questionnaire instructions, although in error, was not unreasonable.

Other Company-Specific Comments

Petitioners made several arguments that certain expenses incurred by the Hong Kong and Taiwan affiliates of the PRC bike producers should be treated as direct selling expenses and be subject to COS adjustments. Because we are not making COS adjustments in this case, these issues are moot. *See* Comment 1 in *General Comments* section above.

Bo An

Comment 26: Market-Economy Based Movement Charges

Petitioners have stated that the Department should assign adverse facts available to Bo An's movement charges because Bo An has been less than forthcoming concerning movement charges purchased from market-economy suppliers and paid for in market-economy currency. Moreover, according to petitioners, the verification exhibits contradict Bo An's statement in its Section C response that ''Bo An did not use any market-economy suppliers for shipment of the goods.'' Petitioners agree that this information should clearly have been reported earlier in the investigation and that the Department should now assume that Bo An made full use of all potential market-economy based movement and handling services between the PRC factory and the loading of the ocean-going vessel in Hong Kong. Accordingly, the Department should apply the highest calculated freight rates found for any respondent in this investigation to all Bo An's movement and handling expenses.

Bo An contends that the Department should not assign market-economy values to goods and services obtained through a non-market-economy transaction. Bo An points out that it has already certified for the record that it arranges for transportation through the PRC affiliates of Hong Kong transportation companies and that the Department found no evidence at verification to contradict this information. Finally, respondent cites *Drawer Slides* and *Ferrovanadium* as evidence that the Department's practice has been to determine whether a good or service obtained through a market-economy transaction is sourced from a market economy rather than merely purchased in it.

DOC Position: We agree with respondent. Because these movement and handling services were provided by a company located in the PRC, we conclude that these charges do not reflect a market-economy based price. Therefore, in our final determination we have continued to apply a surrogate country cost to value these charges.

CBC

Comment 27: Brokerage and Handling Expenses

Petitioners argue that the Department should base brokerage and handling

expenses for CBC's CEP sales on facts available because CBC failed to provide any support for its claimed amount at verification. As facts available, petitioners assert that the Department should use the amount that it calculated during verification based on an examination of CBC's sales information.

DOC Position: We agree. Accordingly, we have based brokerage and handling for CEP sales on the information reviewed at verification.

Comment 28: Interest Expense and Interest Revenue

At verification, we found that CBC received interest revenue on EP sales although it did not report this revenue in its sales listing. In addition, we also noted that CBC incurred sales-specific interest expenses, which likewise had not been reported. CBC requests that the Department add interest revenue to its USPs. Moreover, CBC argues that the Department should ignore the interest expenses observed at verification because they represent affiliated party transactions, as evidenced by intra-company invoices between CBC and its Hong Kong affiliate.

Contrary to CBC's assertions, petitioners maintain that the interest expenses in question are similar to movement expenses because they were actually paid by CBC on every sale. They state that CBC failed to provide any credible evidence supporting its claim that these payments are intra-company transfers. Moreover, they state that failure to report these expenses should lead to the application of adverse inferences against CBC. Specifically, they argue that the Department should subtract from CBC's reported EP sales prices interest expenses equal to the highest expenses (as a percentage of invoice price) observed during verification. Regarding interest revenue, petitioners state that the Department should ignore the amounts collected at verification because CBC failed to provide complete information in a timely fashion.

DOC Position: Regarding interest expenses, we disagree with CBC that these expenses represent affiliated party transactions. At verification, we reviewed actual payment advices issued by the unaffiliated bank. These payment advices showed that interest expenses were actually charged by the bank on each transaction, independent of any affiliated party transfers that may have occurred. However, we have not made an adjustment for these expenses, because we are not making COS adjustments on EP sales. *See,* Comment 1 in *General Comments* section above.

Regarding interest revenue, we found at verification that CBC charged this revenue in order to cover the actual interest expenses that it incurred on each sale. Therefore, adjusting for interest revenue without making the corresponding adjustment for interest expenses would result in an EP that is overstated. Accordingly, we also have made no adjustment for interest revenue for purposes of the final determination.

Comment 29: Freight Rebates

At verification, we found that Western States Importers (WSI), CBC's U.S. affiliate, did not use the eligibility criteria specified in its freight rebate program when calculating the freight rebates reported in its CEP sales listing. According to petitioners, the Department should recalculate these rebates by applying the eligibility criteria set forth in WSI's program brochures.

According to CBC, no adjustment is warranted. CBC states that these rebates operate as a customer-specific price allowance and as a general expense to WSI, as evidenced by the fact that WSI's accounting system does not track freight rebates on a transaction-specific basis. CBC asserts that, indeed, given the limitations of WSI's accounting system, reporting freight rebates on a customer-specific basis was the only feasible way to capture these costs. Moreover, CBC argues that there is no evidence on the record to support the contention that allocating these rebates on a customer-specific basis is distortive.

DOC Position: We do not have sufficient information on the record to reallocate WSI's freight rebates according to the eligibility criteria specified in the rebate program brochures, as requested by petitioners. Moreover, we agree with CBC that it would not be distortive to allow these rebates on a customer-specific basis, based on our finding at verification that they operate as a customer-specific price allowance, rather than as a transaction-specific expense. Therefore, we have accepted the expenses as reported for purposes of the final determination.

Comment 30: Different Control Numbers for Identical Products

At verification, we found CBC had assigned different control numbers to a small number of products which appeared to have identical physical characteristics; however, CBC reported different factors of production for these products. In addition, we found that CBC assigned the same control number (and same factors of production) to a small number of products which appeared to be physically different.

Petitioners assert that the Department should resort to facts available to calculate the factors of production for each of the products in question. As facts available for the physically identical products, petitioners maintain that we should use the highest COM calculated for any of the products which are within the identical grouping. As facts available for the non-identical products, petitioners assert that the Department should calculate separate production costs using ratios derived from the different prices reported for the different models.

According to CBC, the Department should not make adverse inferences as to the COM of the bicycles in question. CBC states that it explained all of the discrepancies at verification and that it documented most of these explanations.

DOC Position: Regarding the different control numbers reported for physically identical products, we agree with petitioners. Contrary to its assertion, at verification CBC could not explain why the factors of production for these models differed. Moreover, it is difficult to imagine how models sharing the same control number could have different production costs. Because CBC failed to report its data in a consistent fashion, we find that applying an adverse inference to facts available is reasonable and appropriate in this case. Therefore, we have used the highest COM calculated for any of the products which are within the identical grouping to the products in question.

Regarding the same control numbers reported for potentially non-identical products, we agree with CBC. The documents reviewed at verification support CBC's assertion that the control numbers in question were assigned correctly to identical products. Accordingly, we find no basis to adjust the costs reported for these products, as suggested by petitioners.

Comment 31: Component Sourcing

At verification, we found that CBC sourced certain components in both a market and non-market economy. Petitioners argue that the Department should rely exclusively on the prices paid to the market-economy suppliers.

DOC Position: We agree and we have made the appropriate corrections for purposes of the final determination.

CATIC

Comment 32: Treatment of handling charges incurred by Motiv and classification of Motiv's selling expenses

Petitioners argue that the Department should treat handling charges incurred

by Motiv for returns of bicycles during the POI as a direct selling expense. At verification we found that Motiv did not report handling charges incurred for bicycles that were returned by a certain customer. Petitioners argue that this expense is a direct selling expenses because it was incurred to return subject merchandise during the POI, and that the Department should treat it as such for purposes of the final determination.

Respondent claims that this expense is properly categorized as indirect because there were no sales associated with the returns.

Petitioners also argue that certain advertising, after-market telephone support, and bad debt expenses reported by Motiv as indirect selling expenses should be classified as direct selling expenses.

Respondent contends that each of those expenses were properly classified as indirect selling expenses.

DOC Position: These expenses has been deducted from U.S. price as part of the CEP deductions. Because we are not making a corresponding CEP offset (*See,* Comment 1), the classification of these expenses as direct or indirect is moot.

Comment 33: Commission Expenses

Petitioners urge the Department to ensure that the commission expense adjustment includes all payments by Motiv to outside sales representatives during the POI. Motiv's questionnaire responses state that its independent sales representatives perform various functions in facilitating customer orders for Motiv. Petitioners state that the record is unclear as to whether Motiv's reported commission amounts cover its payments for all the services provided by its outside sales representatives. Respondent did not comment on this issue.

DOC Position: We verified that the payments to Motiv's outside sales representatives covered all services performed by these sales representatives.

Comment 34: Finance Expense

Petitioners use information from Motiv's and CATIC's financial statements to demonstrate that CATIC may have incurred a certain finance expense on behalf of Motiv. Petitioners contend that the Department should either include this finance expense in Motiv's U.S. selling expenses or should add the expense to the NV for bicycles produced by CATIC.

Respondent claims that imputing this finance expense is at odds with the Department's established practice and would result in double-counting. Respondent states that since CATIC and Motiv are affiliated companies, any interest expense would be an intra-company charge. Respondent cites to *Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less Than Fair Value,* 52 Fed. Reg. 8324 (March 17, 1987) and *Certain Tapered Journal Roller Bearings and Parts Thereof from Japan: Final Determination of Sales at Less Than Fair Value,* 49 Fed. Reg. 2285 (January 19, 1984) as cases in which the Department excluded intra-company interest expenses from the margin calculations. Respondent also states that the Department already will have accounted for the costs of financing inventory and receivables in its imputed calculations of inventory carrying costs and credit costs.

DOC Position: We agree with respondent. The expense identified by petitioners is an intra-company expense and should not be included in our calculations.

Giant

Comment 35: Interest Charge Giant USA Pays its Taiwan Affiliate

The respondent maintains that the fees GUSA pays its Taiwan parent GMC to cover interest charges on letters of credit opened by GMC to finance GUSA's purchases from GMC should not be deducted from USP if the Department also deducts inventory carrying expenses and imputed credit costs. The respondent states that deducting both the actual fees and the imputed expenses would double-count the expenses associated with financing shipment, inventory and receivables on U.S. sales.

The petitioners argue that the Department's verification report makes no mention that the letter of credit fees are actual interest expenses or the nature of the fees. Therefore, the petitioners maintain that there in insufficient evidence to support Giant's claim that its interest expenses will be double-counted if both letter of credit fees and imputed credit expenses are deducted from the USP. Moreover, the petitioners state that the letter of credit fees appear to be indirect rather than direct selling expenses, since these fees were first paid by GMC in opening bank accounts from which GUSA could draw funds to finance inventory and accounts receivables. As such, the petitioners argue that the Department should revise GUSA's reported indirect selling expenses by including the amount of letter of credit fees.

DOC Position: We did not separately deduct the interest expense from the USP because deducting both the actual fees and the imputed costs (which include these fees) would be double-counting. In addition, we did not treat the letter of credit fees as indirect selling expenses since they have been accounted for in the calculation of inventory carrying expenses.

Comment 36: Errors in Giant's Data

Petitioners argue that the Department should apply facts available to Giant in its final margin analysis. Petitioners assert that the Department found numerous errors in Giant's data during verification which company officials were unable to explain. Petitioners cite examples related to the price and usage data reported for Giant's factors of production, as well as discounts reported for CEP sales.

Giant asserts that the Department should use its data for purposes of the final determination, after correcting it for errors discovered at verification. Respondent argues that petitioners misunderstood both the verification reports and Giant's responses, leading to a number of incorrect assumptions regarding the significance of the errors found.

DOC Position: We agree with Giant. The majority of the errors discovered at verification resulted from data input problems or calculation errors. Because these errors were minor in nature, we find that the use of facts available is not warranted. Therefore, we have corrected the errors found at verification and used the data reported by Giant for purposes of the final determination.

Comment 37: Interest Revenue

Petitioners argue that the Department should deny Giant's claim for interest revenue for purposes of the final determination. According to petitioners, Giant did not collect all of the interest revenue that it actually invoiced. In addition, petitioners assert that Giant misapplied these revenues in its sales listing because it reported revenue for sales for which the customer paid on a timely basis and for which no revenue was due.

Respondent asserts that the Department should allow the revenue amounts reported in its sales listing. Respondent notes that petitioners do not dispute the fact that the company received interest revenue, but rather disagree with the methodology used to allocate this revenue to specific sales. Respondent maintains that, not only is its allocation methodology consistent with the methodology used to allocate other adjustments (*e.g.,* credit expenses), but also petitioners failed to object to this methodology prior to the submission of their case brief. Moreover,

respondent asserts that its allocation methodology is not distortive or inaccurate. Finally, respondent notes that the Department reviewed Giant's interest revenue calculation at verification and found no discrepancies.

DOC Position: We found that Giant's record keeping system does not readily allow Giant's to report transaction-specific interest revenue. Therefore, we are allocating interest revenue only to those sales with no early payment discounts. Regarding bad debt expense, we agree with respondents that it was correctly reported as an indirect selling expense. We recommend making no adjustment to bad debt.

Overlord

Comment 38: Declaration Fees

At verification, we found that Overlord under-reported declaration fees paid to the Hong Kong government on U.S. shipments of bicycles through Hong Kong. Petitioners contend that the Department should increase the reported expenses by the average percentage by which the fees were under-reported.

DOC Position: We agree and have made the appropriate calculations for purposes of the final determination.

Universal

Comment 39: Methodology for Reporting Prices of Market-Economy Inputs

According to the petitioners, Universal's price reporting methodology is unacceptable. Based on Universal's unwillingness to provide information prior to the verification regarding the methodology it used to derive market-economy prices, and the inaccuracies discovered during the Department's price variation tests and component traces, the petitioners propose that, as facts available, the Department increase prices for all market-sourced components by the greatest disparity between reported and verified prices in the price variation tests.

Universal argues that the Department should not increase the prices reported for market-economy inputs because the majority of the input prices examined by the Department were accurately reported and the few discrepancies noted by the Department were only minor errors. Additionally, Universal contends that its reported prices are already overstated because these prices are charged by Universal's affiliated supplier. Universal maintains the Department verified that reported component prices, which are charged by Universal's affiliated supplier, are more than the prices the affiliated supplier pays to purchase those components from unrelated suppliers.

DOC Position: Universal failed to report the weight-average price of market-economy inputs purchased during the POI. Rather, Universal reported market-economy prices based on selected invoices which company officials considered to be representative of the prices paid during the POI. According to Universal officials, the company employed this reporting methodology because during the POI prices for most components remained stable. We tested ten components and found that four were under-reported by a small percentage. We disagree with petitioners that we should increase all of Universal's prices by the largest observed variation. This situation does not warrant the use of adverse acts available. Rather, as facts available, we applied the average variance to all purchases. *See,* Concurrence Memo for Final Determination.

Continuation of Suspension of Liquidation

For Bo An, Giant, Hua Chin, and Overlord, we calculated a zero or *de minimis* margin. Consistent the with *Pencils,* merchandise that is sold by these producers but manufactured by other producers will not receive the zero margin. Instead, such entries will be subject to the ''PRC-wide'' margin.

In accordance with section 733(d)(1) of the Act and 735(c)(1), we are directing the Customs Service to continue to suspend liquidation of all entries of bicycles from the PRC, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the NV exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until May 7, 1996. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Bo An	0.00
CBC	3.25
CATIC	13.67
Giant	0.97
Hua Chin	0.00
Merida	7.44
Overlord	0.00
Chitech	2.05
Universal	11.06
PRC-wide rate	61.67

PRC-Wide Rate

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation. This determination is published pursuant to section 735(d) of the Act.

Dated: April 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–10555 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of May 1996.

EFFECTIVE DATE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested

parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

COUNTERVAILING DUTY ORDER

Brazil: Iron construction Castings (C–351–504).	05/15/86 51 FR 17220

Opportunity To Object

Not later than the last day of May 1996, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: April 19, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–10553 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–DS–P–M

Minority Business Development Agency

Business Development Center Application: State of Mississippi

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate a statewide Rural Minority Business Development Center (RMBDC) for approximately a 3-year period, subject to agency priorities, recipient performance and the availability of funds.

The RMBDC will provide business development services to the rural minority business community to help establish and maintain viable rural minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of rural minority individuals and firms; to offer a full range of management and technical assistance to rural minority entrepreneurs; and to serve as a conduit of information and assistance regarding rural minority business. The RMBDC will operate throughout the State of Mississippi. The headquarters of the RMBDC will be located in Jackson, Mississippi. The award number for this RMBDC will be 04–10–96005–01.

DATES: The closing date for applications is May 31, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before May 31, 1996. A pre-application conference to assist all interested applicants will be held on May 15, 1996 at 10:00 a.m., at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., Room 1715, Atlanta, Georgia 30308–3516.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson, Regional Director, Atlanta Regional Office, (404) 730–3300.

Proper identification is required for entrance into any Federal Building.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from September 1, 1996 to September 30, 1997, is estimated at $277,835. A 30-day start-up period will be added to their first budget period, making it a 13-month award. The application must include a minimum cost-share of $41,675 (15%) of the total project cost, through non-Federal contributions. The Federal share, to be in the amount of $236,160, includes $5,760 for an annual audit fee. Cost-sharing may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing rural/urban business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

The RMBDC shall be required to contribute at least 15% of the total project cost through non-Federal

contributions. To assist in this effort, the RMBDC may charge client fees for management and technical assistance (M&TA) rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Awards under this program shall be subject to all Federal laws, Federal and Departmental regulations, policies and procedures applicable to Federal assistance awards.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the RMBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive Order 12372, ''Intergovernmental Review of Federal Programs'', is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Date: April 23, 1996.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–10551 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–21–P

National Institute of Standards and Technology

Phase Equilibria Data for Ceramics

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 1, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph A. Carpenter, Jr.,

Ceramics Division, Building 223 (MATL)/Room A256, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–6397 phone, (301) 990–8729 fax, carpent@micf.nist.gov e-mail.

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST seeks to assess economic impacts of its joint program with the American Ceramic Society on the evaluation and distribution of relevant phase equilibria data. The respondents will be U.S. ceramic producers and their customers. The results will be used by NIST for program evaluation purposes.

II. Method of Collection

Personnel of firms in the U.S. ceramics industry and their customers may respond to questionnaires by mail, fax and E-Mail. Interviews will be conducted by phone.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission for a new collection.

Affected Public: Personnel of firms in the U.S. ceramics industry and their customers.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost: $40,000. (400 × $100 per hour fully burdened cost for a senior level technical manager.) There are no equipment or maintenance costs associated with this collection.

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 a 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 will also become a matter of public record.

Dated: April 23, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–10552 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 042296A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Black Sea Bass Advisors, Habitat Committee, Demersal Species Committee (with Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder Board) and the Surfclam and Ocean Quahog Committee will hold public meetings.

DATES: The meetings will be held on May 14–16, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Doubletree Inn (at airport), 4101 Island Avenue, Philadelphia, PA; telephone: 1–800–222–TREE.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION:

May 14

1:00 p.m. - 3:00 p.m., the Black Sea Bass Advisors will meet.

3:00 p.m. - 5:00 p.m., the Habitat Committee will meet.

May 15

8:00 a.m. - 12:00 p.m., the Demersal Species Committee will meet as Committee of the Whole (with ASMFC Summer Flounder Board).

1:00 p.m. - 3:00 p.m., the Council will meet.

3:00 p.m. - 5:00 p.m., the Surfclam and Ocean Quahog Committee will meet.

May 16

8:00 a.m. - approximately 1:00 p.m., the Council will meet.

The purpose of these meetings is to review comments for the Black Sea Bass Fishery Management Plan (FMP) and discuss possible revisions to the hearing draft, the Mud Dump Draft Environmental Impact Statement, and review comments and possible adoption of Amendment 9 to the Surfclam and Ocean Quahog FMP.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 23, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 96–10662 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–22–F

Pribilof Islands, Alaska; Claims Statements and Recommendations; Report to Congress

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Collection of information for report to Congress under Public Law 104–91.

TITLE: NOTICE FOR FILING STATEMENT OF CLAIMS AND RECOMMENDATIONS UNDER P.L. 104–91.

DATES: Statements of claims must be filed by July 1, 1996.

ADDRESSES: Statements of claims should be sent to Mary O'Connell, Office of General Counsel, NOAA, SSMC–3, Room 15105, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mary O'Connell at 301–713–1328.

SUMMARY: On January 6, 1996, President Clinton signed Public Law 104–91. Under Section 3 of the law the Secretary of Commerce is directed to undertake certain activities with regard to the Pribilof Islands, Alaska. Section 3(c) directs the Secretary to prepare a report for Congress which proposes necessary actions by the Secretary and Congress to resolve all federal responsibilities on the Islands. The report must include the statement of claims and recommendations of local entities and residents. This collection of information is intended to solicit statements of claims and recommendations of local entities and residents of the Pribilof

Islands as required under the law. Respondents are hereby advised that this action is for information gathering purposes only. The Secretary of Commerce has not been authorized to resolve claims submitted and there are currently no federal appropriations available to resolve claims raised as part of this process. In addition, respondents are advised that submission of a statement of claim does not guarantee that the alleged claim will be resolved now or in the future. This information collection is only to provide information and recommendations to Congress so that it may make a determination as to the final resolution of federal responsibility on the Pribilof Islands. When and to what extent Congress will act is unknown, and not in the province of the Secretary of Commerce. All statements and recommendations submitted will be included in the report to Congress after legal and equitable review by the Department of Commerce. The recommendations of the Department and other affected agencies will also be included in the report to Congress. A public meeting to explain the process for submitting claims will be held on the Pribilof Islands in conjunction with publication of this notice. A second public meeting will be held as soon as the claims are categorized for the purposes of summarizing and reporting on the information collected. The final report will be made available to the public at the same time it is submitted to Congress.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration (hereinafter ''NOAA''), a bureau of the Department of Commerce, has been tasked with preparation of the report to Congress on behalf of the Secretary. This notice is given by NOAA's Office of General Counsel and is intended to advise local entities and residents of the Pribilof Islands of the Secretary's activities required under Section 3(c) of the Act. It is also intended to provide notice of the process and procedure whereby statements of claims and recommendations for resolution of federal responsibilities can be raised by the residents and local entities of the Island.

Local entities and residents are advised that this effort is intended to fully and finally resolve all legal claims against the United States related to the Pribilof Islands. Failure to state a claim now may foreclose any future opportunities.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMC Control Number. This Notice and attached form have been approved by the United States Office of Management and Budget. It has received an emergency clearance under the Paperwork Reduction Act to allow the United States government to comply with the terms of Public Law 104–91. The OMB control number of this request for information is contained in the upper right hand corner of this Notice.

Individual public reporting burden for this collection of information is estimated to vary form 2 to 40 hours per response, depending on the nature and complexity of the claim and the supporting documentation available. For most respondents, we anticipate that the average time for responding will not exceed 2 hours. For claimants with more detailed claims and the assistance of counsel, responding may take much longer. However, we do not anticipate that more than a few entities will require more than two hours to respond, and in no event do we anticipate more than 40 hours of response time for any claimant. All estimates for responding include 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 this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Mary O'Connell, Office of General Counsel, NOAA, SSMC–3, Room 15105, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

A form for filing claimant's statements and recommendations is attached. Each statement of claim and corresponding recommendation must be filed on a separate form. The form is designed to assist claimants in organizing and presenting their statements of claims and recommendations. While it provides the framework for presenting statements and recommendations, the claimant is solely responsible for presenting statements and recommendations in sufficient detail to permit an appropriate analysis and finding of necessary action to be recommended to Congress. A detailed description of the degree of information required is described in the instructions to the form and in the ''PROCEDURES'' section below.

Scope

The report required by Congress must propose necessary actions by the Secretary and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

(A) Title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 *et seq.*) (hereinafter ''the FSA'');

(B) the land conveyance entitlements of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) (hereinafter ''ANCSA'');

(C) the provisions of Public Law 104–91, and

(D) any other matters the Secretary deems appropriate.

Accordingly, all parties who believe they have a claim against the United States related to the United States's obligations under the FSA, the transfer of real property by the United States under ANCSA, Public Law 104–91, or any other legal or equitable claim related to the United States' ownership, occupation, management or administration of the Pribilof Islands are hereby requested to submit a statement of their claims in accordance with the procedures set forth below.

Procedure for Submitting Statements of Claims and Recommendations

All statements of claims and recommendations must be submitted in writing on the forms provided and postmarked or hand delivered with an original and two copies no later than [insert date within 60 days of the publication of this notice in the Federal Register. Failure to meet this deadline or to comply with the requirements proscribed in this notice will act as a bar to inclusion of the claim in the report to Congress. No extensions will be granted.

All statements should be directed to the Office of General Counsel, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC–3, Room 15104, Silver Spring, MD, 02910, Attention Mary O'Connell. Statements made over the phone or in person to a representative of NOAA will not be included in the report.

To be included in the report, a statement of claim must set forth a legitimate, well-supported and well-defined assertion, based on a clear set of facts and occurrences. To ensure the best possible review and analysis of claims, it is incumbent on the claimant that they adhere to and comply with the following guidelines:

(1) A party may state as many separate claims as they have, regardless of consistency, and whether based on legal, on equitable, or on both grounds.

(2) Each statement of claim and corresponding recommendation must be submitted separately. You must fill out a separate form for each statement and corresponding recommendation.

(3) Each statement of claim must be stated in simple, concise and direct language.

(4) Each statement of claim must be based on a separate transaction or occurrence and the contents of each claim shall be limited to a statement of a single set of circumstances.

(5) Each statement of claim include a clear and concise statement of the facts on which the claim is based, and the time, date and place where the claim arose.

(6) Each statement of claim shall include as an attachment copies of any documentary evidence relied on in asserting the claim. If the supporting documentation constitutes confidential business information entitled to protection under a confidentiality agreement, entitled to protection under a confidentiality agreement, please state the existence and nature of the documentation and the need for its protection. Do not fail to raise a claim because of the need to work out a confidentiality agreement.

(7) Each statement of claim shall clearly cite all statutes, regulations, orders and authorities on which the claim is founded.

(8) Each statement of claim shall set forth and describe, as applicable, any treaty, contract, executive order, act of Congress, administrative or judicial proceeding, and any legal or equitable theory or principle relied on in asserting the claim. Reference to particular provisions shall be made, or copies of the relevant documents attached.

(9) A statement of claim can only be made by that party entitled to relief, or their legal representative.

(10) Each statement of claim shall include specific and concise statements of the relief sought, or a recommendation for resolution. If monetary damages are claimed, each statement shall include an itemization of costs, and copies of documentary evidence supporting those monetary damages shall be attached. If specific performance is sought, such performance shall be adequately described.

(11) Each statement of claim shall state the name address and phone number of the claimant and shall be signed by the claimant.

(12) Each claimant shall clearly set forth the recommendations they have for the United States to resolve all obligations to the Pribilof residents and local entities.

Public Meetings

Representatives from NOAA will be convening the first of two public meetings on this process the week of May 20, 1996. A second meeting is planned for early July, 1996. The meetings will be video-taped for residents who cannot attend. The purpose of the first public meeting will be to answer questions regarding this collection of information and to assist you in responding. The second public meeting will permit NOAA to report on and describe the claims and recommendations made.

No written or oral statements of claims will be accepted at either public meeting. Statements of claims will only be accepted in writing, using the provided forms, mailed to the address above during the 60 day period for submission described above.

All claimants are hereby advised that submission of a statement of claim is for collection of information purposes only and does not guarantee that the claim will be resolved as recommended by the claimant, or at all. Failure to raise and state a potential claim, will, however, serve as a bar to that claim being addressed by the Secretary or Congress under Public Law 104–91.

Dated: April 24, 1996.

Terry Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

[OMB Control No: 0648–0312, Expires: 7/31/96]

Instructions for Statement of Claim Filing Form

Re: Public Law 104–91

Instructions: Use this form to file a statement of claim and/or recommendation as called for in the ''Notice for Filing Statement of Claim and Recommendation Under Public Law 104–91'' (''the Notice''). This form is intended to assist claimants in organizing and presenting their claims and recommendations. While it provides the framework for presenting statements of claims, the claimant is solely responsible for presenting claims in sufficient detail to permit an appropriate analysis and finding of necessary action. Detailed instructions regarding the content required to assure an adequate analysis of each claim is provided in the Notice. PLEASE NOTE: ALL CLAIMANTS MUST SUBMIT AN ORIGINAL PLUS TWO COPIES OF EACH CLAIM.

State each claim on a separate form, and answer each question for each claim separately. Be as clear, concise and accurate as possible. Provide all facts and copies of all documents relied on in asserting a claim. If additional space is needed for any question, attach separate sheets of paper. For each attachment to the response (including copies of documents and extra space to answer questions) be sure to put the claimant's name, the claim number it corresponds to and the question being answered in the upper-right-hand corner.

(1). Self Explanatory.

(2). Signify whether the claimant is the party entitled to relief, a legal representative, a resident or a legal representative of a local entity. Check all that apply.

(3). Fill in Total number of claims submitted. *Note:* At the top of the form fill in the numbered claims represented on the form and the total number of claims in the spaces provided. USE A SEPARATE FORM FOR EACH CLAIM.

(4). Summary of Claim. State the potential claim against the United States government. Identify the underlying facts supporting the claim (state the facts and circumstances leading to the claim—including time, date, place, and persons involved. Additional sheets of paper may be attached to explain the claim, but they must be numbered to correspond to this claim and this question)

NOTE: A claim cannot be reviewed adequately without presentation of all relevant facts and documents. If copies of documents are provided, please number them to correspond to the correct claim number and this question.

If a confidentiality agreement is required to protect documents being disclosed, please state the reason such an agreement is justified on a separate sheet of paper and attach to the corresponding form.

(5). Self explanatory.

(6). If the claim is based on a statute, regulation, treaty, order, contract, act of Congress or other authority, please cite and attach a copy to this form. Please number the attachments to correspond to the correct claim number and this question.

(7). State the type of relief sought. If you are seeking monetary damages, please itemize the costs incurred which support the claim for damages. Include copies of invoices and bills for those costs. If seeking specific performance, describe that performance in detail. Also, state and describe other recommendations for the United States to resolve all obligations to the Pribilof residents and local entities.

The claimant's signature is required for this form. Please read the declaration and print and sign claimant's name in the space provided to acknowledge the truthfulness of the information and notice of possible adverse actions and/or punishment for false statements pursuant to 18 U.S.C. § 1001.

BILLING CODE 3510–12–M

COMPLETE THIS FORM FOR EACH CLAIM
Claim No. _____ of _____

OMB Control No.: 0648-0312
Expires: 7/31/96

PRIBILOF STATEMENT OF CLAIM FILING FORM AUTHORIZED UNDER P.L. 104-91

1. Claimant

Name:

Address:

Phone:

2. Submitted By Please Check all that apply

- ☐ Legal Representative
- ☐ Resident
- ☐ Local Entity

3. Total Number of Claims Submitted by Claimant

4. Summary of Claim: **Provide all Supporting Facts. Examples include tort claims, real property transaction claims, federal trust claims and claims for environmental response**

☐ Check here if you are attaching supporting evidence or documentation

5. Description and Location of Affected Property

6. Basis for Claim: **Please Check and Provide Citation to specific section and copy of applicable law, regulation, and code, etc.**

- ☐ Statutory _____
- ☐ State Code _____
- ☐ Other: Briefly Explain
- ☐ Regulatory _____
- ☐ Municipal Code _____

(Continue on reverse)

7. Relief Requested

☐ Monetary Damages in the amount of $

☐ Specific Performance or action to be taken by Federal Government Briefly Describe

☐ Other Recommended Relief: Briefly Describe

I declare that I have truthfully completed this form to the best of my knowledge and belief.
I understand that a false statement on this form is grounds for denial or bar to the claim being addressed in this form, and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. § 1001.

Print Name: Signature: Date:

FOR NOAA USE ONLY:

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMC Control Number. This form has been approved by the United States Office of Management and Budget. It has received an emergency clearance under the Paperwork Reduction Act to allow the United States government to comply with the terms of Public Law 104-91. The OMB control number for this request for information is contained in the upper right hand corner of this form.

[FR Doc. 96–10603 Filed 4–29–96; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 15225, FR Doc. 96–8506, in the issue of April 5, 1996, in the first column, the following NSN shown as 7520–01–424–4862 should read 7520–01–424–4861. In the same document, appearing in the same column, the NSN shown as 8135–00–689–9466 should read 8135–00–618–1783.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–10641 Filed 4–29–96; 8:45 am]

BILLING CODE 6353–01–P

Additions to the Procurement List; Correction

In the document appearing on page 17281, FR Doc. 96–9732, in the issue of April 19, 1996, in the first column, the following item should be deleted from the document—Gloves, Patient Examining (6515–01–364–8553).

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–10642 Filed 4–29–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 1, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), OASD (Force Management Policy/ Military Personnel Policy/ Compensation), ATTN: LTC William Foster, OASD(MPP)COMP, Pentagon Rm. 2B279, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 693–1068.

Title, Associated Form, and OMB Number: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority (TERA) for Increased Retirement Compensation, DD Form 2676, OMB Number 0704–0357.

Needs and Uses: Public Law 102–484, Section 4464 required the Department of Defense to develop policy and procedures to validate and credit increased retirement compensation for qualifying public and community service employment performed by retired personnel of the Armed Forces under the early retirement program.

Affected Public:

a. Individuals or Households.

b. State, Local or Tribal Governments.

c. Not-for-Profit Institutions.

Annual Burden Hours: 800 hours.

Number of Respondents: 4,800.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion annually thereafter.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is needed to support the information collection requirements of Public Law 102–484 which established the Temporary Early Retirement Authority (TERA). TERA is a DoD force reduction tool. It authorizes Service members who are short of their 20 year retirement to accumulate credit by finding employment with local governments and non-profit organizations. The DD Form 2676 ''Validation of Public or Community Service Employment'' was developed as part of a systematic employment reporting mechanism. Employers certify public or community service employment and retired members submit the employment validation form, DD Form 2676 to the Defense Manpower Data Center for processing.

Dated: April 24, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–10580 Filed 4–29–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Notice of Intent To Prepare an Environmental Assessment for the Disposal and Reuse of Ontario Air National Guard Station, Ontario, CA

The United States Air Force (Air Force) is issuing this notice to advise the public that the Air Force intends to prepare an Environmental Assessment (EA) to assess the potential environmental impacts of disposal and reuse of Ontario Air National Guard Station (ANGS), Ontario, California.

The EA will address the potential environmental impact of disposal of the property to public or private entities, as well as the potential environmental impact of all reasonable reuse alternatives.

To provide a forum for public officials and the community to provide information and comments, a scoping meeting will be held in Ontario, California, on May 2, 1996, and the scoping period will extend to 31 May 1996. Notice of the time and location of this meeting will be provided at a later date, and publicized in the community. The purpose of this meeting is to help identify issues that need to be assessed and discussed in the EA. During this meeting, the Air Force will discuss the proposal to dispose of Ontario ANGS, describe the process involved in preparing an EA, and ask for help in identifying alternative uses for Ontario ANGS and any significant environmental impacts that may result from its disposal by the Air Force. In soliciting disposal and reuse alternatives, the Air Force will consider all reasonable alternatives offered by any federal, state, or local government agency, and any federally-sponsored or private entity or individual.

To ensure sufficient time to adequately consider public comments concerning environmental issues and disposal and reuse alternatives to be included in the EA, the Air Force recommends that comments and reuse proposals be presented at the upcoming scoping meeting or forwarded to the address listed below at the earliest possible date. The Air Force will, however, accept additional comments at any time during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the Ontario ANGS disposal and reuse EA to: Mr. George Gauger, AFCEE/ECM, 3207 North Road, Brooks AFB, TX 78235–5363, 210/536–6545 or 210/536–3839.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–10653 Filed 4–29–96; 8:45 am]

BILLING CODE 3910–01–W

Defense Logistics Agency

Finding of No Significant Impact for the Defense Logistics Agency Early Base Realignment and Closure (BRAC) Action

AGENCY: Defense Logistics Agency (DLA), Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Logistics Agency (DLA) prepared a programmatic environmental assessment pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) which evaluated the potential environmental and socioeconomic effects associated with realigning designated missions and personnel to enduring DLA activities pursuant to recommendations by the BRAC Commission and related discretionary action plans. The environmental assessment resulted in a finding of no significant environmental or socioeconomic impact.

EFFECTIVE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Captain F.G. Leeder, USN, Staff Director, Public Affairs, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Attn: CAAV, Ft. Belvoir, VA 22060–6220, (703) 767–6200.

SUPPLEMENTARY INFORMATION: In summary, the DLA proposed action, identified as the preferred alternative, is to:

- Disestablish the Defense Contract Management District (DCMD) South located in Marietta, GA, and redistribute its mission workload to the two enduring DCMDs, DCMD East in Boston, MA, and DCMD West in El Segundo, CA.
- Relocate the Defense Contract Management Command International

from Gentile Air Force Base, Dayton, OH, to the DLA complex at Fort Belvoir, VA.

• Relocate the Defense Distribution Depot missions that remain after the disestablishment of the depots at Charleston, SC; Oakland, CA; Pensacola, FL; and Tooele, UT, to the following receiving Defense Distribution Depots: Jacksonville, FL; San Joaquin, CA; San Diego, CA; Red River, TX; Norfolk, VA; Sesquehanna, PA; Barstow, CA; Puget Sound, WA; Cherry Point, NC, and Military services depot/supply activities at the Navy Trident Refit Facility, Kings Bay, GA; Naval Aviation Depot, North Island, San Diego, CA; and Sierra Army Depot, Herlong, CA, using existing facilities and materiel storage and procession capacity.

• Close the Defense Clothing Factory, Philadelphia, PA, and reassign the flag manufacturing mission, consisting of 21 personnel, to the Defense Personnel Support Center, already located on the same site.

• Disestablish the Defense Fuel Support Point, Escanaba, MI, and return the facility to the U.S. Air Force for disposal.

• Close 13 Defense Reutilization and Marketing Offices (DRMOs) located on closing military installations and relocate residual missions to the enduring DRMOs. Dispose of surplus and hazardous property by reutilization, transfer, donation, sale, or ultimate disposal (disposal service contract) prior to the DRMO relocation or disestablishment.

The only alternatives considered were the proposed action, which was the preferred alternative, and the no action alternative. No other alternatives were considered reasonable because of their inability to satisfy BRAC Commission directives or DLA mission requirements. Any other alternative would entail extensive renovation of existing facilities, leasing of off-base facilities, and/or construction of new facilities. Additionally, customer support would be diminished and costs to conduct business would be substantially increased.

The environmental assessment showed that implementing the proposed action would result in only minimal or no environmental or socioeconomic impact. A small but positive would be realized through a net reduction in DLA's consumption of natural resources, thereby lessening negative environmental effects associated with routine support of Armed Forces activities. Analysis of the consequences of the proposed action at the program level does not indicate the need for mitigation measures. Accordingly, an Environmental Impact Statement will not be prepared.

A public comment period regarding the environmental assessment will begin at the time of publication of this notice and will conclude 30 days following. Copies of the environmental assessment are available for inspection at the address listed above. Interested parties may contact the DLA Public Affairs Office at (703) 767–6200.

Dated: April 24, 1996.

Jan B. Reitman,

Staff Director (Environmental and Safety Policy).

[FR Doc. 96–10609 Filed 4–29–96; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1150–000]

Wheeled Electric Power Company; Notice of Issuance of Order

April 25, 1996.

On February 23, 1996, as amended March 18, 1996, Wheeled Electric Power Company (WEPC) submitted for filing a rate schedule under which WEPC will engage in wholesale electric power and energy transactions as a marketer. WEPC also requested waiver of various Commission regulations. In particular, WEPC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WEPC.

On April 17, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WEPC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WEPC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WEPC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 17, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10635 Filed 4–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–59–000, et al.]

Enpak Power (Private) Company, et al.; Electric Rate and Corporate Regulation Filings

April 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Enpak Power (Private) Company

[Docket No. EG96–59–000]

On April 18, 1996, Enpak Power (Private) Company (''Enpak''), with its principal office at Nasr Chambers, Block 19, Markaz F–7, Islamabad, Pakistan, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Enpak states that it is a private unlimited liability company organized under the laws of the Islamic Republic of Pakistan. Enpak will be engaged directly and exclusively in owning an approximately 782 MW fuel oil-fired electric generating facility located in the Province of Punjab, Pakistan. Electric energy produced by the facility will be sold at wholesale to the Water and Power Development Authority, a Pakistan statutory entity that is the largest electric power supplier in the Province of Punjab. Enpak may, in the future, sell electricity at retail in a foreign country, although no such sales are presently contemplated. In no event will any electric energy be sold to consumers in the United States.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

2. Maine Public Service Company

[Docket No. ER96–727–000]

Take notice that on April 15, 1996, Maine Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–977–000]

Take notice that on April 18, 1996, Consolidated Edison Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER96–1412–000]

Take notice that on April 16, 1996, Kansas City Power & Light Company (KCPL) in responses to staff inquiry, amends the original March 27, 1996, filing in the above-referenced docket to include the methodology for the recovery of emission allowances. KCPL requests the same effective date as of the earlier filing, June 1, 1996.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER96–1574–000]

Take notice that on April 15, 1996, Duke Power Company tendered for filing copies of the true-up filing for calendar Year 1995 under Article II.3 of the Settlement Agreement in this docket.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER96–1575–000]

Take notice that on April 16, 1996, Central Illinois Light Company (CILCO), tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for four new customers.

CILCO requested an effective date of April 17, 1996.

Copies of the filing were served on all affected customers parties and the Illinois Commerce Commission.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER96–1576–000]

Take notice that on April 16, 1996, Wisconsin Public Service Corporation tendered for filing an executed service agreement with UtiliCorp United Inc. under its CS–1 Coordination Sales Tariff.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER96–1577–000]

Take notice that on April 16, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed service Transmission Service Agreement between WPSC and UtiliCorp United Inc. The Agreement provides for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC requests that the agreement become effective retroactively to April 15, 1996.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Company

[Docket No. ER96–1578–000]

Take notice that on April 16, 1996, Pennsylvania Power & Light Company (PP&L) tendered for filing with the Federal Energy Regulatory Commission Service Agreements (the Agreements) between PP&L and NorAm Energy Services, Inc., dated March 28, 1996, and between PP&L and Coral Power, L.L.C., dated March 25, 1996.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part,* 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreements effective as of April 16, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Atlantic City Electric Company

[Docket No. ER96–1579–000]

Take notice that on April 16, 1996, Atlantic City Electric Company (ACE) tendered for filing an Agreement for Short-Term Energy Transactions between ACE and NorAm Energy Services, Inc. ACE requests that the Agreement be accepted to become effective April 17, 1996.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Minnesota Power & Light Company

[Docket No. ER96–1580–000]

Take notice that on April 16, 1996, Minnesota Power & Light Company tendered for filing a Point-to-Point Transmission Service Tariff and a Network Integration Service Transmission Tariff. Minnesota Power's tariffs are consistent in all substantive respects with the terms and conditions of service contained in the pro forma tariffs included in the Notice of Proposed Rulemaking in Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities, Docket No. RM95–8–000.

Comment date: May 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. James M. Hoak, Jr.

[Docket No. ID–2425–001]

Take notice that on April 12, 1996, James M. Hoak, Jr. (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—MidAmerican Energy Company

Director and Officer—Hoak Securities Corp.

Comment date: May 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–10632 Filed 4–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL91–195–023, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

April 24, 1996.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91–195–023]

Take notice that on April 17, 1996, the Western Systems Power Pool (WSPP) filed certain information to update its January 30, 1996, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991, Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992, Order on Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

2. Amoco Energy Trading Corporation

[Docket No. ER95–1359–002]

Take notice that on April 3, 1996, Amoco Energy Trading Corporation tendered for filing a Notice of Succession adopting, ratifying and making its own in every respect all applicable rate schedules and supplements thereto, filed with the Federal Energy Regulatory Commission by Amoco Power Marketing Corporation.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. DuPont Power Marketing Inc.

[Docket No. ER95–1441–003]

Take notice that on April 8, 1996, Dupont Power Marketing Inc. tendered for filing a Notice of Succession stating that effective March 15, 1996, Conoco Power Marketing Inc.'s name was changed to DuPont Power Marketing Inc.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER96–496–002]

Take notice that on April 12, 1996, Northeast Utilities Service Company tendered for filing copies of its revised tariff sheets pursuant to the Commission's March 29, 1996, Order issued in Docket No. ER96–496–000.

Comment date: May 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER96–1066–000]

Take notice that on April 10, 1996, Portland General Electric Company (PGE) tendered for filing an Amendment to its filing in this docket clarifying its intent to provide no jurisdictional sales for resale or transmission services in connection with any transactions under the AIG Trading Corporation Scheduling Services Agreement (Agreement).

Copies of this filing were served upon AIG Trading Corporation and the Oregon Public Utility Commission.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Atlantic City Electric Company

[Docket No. ER96–1373–000]

Take notice that on April 12, 1996, Public Service Electric & Gas Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. KC United Corporation

[Docket No. ER96–1446–000]

Take notice that on April 17, 1996, KC United Corporation tendered for filing additional information to its March 29, 1996, filing in the above-referenced docket.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Midwest Energy Inc.

[Docket No. ER96–1497–000]

Take notice that on April 10, 1996, Midwest Energy Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–1581–000]

Take notice that on April 17, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Koch Power Services, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 29, 1996.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER96–1582–000]

Take notice that on April 17, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which PECO Energy Company—Power Team will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1996.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER96–1583–000]

Take notice that on April 17, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Federal Energy Sales Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1996.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Company

[Docket No. ER96–1584–000]

Take notice that on April 17, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Federal Energy Services Inc. (FES). WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of April 8, 1996.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company, NEES Transmission Services, Inc., Granite State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company

[Docket No. ER96–1585–000]

Take notice that on April 17, 1996, New England Power Company NEES Transmission Services, Inc., and certain of its affiliates tendered a series of agreements and amendments to agreements to permit Granite State Electric Company and New Hampshire Electric Cooperative, Inc. to participate in the retail Pilot Program ordered by the New Hampshire Public Utilities Commission (PUC). The filing companies seek waiver of the Commission's advance notice requirements in order to implement the documents tendered in this filing on the schedule established and authorized by the New Hampshire PUC.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER96–1586–000]

Take notice that on April 17, 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 South Carolina Public Service Authority.

Cinergy and the South Carolina Public Service Authority are requesting an effective date of April 22, 1996.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power Company

[Docket No. ER96–1587–000]

Take notice that on April 17, 1996, Duke Power Company (Duke), tendered for filing Schedule MR Transaction Sheets under Service Agreement No. 3 of Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–1588–000]

Take notice that on April 18, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Citizens Lehman Power Sales under Rate GSS.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER96–1589–000]

Take notice that on April 18, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to Coral Power L.L.C., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Co., Metropolitan Edison Company, Pennsylvania Electric Company,

[Docket No. ER96–1590–000]

Take notice that on April 18, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Noram Energy Services, Inc. (NES) dated April 16, 1996. This Service Agreement specifies that NES has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–791–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of April 16, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on NES.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Herman J. Russell

Docket No. ID–2572–001

Take notice that on April 12, 1996, Herman J. Russell (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Georgia Power Company

Director—National Service Industries, Inc.

Comment date: May 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Steven L. Kitchen

[Docket No. ID–2709–001]

Take notice that March 20, 1996, Steven L. Kitchen (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Westar Electric Marketing, Inc.

Executive Vice President—Western Resources, Inc.

Director—Kansas Gas and Electric Company

Comment date: May 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. John K. Rosenberg

[Docket No. ID–2947–000]

Take notice that on March 20, 1996, John K. Rosenberg (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Westar Electric Marketing Inc.

Executive Vice President and General Counsel—Western Resources, Inc.

Comment date: May 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10634 Filed 4–29–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Intent To File an Application for a New License

April 24, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2566.

c. *Date filed:* March 27, 1996.

d. *Submitted By:* Consumers Power Company, current licensee.

e. *Name of Project:* Webber.

f. *Location:* On the Grand River, in Lyons and Portland Townships, Ionia County, Michigan.

g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's Regulations.

h. *Effective date of original license:* April 1, 1962.

i. *Expiration date of original license:* March 30, 2001.

j. The project consists of: (1) a 32-foot-high, 1200-foot-long dam consisting of an earthfill embankment with concrete core wall section, a reinforced concrete gated spillway section, and intake sections; (2) a 7.0-mile-long reservoir having a 660 acre surface area at normal pool elevation 684.4 feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250-Kw; (4) circuit breakers and transformer banks; and (5) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, Attn: Judy A. Schneider (616) 779–5516.

l. *FERC contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 30, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–10586 Filed 4–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–252–001, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

April 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP96–252–001]

Take notice that on April 18, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an amendment in Docket No. CP96–252–001 to its application in Docket No. CP96–252–000, filed on March 15, 1996 as 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 states that due to mechanical problems with 2-inch turbine meters, Northwest now proposes to install two new 2-inch rotary meters as replacements instead of the two 2-inch turbine meters as originally proposed. The design capacity, it is said, would now only increase from 700 Dth per day to approximately 733 Dth per day at 150 psig.

Northwest states that all other pertinent information remains accurate as originally filed.

Comment date: June 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP96–325–000]

Take notice that on April 16, 1996, Texas Eastern Transmission Corporation, 5400 Westheimer Court, Houston, Texas 77056–5310 (Texas Eastern) filed, in Docket No. CP96–325–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing abandonment of its transportation service with CNG Transmission Corporation (CNG) known as Rate Schedule X–93, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that it received authorization in Docket No. CP79–85–000 to receive up to 20,000 Dth/d of natural gas from CNG, by displacement, at Texas Eastern's M&R Station No. 037 located in Greene County, Pennsylvania or at Texas Eastern's M&R Station No. 082 located in Westmoreland County, Pennsylvania and the transportation and redelivery of such quantities to Equitrans, for CNG's account, at Texas Eastern's M&R Station No. 009 located in Greene County, Pennsylvania or at Texas Eastern's M&R Station No. 355 located in Westmoreland County, Pennsylvania. Texas Eastern explains that the agreement provided for a primary term commencing upon the date of initial delivery and terminating three years from such date, and from year to year thereafter until terminated by prior written notice of not less than sixty days.

CNG and Equitrans have filed a joint companion abandonment application in Docket No. CP96–328–000 requesting authorization to abandon their Rate Schedules X–24 and X–7, respectively. These rate schedules set forth the exchange agreement between CNG and Equitrans in which Equitrans would deliver up to 20,000 Dth/d to CNG. CNG would receive the gas from Equitrans for processing and redeliver to Texas Eastern. CNG and Equitrans notified Texas Eastern that they had executed an interruptible transportation agreement which negated the need for the certificated exchange service.

Texas Eastern and CNG have agreed to abandon the transportation service pursuant to Texas Eastern's letter agreement dated December 18, 1995, and have mutually agreed that the appropriate date for termination of the transportation service for CNG under the terms of Texas Eastern's Rate Schedule X–93 is March 15, 1992.

Comment date: May 14, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation Equitrans, L.P.

[Docket No. CP96–328–000]

Take notice that on April 16, 1996, CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301 (CNG), and Equitrans, L.P., 3120 Park Lane, Pittsburgh, Pennsylvania 15275–1102 (Equitrans) filed, in Docket No. CP96–328–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing abandonment of the exchange service knows as CNG's Rate Schedule X–24, and as Equitrans' Rate Schedule X–7, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG and Equitrans state that they received authorization in Docket No. CP79–26–000 for CNG to receive up to 20,000 Mcf/d of natural gas from Equitrans at CNG's Hastings Processing Plant located in Wetzel County, West

Virginia. CNG then redelivered such quantities to Texas Eastern Transmission Corporation (Texas Eastern-Rate Schedule X–93) for Equitrans' account at Texas Eastern's M&R Station No. 009 located in Greene County, Pennsylvania or at Texas Eastern's M&R Station No. 355 located in Westmoreland County, Pennsylvania. CNG and Equitrans explain that the agreement provided for a primary term commencing upon the date of initial delivery and terminating five years from such date, and from year to year thereafter until terminated by prior written notice of not less than twelve months.

CNG and Equitrans state that subsequently the exchange agreement was amended, terminated and replaced with a limited-term transportation agreement between CNG and Equitrans dated January 1, 1989. CNG and Equitrans explain that this transportation agreement negated the need for the certificated exchange service and further eliminated the need for Texas Eastern to receive the exchange gas from CNG and redeliver it for Equitrans' account. Texas Eastern and CNG have agreed to abandon the transportation service pursuant to Texas Eastern's letter agreement dated December 18, 1995, and have mutually agreed that the appropriate date for termination of the transportation service for CNG under the terms of Texas Eastern's Rate Schedule X–93 is March 15, 1992.

CNG and Equitrans state they do not propose to abandon any facilities pursuant to the instant application. Texas Eastern has filed a companion abandonment application in Docket No. CP96–325–000 requesting authority to abandon Rate Schedule X–93.

Comment date: May 14, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–333–000]

Take notice that on April 17, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251 filed in Docket No. CP96–333–000 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 delete two delivery points from an existing 7(c) exchange agreement under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 and Transco's issued in Docket No. CP82–426 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.

Texas Eastern and Transco state that the delivery points are located in Newton and Nueces Counties, Texas and that the exchange volumes will be reassigned to the remaining exchange points within the agreement. Texas Eastern and Transco state that the proposed changes will not impact either of the certificate holder's peak day or annual deliveries and that neither pipeline's tariff prohibits the proposed elimination of the delivery points.

Comment date: June 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Koch Gateway Pipeline Company, Texas Eastern Transmission Corporation

[Docket No. CP96–334–000]

Take notice that on April 17, 1996 Koch Gateway Pipeline Company (Koch Gateway), P. O. Box 1478, Houston, Texas 77251–1478 and Texas Eastern Transmission Corporation (Texas Eastern), P. O. Box 1642, Houston, Texas 77251–1642, collectively referred to as Applicants, filed in Docket No. CP96–334–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon three exchange services which were performed at various points in Texas, Mississippi, and both offshore and onshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicants propose to abandon an August 5, 1948 Agreement, an August 31, 1979 Agreement, and a March 21, 1980 Agreement.

(1) Under the August 1948 Agreement, as amended, the Applicants performed an interruptible exchange under Koch Gateway's Rate Schedule X–1 and Texas Eastern's Rate Schedule X–1, at various points of exchange in Beauregard, Claiborne, Lafourche, Ouachita, Plaquemines, Richland, and St. Landry Parishes, Louisiana; and in Jackson, Victoria, and Smith Counties in Texas; and in Attala County, Mississippi.

(2) Under the August 1979 Agreement, as amended, the Applicants performed a firm exchange under Koch Gateway's Rate Schedule X–124 and Texas Eastern's Rate Schedule X–107, in the offshore Louisiana area.

(3) Under the March 1980 Agreement, as amended, the Applicants performed a firm exchange under Koch Gateway's Rate Schedule X–150 and Texas Eastern's Rate Schedule X–120, at various points in Bee, Harrison, Panola, Rusk, DeWitt, Shelby, Jackson, and Cass Counties in Texas; and in Desoto and Lincoln Parishes in Louisiana.

The Applicants state that the three exchange services mentioned above are no longer necessary or beneficial and were terminated by mutual written agreements on November 30, 1995. No facilities are proposed to be abandoned, and the Applicants declare that no impact will result on either Applicant's system from the granting of this proposal.

Comment date: May 14, 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. 96–10633 Filed 4–29–96; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 27]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review, comment request.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States (Ex-Im Bank) has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved collection described below. A request for public comments was published in 61 FR 6375, February 20, 1996. No comments were received.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public concerning the proposed collection of information to (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments due date: May 30, 1996.

OMB Number: 3048–0009.

Title and Form Number: 9 forms submitted (respondents could complete any one of the nine forms):

(1) Financing or Operating Lease Coverage, Explanation of Form for Export Credit Insurance, EIB–92–45.

(2) Application for Multibuyer Export Credit Insurance Policy, EIB–92–50.

(3) Application for Short-Term Single-Buyer Policy (For Exporters Only), EIB–92–64.

(4) Application for Export Credit Insurance Trade Association Policy, EIB–92–68.

(5) Application for Export Credit Insurance Umbrella Policy, EIB–92–72.

(6) Broker Registration Form, EIB–92–80.

(7) Application for Quotation-Export Credit Insurance Commercial Bank Insureds, EIB–92–34.

(8) Application for Short-Term Single-Buyer Coverage Financial Buyer Credit Policies, EIB–92–41.

(9) Application for Medium-Term Export Credit Insurance, EIB–92–48.

Type of Review: Revision of a currently approved collection.

Need and Use: The information requested enables the applicant exporter, bank, or insurance broker to provide Ex-Im Bank with information necessary to determine eligibility for various exporter credit insurance policies and programs.

Affected Public: Business or other for-profit—Not-for-profit institutions—Farms—State, Local or Tribal Government.

Respondents: Entities involved in the export of U.S. goods and services, including exporters, banks, insurance brokers and non-profit or state and local government acting as facilitators.

Estimated Annual Respondents: 1,500.

Estimated Time per Respondent: 1 hour per form.

Estimated Annual Burden: 1,500 hours.

Frequency of Response: Applications submitted one time, renewals annually.

ADDRESSES: Copies of these submissions may be obtained from Debbie Ambrose, Export-Import Bank of the United States, 811 Vermont Avenue, N.W., Washington, D.C. (202) 565–3313.

Comments and recommendations concerning the submissions should be sent to OMB Desk Officer, Victoria Wassmer, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503, (202) 395–5871.

Dated: April 23, 1996.

Daniel Garcia,

Administrative Officer.

[FR Doc. 96–10365 Filed 4–29–96; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011542.

Title: African Northbound Space Charter and Sailing Agreement.

Parties: Wilhelmsen Lines A/S, Safbank Line Limited, Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree on whether to become or remain a member of or withdraw from any conferences or any other agreements covering the Trade or any part of it. In addition, it permits the parties to charter space to and from one another, consult and agree upon the deployment and utilization of vessels and rationalize sailings in the trade from ports and points in Southern Africa in the range from the northern border of Namibia to the northern border of Mozambique to U.S. Atlantic Coast ports and points.

Agreement No.: 203–011543.

Title: U.S.-Australia/New Zealand Policing Agreement.

Parties: Australia New Zealand Direct Line, Blue Star (North America) Limited, Hamburg-Sudamerikanische Dampfschiffahrts Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed Agreement authorizes the parties to discuss, agree

upon and implement contracts for neutral body policing and cargo inspection services, to establish guidelines and procedures for the exchange of information relating to actions taken by the neutral body, and to exchange such information.

Agreement No.: 232–011544.

Title: Lykes/APL space Charter Agreement.

Parties: American President Lines, Ltd. (''APL''), Lykes Bros. Steamship Co., Ltd. (''Lykes'').

Synopsis: The proposed Agreement authorizes APL to charter and subcharter or assign all or any space it has on Lykes' vssels to a non-party without Lykes' consent, and rationalize sailings in the trade between U.S. Atlantic, Gulf and Pacific Coast ports and points, on the one hand and, on the other hand (a) ports and points in the United Kingdom, the Republic of Ireland, Denmark, Finland, Norway, Sweden, Poland and Baltic ports in the former Soviet Union, (b) ports and points in the Continental Europe range from Germany, to and including Portugal and the Atlantic Coast of Spain; and (c) ports and points on the Mediterranean Sea and Africa. The parties have requested a shortened review period.

Dated: April 24, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–10588 Filed 4–29–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

April 24, 1996.

TIME AND DATE: 2:00 p.m., Thursday, May 2, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The Commission will consider and act upon the following:

1. *Secretary of Labor o.b.o. Poddey* v. *Tanglewood Energy, Inc.*, Docket No. WEVA 93–339–D. (Issues include whether the judge erred in applying three section 110(i) criteria in assessing a civil penalty for a section 105(c) violation, and whether the judge erred by deducting unemployment compensation received from the back pay award.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–10720 Filed 4–26–96; 8:45 am]

BILLING CODE 6735–01–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 May 15, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Donald R. Grobowsky, Temple, Texas; to acquire an additional 18.79 percent, for a total of 28.78 percent of the voting shares of Central Community Corporation, Temple, Texas, and thereby indirectly acquire First State Bank, Temple, Texas.

Board of Governors of the Federal Reserve System, April 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10605 Filed 4–29–96; 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 May 25, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FNB Corporation, Christiansburg, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Christiansburg, Christiansburg, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Vogel Bancshares, Inc., Orange City, Iowa; to acquire 100 percent of the voting shares of Ireton Bancorp, Ireton,

Iowa, and thereby indirectly acquire Security Savings Bank, Ireton, Iowa.

Board of Governors of the Federal Reserve System,

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10604 Filed 4–29–96; 8:45 am]

BILLING CODE 6210–01–F

[Docket No. R–0922]

Federal Reserve Uniform Cash Access Policy

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has revised its cash access policy to provide greater consistency in Federal Reserve Bank cash service levels. The policy provides for a base level of free currency access to all depository institutions, but restricts the number of offices served and the frequency of access. Depository institution offices that meet minimum volume thresholds will be able to obtain more frequent free access. Additional access, beyond the free service level, will be priced.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jon J. Cameron, Manager (202/452–2220) or Kathleen M. Connor, Senior Financial Services Analyst (202/452–3917), Cash Section, Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve Banks supply currency and coin to depository institutions throughout the nation. Reserve Banks provided cash services to Federal Reserve member banks at no explicit fee (beyond the face value of cash orders or deposits) from 1914 to 1981. Nonmember institutions received cash services from the Treasury Department until the transfer of its Subtreasury functions to the Federal Reserve Banks in 1920. As a result, nonmember institutions generally met their cash needs through correspondent member banks from 1920 to 1980. During this period, member banks could request the Federal Reserve to provide cash services to a nonmember institution. The member's reserve account would reflect the transaction, including a charge to reimburse the Federal Reserve for the cash transportation cost.

The Monetary Control Act of 1980 authorized the Federal Reserve Banks to offer priced services to both member and nonmember institutions, and included currency and coin services in its list of priced Federal Reserve Bank services. The Board determined in the development of its pricing principles that ''currency and coin processing (paying, receiving and verifying both coin and currency, and issuing, processing, canceling, and destroying currency) are governmental functions and would not be priced.'' The Board noted, however, that ''the Reserve Banks may impose reasonable limitations on frequency of service, number of offices served and size of orders/deposits.'' (45 FR 56893, September 4, 1980)

As part of the Federal Reserve's implementation of the Monetary Control Act, the Board adopted a policy in November 1981 to provide standard access nationwide to every depository institution that requested coin and currency directly from the Federal Reserve. (46 FR 55152, November 6, 1981) Under the policy, the Board required that all Federal Reserve offices provide access to, at a minimum, one office per depository institution or one office of a depository institution per municipality, subject to adjustment where special circumstances apply. In 1982, the Board adopted fee schedules for currency and coin transportation and coin wrapping services. (47 FR 58364, December 30, 1982)

In 1984, the Board adopted uniform cash service standards (UCSS) for Federal Reserve Banks and most recently revised the UCSS in 1987. The UCSS provide a common framework for Federal Reserve cash services. The UCSS address packaging standards, handling and verification requirements, access frequency, and depository institution service levels. The UCSS allow normal service to each authorized depository institution or office once per week and recognizes that certain depository institution offices may call for more frequent service where volume and cost justify more frequent service. Under the UCSS, Reserve Banks that wish to provide access exceeding the basic frequency may do so as a priced service but are not required to price the service.

In 1987, the Federal Reserve Bank of Minneapolis and the Detroit Branch of the Federal Reserve Bank of Chicago established access fees for additional cash services in excess of the free weekly service allowed by the UCSS. In March 1996, the Federal Reserve Bank of San Francisco modified its cash service structure to restrict the frequency of access. Under the modified structure, a depository institution must meet a minimum bundle threshold to qualify for more frequent access. [1] Additional access is priced if the bundle threshold is not met.

Currently, there is a lack of consistency in the cash service levels provided by the Reserve Banks. Some Reserve Bank offices limit access to cash services to as few as five offices per depository institution, while other offices allow unrestricted access (up to 400 offices). While some Reserve Bank offices permit unrestricted frequency of access, other offices limit frequency based on parameters such as dollar values, volumes, and location. As noted above, only a few offices offer additional priced access. Consistency in Federal Reserve policies and service levels will become increasingly important as an increasing number of depository institutions have a presence in multiple Federal Reserve districts.

II. Uniform Cash Access Policy

The Board has approved a new cash access policy, which was developed within the following framework: (1) the structure of cash services should include a common, base level of free services to achieve greater uniformity in Federal Reserve cash service levels; (2) the base level of free cash services should be consistent with a wholesale role for the Reserve Banks, which implies that a large depository institution is responsible for servicing its own branch network; and (3) Reserve Banks that choose to provide cash services exceeding the base level may do so as a priced service, where demand exists.

The new policy imposes more uniformity on the provision of cash services than currently exists. While the policy reflects the differing operating capabilities of the various Federal Reserve Bank offices, the Board's intent is to move to full uniformity within two years of implementation of this policy. The Board will review the Reserve Banks' initial experience with this policy and assess whether there are impediments to moving to a fully uniform policy. Based on the results of the review, the Board may modify the policy to achieve Systemwide uniformity with respect to volume thresholds, pricing, and additional priced access.

Following is a discussion of the new cash access policy and how and why it

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[1] A bundle is a standard unit of 1000 currency notes of the same denomination. Deposits of lower denomination notes generally are made in bundle increments. Deposits of higher denomination notes (e.g., $50s or $100s) generally are made in strap increments (100 currency notes).

differs from the current policy provisions.

A. Number of Depository Institution Offices Eligible for Free Access

Under the new policy, each depository institution with a banking presence in a Federal Reserve office territory can designate up to ten offices to receive free cash access (deposit and order) service from the local Reserve Bank office. Beyond the ten offices, Reserve Bank offices will provide free cash access to large offices whose volumes exceed a specified threshold and that satisfy the local Reserve Bank office's denomination bundle standard.[2] Each district will set a ''high bundle threshold,'' within the range of fifty to one hundred bundles, to accommodate the needs of the geographic area being serviced by a particular office within their district. During initial implementation of the policy, depository institutions will include the known large offices exceeding the ''high bundle threshold'' in the original ten designated offices to receive free access to cash services.

The current policy requires Federal Reserve Banks to provide free cash access service to depository institutions on an equal and impartial basis, consistent with their capabilities to provide such service through maximum utilization of available physical facilities. The varying application of this provision by the Reserve Bank offices has resulted in inconsistent cash service levels throughout the System.

The new ten-office provision provides uniformity in the provision of cash services. The new provision is consistent with the wholesale role of the Federal Reserve in providing cash services, particularly with respect to large institutions. The policy encourages large institutions to consolidate deposit and cash ordering functions and imposes reasonable limitations on the number of offices served.

The provision for ten free endpoints may provide many smaller depository institutions with complete coverage of their branch network. The Board considered developing a formula to set the number of endpoints eligible to receive free service based on the institution's deposit size and total number of endpoints. The Board concluded that such a formula would prove too difficult to administer and that the provision of ten free endpoints would result in the least disruption to the current level of free cash services.

The Reserve Banks estimate that 95 percent of depository institutions would continue to receive their current level of cash services free of charge. The policy would affect primarily branch networks of large depository institutions. The policy would result in a reduction of approximately 8,700 endpoints from the current base of 29,500 endpoints that currently receive free cash services (a reduction of approximately 26 percent). The Board believes implementation of the policy will not materially affect the Reserve Banks' costs of providing cash services. Aggregate cash receipts and disbursements are expected to remain unchanged.

The Reserve Banks will establish procedures to ensure that, if a depository institution receives free access to more than ten offices, all endpoints must meet the high bundle threshold. In addition, the Reserve Banks have developed administrative guidelines to accommodate mergers and bank acquisitions. For one year after the merger or acquisition, the merged institutions can receive the same level of free access as they received at the time of the merger. After one year, the Reserve Banks will treat the merged institutions as one entity for the purposes of this policy.

B. Frequency of Access

Normal free access for each designated office of the depository institution will continue to be once per week. Access more frequent than once per week will be available free of charge to the designated endpoints whose volumes exceed a twenty-bundle aggregate threshold and that satisfy the local Reserve Bank office's denomination bundle standard.

These provisions impose reasonable limitations on the frequency of service and standardize System service levels. They are consistent with the current cross-shipping policy, which will continue under the new cash access policy.[3] Elimination of the cross-shipping policy could result in some depository institutions relying on the Reserve Banks as money distribution centers, which would be inconsistent with the Federal Reserve's wholesale role.

C. Priced Additional Access

The new policy requires that Reserve Banks price additional cash services. Under the current policy, Reserve Banks that provide access exceeding the basic frequency can do so as a priced service but are not required to price the service. The Board anticipates that all Reserve Banks will offer priced cash services except for those offices that can demonstrate that operational limitations prevent them from doing so.

The pricing of additional service will recover the cost of access to the Federal Reserve cash vault only and will not reflect the costs of the governmental aspects of the Reserve Banks' cash services, such as vault storage and processing of currency. Preliminary estimates of the range of Reserve Bank fees for additional access are $20–$100 per deposit or order.

D. Delegation of Authority

The Board believes that flexibility is desirable in the administration of future routine changes to the policy. The Board, therefore, has delegated authority to the Director of the Division of Reserve Bank Operations and Payment Systems to (1) approve changes in the base number of free endpoints and the volume thresholds; and (2) waive the policy for a limited period if warranted by special circumstances, such as a natural disaster or the introduction of new currency.

III. Effective Date

The new cash access policy becomes effective on May 1, 1998. The Board believes that two years is adequate time for financial institutions to make the necessary preparations to implement the policy.

IV. Competitive Impact Analysis

The Board assesses the competitive impact of changes that may have a substantial effect on payment system participants. In particular, the Board assesses whether a proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing similar services and whether such effects are due to legal differences or due to a dominant market position deriving from such legal differences.

The Reserve Banks will continue to perform the governmental functions of currency and coin processing. While private-sector service providers cannot duplicate the entire range of Federal Reserve cash functions, these providers can supply and accept coin and currency. In addition, private-sector service providers offer an array of value-

[2] The Reserve Banks make payments and accept deposits in standard units as defined by the UCSS. The denomination bundle standard is set by the individual Reserve Bank office to reflect the operating needs of the office. Each Reserve Bank's denomination bundle standard is included in its cash operating circular.

[3] The cross shipment policy states that cross shipment (deposit of excess fit currency and reorder of the same denomination within five business days) should be eliminated at the depositing-office level, and minimized, or eliminated where practicable, at the depositing-institution level.

added cash services that the Federal Reserve Banks do not provide. For example, some private-sector service providers maintain automated teller machines for depository institutions and offer specific retail services for the depository institutions' customers. Therefore, it is unlikely that the policy will result in any significant shift to Federal Reserve cash services away from private-sector providers. The Board's policy, as revised, does not adversely affect the ability of depository institutions or service providers to compete with the Federal Reserve Banks to provide cash services.

V. Federal Reserve Cash Service Access Policy

The Board has adopted the following Federal Reserve cash access policy:

1. *Number of endpoints eligible for free cash access.* Each depository institution with a banking presence in a Federal Reserve office territory can designate up to ten offices in that territory to receive free cash access (deposit and order) service from the local Reserve Bank office.

Beyond the ten offices, Reserve Bank offices will provide free cash access to endpoints whose volumes exceed a specified threshold and that satisfy the local Reserve Bank office's denomination bundle standard. Each Reserve Bank office will set a ''high bundle threshold,'' within the range of fifty to one hundred bundles, to accommodate the needs of the geographic area being serviced within that Federal Reserve office territory. If a depository institution receives free access for more than ten endpoints, all endpoints must meet the high bundle threshold.

2. *Frequency of access.* Normal free access for each designated office of the depository institution will be once per week. Access more frequent than once per week will be available free of charge to each designated office whose volume exceeds a twenty-bundle aggregate threshold and that satisfies the local Reserve Bank office's denomination bundle standard.

3. *Priced access.* Reserve Bank offices may choose to accommodate additional access where the demand exists subject to the constraints of the physical facilities at each Reserve Bank office. Reserve Banks must price access to cash services beyond the free service described above, if offered.

4. *Delegation of authority.* The Director of the Division of Reserve Bank Operations and Payment Systems, under delegated authority, may (1) approve changes in the base number of free endpoints and the volume thresholds; and (2) waive the policy for a limited period if warranted by special circumstances, such as a natural disaster or the introduction of new currency.

By order of the Board of Governors of the Federal Reserve System.

Dated: April 24, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–10606 Filed 4–29–96; 8:45 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, May 6, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–10837 Filed 4–26–96; 2:54 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 932–3331]

The May Department Stores Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the St. Louis-based company to cease unwarranted collection activity on certain acquired credit card accounts, to correct the inaccurate or obsolete credit data it sent to credit reporting agencies about these accounts, and to take steps to ensure that the information maintained and reported with respect to the acquired accounts is accurate. May would also be prohibited from sending credit cards to consumers except: (1) In response to an oral or written request or application for the card, or (2) as a renewal of, or substitute for, an accepted credit card. The Consent Agreement settles allegations that, as an example, in converting its Thalhimer's customers' credit card accounts to Hecht's accounts, May's conversion process transferred obsolete derogatory information to the new accounts. The conversion process also allegedly led to the inaccurate reporting of payments and other negative data and to the initiation of collection activity against some customers.

DATES: Comments must be received on or before July 1, 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: David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave., NW., Washington DC 20580. (202) 326–3224. Christopher Keller, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3159.

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)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The May Department Stores Company, a corporation, (''May''), hereinafter sometimes referred to as proposed respondent, and it now appears 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 May, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent May is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 611 Olive Street, St. Louis, Missouri 63101.

2. Proposed respondent is now and has been regularly engaged in the practice of extending consumer credit pursuant to an open end credit plan involving a credit card, and in the practice of honoring that credit card. Hence, respondent is a creditor as defined in § 103(f) of the Truth in Lending Act (''TILA''), 15 U.S.C. § 1602(f).

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

4. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

5. 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;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 50 *et seq.*

6. 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 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.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

8. 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 respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with 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.

9. 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

Definitions

For the purpose of this Order the following definitions apply:

The terms ''open and credit plan,'' ''credit card,'' and ''cardholder'' are defined as set forth in §§ 103(i), (k), and (m), respectively, of the Truth in Lending Act (''TILA''), 15 U.S.C. §§ 1602(i), 1602(k), and 1602(m).

The term ''consumer reporting agency'') is defined as set forth in §§ 603(f) of the Fair Credit Reporting Act (''FCRA''), 15 U.S.C. §§ 1681a(f).

''Fair Credit Billing Act'' refers to Chapter 4, Credit Billing, 15 U.S.C. § 1666 *et seq.*, of the Consumer Credit Protection Act.

I

It is hereby ordered that respondent, The May Department Stores Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate subsidiary, division, or other device, do forthwith cease and desist from failing to follow reasonable procedures to assure the accuracy of the information that respondent maintains with respect to cardholder accounts that respondent has acquired or acquires from other retail sellers of consumer goods or services and that respondent provides to consumer reporting agencies, including but not limited to the accuracy of dates of relevant actions.

II

It is further ordered that, to the extent not already accomplished, within ninety (90) days of service of this Order, respondent, its successors and assigns, shall identify current cardholders on whom, since January 1, 1992, respondent has reported incorrectly to any consumer reporting agency derogatory information related solely to the cardholder's open end credit plan account with an acquired creditor. Respondent shall instruct each such consumer reporting agency, in writing, to remove or correct any such derogatory information.

III

It is further ordered that respondent, its successors and assigns, shall, after written notice from a consumer to its Bill Adjustment Department in accordance with the Fair Credit Billing Act of a failure by respondent accurately to ascribe charges, credits, payments, or other activity to the correct account, cease collection activity as to the disputed amount, either directly or through any third party, on any outstanding balance that is due, in whole or in part, to respondent's failure accurately to ascribe charges, credits, payments, or other activity to the correct account.

IV

It is further ordered that respondent, its successors and assigns, in order to give effect to Paragraph III of this Order, shall institute reasonable procedures to train respondent's collection personnel in the obligations of the Fair Credit Billing Act, and to further train respondent's collection personnel to inform consumers who assert billing errors of the correct address of respondent's Bill Adjustment Department.

V

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate subsidiary, division, or other device, in connection with any open end credit plan, do forthwith cease and desist from violating § 132 of the Truth in Lending Act, 15 U.S.C. § 1642, and § 226.12 of Regulation Z, 12 C.F.R. § 226.12, by issuing a credit card to any person except (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

VI

It is further ordered that respondent, its successors and assigns, shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order.

VII

It is further ordered that respondent, its successors and assigns, shall deliver for five (5) years a copy of this Order to all present and future personnel, agents, or representatives having responsibilities with respect to the subject matter of this Order.

VIII

It is further ordered that respondent, its successors and assigns, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the Order.

IX

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.

X

It is further ordered that respondent, its successors and assigns, shall, within one hundred and eighty (180) days of the date of service of this Order, file with the Federal Trade Commission, Division of Enforcement, a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from the May Department Stores Company, a corporation (''the respondent''). The proposed consent order has been placed on the public record for sixty (60) days for receipt 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 proposed order contained in the agreement.

This matter concerns the placement of inaccurate information in the credit bureau files of consumers whose accounts were acquired by respondent in the course of its purchase of another retailer. The complaint alleges these inaccuracies were a result of the process used to convert the accounts, which, among other things, included dating past negative activity in a way that allowed it to remain on consumers' credit reports longer than the seven year obsolescence period found in the federal Fair Credit Reporting Act (''FCRA''). In addition, the complaint alleges that once respondent knew or should have known the information was not accurate, it failed to take steps to correct it.

This matter also addresses the issuance of credit cards to consumers who did not apply for the cards orally or in writing. The complaint accompanying the proposed consent order alleges that in connection with these practices, the respondent engaged in acts and practices in violation of Section 5 of the Federal Trade Commission Act and Section 132 of the Truth in Lending Act and Section 226.12(a)(2) of Regulation Z.

According to Count I of the complaint, when the respondent acquires other retail sellers of consumer goods or services, it converts the acquired open end credit plan accounts to its own open end credit plan accounts; an example of this occurred when it converted Thalhimer's accounts the Hecht Co. accounts. The respondent creates new open end credit plan accounts and issues new account numbers in the name of each consumer having an open end credit plan account in good standing with the retail company acquired by respondent. As part of this process, certain inaccuracies appeared in consumers' credit files.

Respondent, in the normal course of its business, furnishes account information concerning its open end credit plan accounts to consumer reporting agencies. This reported information reflected the inaccuracies allegedly caused by the respondent's account conversion process. The complaint alleges that respondent's reporting of inaccurate information constitutes an unfair practice in violation of Section 5 of the Federal Trade Commission Act.

Count I also alleges that respondent on some occasions initiates collection activity on purported delinquencies, created in error when respondent creates a second account without the knowledge or authorization of consumers, and subsequently posts payments and other credits to the incorrect account. The complaint alleges that this practice also constitutes an unfair practice in violation of Section 5 of the Federal Trade Commission Act.

Count II of the complaint alleges that in connection with telephone marketing of offers of pre-approved open end credit plan accounts, respondent in some cases establishes open end credit accounts for consumers who have not received or approved the offer or who have specifically declined the offer, in violation of Section 132 of the Truth in Lending Act and 226.12(a)(2) of Regulation Z.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future.

Specifically, Paragraph I of the order requires the respondent to cease and desist from failing to follow reasonable procedures to assure the accuracy of the information that respondent maintains with respect to cardholder accounts that respondent has acquired or acquires from other retail sellers of consumer goods or services and that respondent provides to consumer reporting agencies, including but not limited to the accuracy of dates or relevant actions.

Paragraph II of the order requires respondent, to the extent not already accomplished, within ninety (90) days of service of the order, to identify current cardholders on whom, since January 1, 1992, respondent has reported incorrectly to any consumer reporting agency derogatory information related solely to the cardholder's open end credit plan account with an acquired creditor. The respondent must instruct each consumer reporting agency, in writing, to remove or correct any such derogatory information.

Paragraph III of the order requires respondent, after written notice from a consumer to its Bill Adjustment Department in accordance with the Fair Credit Billing Act of a failure by respondent accurately to ascribe charges, credits, payments, or other activity to the correct account, to cease collection activity as to the disputed amount, either directly or through any third party, or any outstanding balance that is due, in whole or in part, to respondent's failure accurately to ascribe charges, credits, payments, or other activity to the correct account.

Paragraph IV of the order requires that the respondent institute reasonable procedures to train their collection personnel in the obligations of the Fair Credit Billing Act, and to further train their collection personnel to inform consumers who assert billing errors of the correct address of respondent's Bill Adjustment Department.

Paragraph V of the order requires respondent to cease and desist from issuing credit cards to any person except (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

Paragraph VI of the order requires the respondent to make documents demonstrating compliance with the requirements of the order available to the Federal Trade Commission for inspection and copying.

Paragraph VII of the order requires respondent for a period of five years to deliver a copy of the order to all present and future personnel, agents, or representatives having responsibilities with respect to the subject matter of the order.

Paragraph VIII of the order requires that the respondent promptly notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the Order.

Paragraph IX of the order is a provision terminating the order in twenty years from the date of its issuance, or twenty years from the most recent date that the Untied States or the Federal Trade Commission files a complaint in federal court alleging any violation of the order, whichever comes later.

Paragraph X of the order requires respondent within one hundred and eighty (180) days of the date of service of the order, to file with the Commission's Division of Enforcement, a written report setting forth in detail the manner and form in which it has complied with 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 in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–10561 Filed 4–29–96; 8:45 am]

BILLING CODE 6750–01–M

Request for Comments Concerning Disclosures in the Resale of Vehicles Repurchased Due to Warranty Defects

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') is requesting public comment and holding a public forum concerning the practices of motor vehicle manufacturers, their franchised dealers, and other firms and individuals in the resale of allegedly defective vehicles previously repurchased from consumers because of warranty defects. This notice sets forth a statement of the Commission's reasons for requesting public comment, a list of specific questions and issues upon which the Commission particularly desires written comment, an invitation for written comments, and an invitation to participate in the public forum.

On November 8, 1995, the Consumers for Auto Reliability and Safety and other consumer groups (''Consumer Coalition'' or ''Petitioners'') filed a petition in which they requested that the Commission initiate either a rulemaking proceeding or an enforcement action regarding the alleged industry practice of reselling vehicles repurchased due to defects without disclosure of the vehicle's prior history to the subsequent purchaser. The Commission is publishing this petition without endorsing or supporting the views expressed therein. The Commission is seeking public comment and holding a public forum on the issues raised by the petition and on other related issues.

DATES: Written comments will be accepted until June 28, 1996. Notification of interest in participating in the public forum also must be submitted on or before June 28, 1996. The public forum will be held in Washington, D.C. on July 15, 1996, from 9 a.m. until 5 p.m.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Comments should be identified as ''Vehicle Buybacks—Comment. FTC File No. P96 4402.''

Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. The public forum will be held at the Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Carole I. Danielson (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

Traditionally, automobile manufacturers have bought back allegedly defective vehicles from consumers in only the most exceptional circumstances. Although the Uniform Commercial Code gave buyers a right to elect other remedies if a product was seriously defective, the remedy ordinarily available to consumers was limited to repairs, as expressly provided by the terms of the written warranty. Buybacks were granted only rarely, and usually on the basis of goodwill. This situation changed with the advent of state lemon laws. Beginning in 1982, state legislatures began enacting ''lemon laws'' to improve consumers' remedies for new vehicle problems. These laws give consumers the right to a replacement or a refund if their new cars cannot be repaired under warranty. Under these lemon laws, if a specified number of repair attempts fails to correct a major problem, or if a new car has been out of service for repair for the same problem for a cumulative period of thirty days or more within the one year following delivery of the vehicle, the manufacturer must either replace the car or refund the full purchase price, less a reasonable allowance for the consumer's use of the car prior to reporting the defect. All 50 states and the District of Columbia now have enacted such statutes. Since the state lemon laws were enacted, consumers can more easily obtain relief requiring manufacturers to repurchased allegedly defective vehicles.

Most state lemon laws require consumers to notify the manufacturer of their intention to assert their lemon law rights before exercising those rights. In addition, most states require the consumer to submit the dispute to an informal dispute settlement mechanism before pursuing their lemon law rights in court. This mechanism may be an arbitration program established or staffed by the state (such as the Florida and Washington State arbitration programs), offered by the manufacturer (such as the Ford Consumer Appeals Board or the Chrysler Customer Arbitration Board), or offered through third-party organizations (such as the BBB's AUTO LINE or the National Automobile Dealers Association's AUTOCAP programs). After reviewing the evidence submitted, these arbitration programs may impose a wide range of remedies, including requiring the manufacturer or dealer to replace the defective vehicle or refund the full purchase price.

Some vehicles that have been replaced or bought back (''repurchased vehicles'' or ''buybacks'') under the state lemon laws are resold to other consumers as used cars. To protect subsequent buyers, approximately 36 states and the District of Columbia have enacted legislation requiring manufacturers and dealers to disclose to subsequent buyers that a used vehicle was repurchased because it was found to be defective or to have non-conformities under the state lemon law. The state laws vary as to how this disclosure is to be made. Some states require the vehicle's title to be branded; others require that the consumer be given a disclosure document at the time of sale or that the disclosure be placed on the vehicle. The state laws also vary regarding which vehicles are subject to the disclosure requirement. Some states require disclosure on all buyback vehicles, including those repurchased under voluntary settlements, while other states require disclosure on only certain vehicles (e.g., where there was a final arbitration decision). In addition, some states prohibit reselling a repurchased vehicle with a serious safety defect within the state.

Despite these state laws, subsequent buyers of repurchased vehicles may not be receiving the intended disclosures. In a petition dated November 8, 1995, the Consumer Coalition requested that the FTC either initiate a rulemaking proceeding or an enforcement action in connection with the industry practice of allegedly reselling vehicles bought back because of defects without disclosure to the used car purchaser. The petitioners allege that auto manufacturers, their dealers and others are engaged in a pattern of conduct (which the petitioners term ''lemon laundering'') intended to conceal from used car buyers material information about the vehicle's safety and quality history. The petitioners also allege that this pattern of conduct often involves transporting the repurchased vehicles across state lines to avoid the operation of state law protections. A copy of the petition is appended to this Notice as Attachment 1.

Section B. Invitation To Comment

The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination on the issues raised by the petition and on Petitioners' request. Written comments must be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W. Washington, D.C. 20580, on or before June 28, 1996. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Section C. Public Forum

The FTC staff will conduct a Public Forum to discuss the written comments received in response to the Federal Register notice. The purpose of the forum is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the petition and in the comments, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus opinion among participants or between participants and Commission staff with respect to any issue raised in the comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning what action, if any, to take in response to the petition.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the petition. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the forum will be open to the general public. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following interests: Auto manufacturers, new and/or used auto dealers, operators of auto auctions, consumer groups, Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties who represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 60-day comment period.

2. The party notifies Commission staff of its interest by June 28, 1996.

3. The party's participation would promote a balance of interests being represented at the forum.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in the petition.

5. The party has expertise in activities affected by the petition.

6. The number of parties selected will not be so large as to inhibit effective discussion among them.

The forum will be held on July 15, 1996. Parties interested in participating in the forum must notify Commission staff by June 28, 1996. Prior to the forum, parties selected will be provided with copies of the comments received in response to this notice.

Section D. Issues for Comment

The Commission seeks comments on various issues raised by the petition. Without limiting the scope of the issues it seeks comments on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions below, to which they correspond. In responding to these questions, include detailed, factual supporting information whenever possible.

1. How many vehicles are repurchased each year by manufacturers? How many vehicles are repurchased each year by dealers? What is the disposition of these vehicles? How many are resold to consumers? How many are resold within the same state? How many are transported to another state and resold. What happens to those not resold?

2. How many of the repurchased vehicles are successfully repaired after they are bought back? Are there studies showing whether subsequent purchasers of these repurchased vehicles encounter a frequency of repair that is greater than, equal to, or less than that of purchasers of non-repurchased used cars of like models and model years?

3. At what stage should a car be considered a buyback for the purposes of imposing a disclosure requirement? Should *any* car that is taken back by the manufacturer at any stage in a dispute over alleged defects be considered a buyback? If not, under what circumstances should a vehicle be considered a buyback? Should only those vehicles in which there has been an impairment of value be considered a buyback? If so, how should ''impairment in value'' or any similar limiting term be defined? Since manufacturer buybacks are only one segment of the buyback market, how can defective vehicles bought back by the dealer and/or traded in by consumers be identified?

4. If ''buybacks'' are defined to include those repurchased prior to the initiation of arbitration or litigation, would disclosure laws cause a chilling effect on manufacturers' willingness to make such ''goodwill'' repurchases? On the other hand, would disclosure laws that only cover cars that were the subject of a formal arbitration or litigation proceeding lead manufacturers to buy back more vehicles under the heading of ''goodwill'' in order to avoid the disclosure requirement?

5. How long should a vehicle be considered a''buyback''? Permanently? Until successfully repaired? Some other time period? How can it be determined whether a vehicle has been successfully repaired prior to reselling it?

6. What are the current practices of auto manufacturers, auction companies, and dealers regarding disclosure of the fact that a vehicle is a buyback to subsequent purchasers? What types of disclosures are given? Are these disclosure methods effective? Are consumers receiving the disclosures? Who is responsible for ensuring that disclosures are made to the consumer? Are the disclosures specific enough to identify or reveal the vehicle's previous history and the repairs performed? What are the costs and/or benefits of these disclosure methods to manufacturers? To auction companies? To dealers? To consumers? To other parties?

7. What methods are or would be most effective in getting information about a vehicle's history and prior repairs to consumers *before* they buy the vehicle? Title branding? Disclosure documents to be given to consumers? Other methods? If disclosure laws are the most effective method, then what type of disclosure requirement should be imposed? What are the costs and/or benefits of these various methods?

8. What methods have been adopted by the various States to ensure that subsequent purchasers are advised that vehicles are buybacks? How effective have these methods been? What have been the costs and benefits of these State requirements to manufacturers? To auction companies? To dealers? To consumers? To the States?

9. If disclosure or title branding laws are or would be most effective, how should any such disclosure or title branding rules be enforced? By FTC regulation? By model State law? By a national databank of VIN numbers? By other means?

10. Uniformity in the disclosure and labeling of repurchased vehicles might resolve the problem of interstate shipment of vehicles to avoid individual state requirements. What are the costs and/or benefits of diverse State requirements versus those of uniformity? Would a uniform national standard be an effective method to get buyback information to subsequent purchasers? What would be the costs and/or benefits of a national standard?

List of Subjects

Used cars, Warranties, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

Attachment I

Consumers for Auto Reliability and Safety

Advancing Auto Reliability and Safety Since 1979

November 8, 1995

Donald S. Clark, Secretary,
Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, DC 20580

Re: Petition for Investigation of ''Lemon'' Motor Vehicle Resale Practices

Dear Secretary: Petitioners submit this petition to the Federal Trade Commission (hereinafter, ''FTC'', or ''Commission''), requesting an investigation of certain practices of new motor vehicle manufacturers, their franchised dealers, and others in the resale of defective vehicles. Petitioners request that the Commission initiate either rulemaking proceedings or an enforcement program under Section 5 of the FTC Act,[1] to stop the industry practice of reselling ''lemon'' cars without disclosure to the used car purchaser.

Petitioners contend that these practices are deceptive and unfair, and that they are carried out in knowing disregard of the laws and policies of many states that regulate the resale of vehicles which have been deemed ''lemons.''

Over the last several years, investigations conducted by state law enforcement officials and by reporters for national news bureaus have uncovered a pattern of conduct in the resale of defective vehicles, conduct which is intended to conceal from used car buyers material information about the vehicle's safety and quality history. These practices evidence a pattern of deception that substantially injures consumers, passing on to the second retail purchaser the very losses that lemon laws were designed to prevent. Often these practices involve the transport of vehicles across state lines to avoid the operation of state law protections.

Petitioners consider this practice, known as ''lemon laundering,'' to be an unfair and deceptive trade practice under Section 5 of the FTC Act. Because the practices necessitate the use of interstate commerce to subvert the operation and purpose of state laws designed to protect used car buyers, Commission action is both appropriate and necessary.

[1] 15 U.S.C. Sec. 45.

Background

No consumer product generates more consumer complaints, or more economic injury, than the automobile. The National Association of Attorneys General's nationwide survey of consumer complaints, released in April, 1994, listed automobile-related complaints at the top.[2] This finding is echoed by the survey report issued by the Consumer Federation of America and the National Association of Consumer Agency Administrators [3]: no doubt the FTC's experience confirms the accuracy of this finding.

In 1991, the National Association of Attorneys General (NAAG) adopted a resolution calling for mandatory disclosures in the resale of ''lemon'' vehicles. NAAG's statement reads, in part, as follows:

''At least 50,000 vehicles with serious safety defects or non-conformities are repurchased by manufacturers or dealers annually through arbitration, litigation or through settlements as a result of the various state lemon laws, representing a potential $750 million loss.

''Many of those vehicles are subsequently resold at auction or by used car dealers and thus recycled back into the marketplace, back onto the streets, and back into repair shops.

''Many states do not have adequate legal protection for the unwitting consumer purchasers of lemon law 'buyback' vehicles.'' [4]

Even with statutory protections in some states, the practices continue to be widespread, in large part due to the ease with which vehicles can be moved to or through states with weak or no protections for used car buyers. This enables sellers to remove the ''lemon'' label from the used car transaction. It is this particular practice which constitutes ''lemon laundering.''

The national scope of the problem is brought into clearer focus when the safety implications are considered. Many new car ''lemons'' resold in the used car market have severe safety defects, which were not addressed by safety recalls. Undoubtedly these unsafe used car ''lemons'' contribute to the enormous economic and human toll exacted by motor vehicle crashes. It is well documented that motor vehicle crashes are the leading killer of Americans under the age of 35, and the leading cause of head injuries, epilepsy, quadriplegia, paraplegia, and facial injuries, as well as a significant cause of blindness.

It is petitioners' contention that consumers purchasing used cars are entitled to full, clear and timely disclosure of the status of vehicles deemed ''lemons,'' if not under state laws then under the Uniform Commercial Code provisions against unconscionability, under Section 5 of the FTC Act, and as a matter of public policy.

Federal and State ''Lemon'' Laws Primarily Protect New Car Buyers

After the passage in 1976 of The Magnuson-Moss Warranty Act with its Federal private right of action for products covered by a ''full'' warranty,[5] all 50 states and the District of Columbia enacted new car ''lemon laws'' to protect new car buyers. Typically these statutes denominate a vehicle as a ''lemon'' by the number of times a repair is attempted without success, or by the period of time a vehicle is out of service for warranty repairs. The statutes generally create a private cause of action with remedies of replacement or refund of the purchase price, incidental costs, and, in many states, attorney fees. Many state laws encourage settlements through state-sponsored or state-certified arbitration.

The measure of success of these laws and programs is their widespread use: The Center for Auto Safety estimates that over 50,000 vehicles are repurchased annually by manufacturers as a result of arbitration decisions or legal settlements.[6] Thus, substantial economic losses to many new car buyers are prevented by the ''lemon'' laws.

In the wake of the success of these state laws is the secondary harm to consumer buyers in the used car market. Petitioners see continuing consumer injury to used car buyers who have no way to distinguish between ordinary used cars and those that have had defects that the manufacturer was unwilling or unable to repair, defects which are so severe as to warrant their repurchase under state laws.

Manufacturers and dealers frequently mislead consumers by characterizing defective ''lemon'' vehicle buybacks as ''goodwill'' or ''customer satisfaction'' repurchases, particularly when the repurchase is made as settlement to a potential or actual lawsuit. The National Association of Attorneys General Working Group on Resold Lemons examined this issue and concluded that vehicles repurchased through such voluntary agreements should be designated as ''Defective Vehicle Buybacks,'' just as are all adjudicated ''lemons.'' The group's report goes on to note that, otherwise,

''If voluntary buybacks were not included in this definition, manufacturers would be able to avoid the disclosure requirements by entering into voluntary agreements with consumers to buy back or replace those vehicles which are most seriously defective and would most likely be adjudicated as lemons. Subsequent consumer purchasers would then have no knowledge of the 'lemon' history of these vehicles.

''Some manufacturers may argue that the use of the phrase 'Defective Vehicle Buyback' is not fair or accurate because vehicles are also bought back on a 'goodwill' basis which are not defective. The Working Group is not convinced that vehicles which are free from any alleged defects are routinely repurchased by manufacturers and dealers. If there are goodwill repurchases, the numbers are not significant.'' NAAG Working Group Report Summary, November 1, 1990.

It is important to understand the typical distribution channels for new car ''lemon buybacks,'' as they are known. State laws require that the manufacturer who gives the warranty. and not the dealer, repurchase the car. As noted above, many ''lemon buybacks'' are disguished by the manufacturer and dealer, working in concert, who arrange for the transaction to appear as a trade-in or, as they are known in the industry, ''trade assists.'' When manufacturers *do* repurchase vehicles as prescribed in the ''lemon laws'', they reintroduce the vehicle into the used car wholesale market typically through ''closed'' auctions, where only franchised dealers for that same make of vehicle are invited. The vehicle may be sold on the used car lot of the dealer purchaser at auction, or the title may change hands several times before being resold to the public.

On the used car lot of a franchised dealer, the car will be shown alongside other late model, low mileage cars. These may be recent trade-ins, or cars returned to the dealer after a period of use as a daily rental, salesperson's demonstrator, manufacturer executive vehicle, or dealer ''loaner'' car. There is nothing in the appearance of lemon buybacks that would make them identifiable to the used car buyer.

To address the ''downstream'' problem of the resale of ''lemons'', thirty six states and the District of Columbia have enacted disclosure laws. These take various forms, but can include requirements for one or more of the following disclosures: an on-vehicle sticker; a special form that must be acknowledged by the used car buyer at the time of purchase; or a ''branding'' of the vehicle title. Five states forbid the resale in that state of lemons found to have had serious safety defects. The effect of these various state laws, though, is to create a great incentive for manufacturers and dealers to move the cars out of the state in which they are determined to be ''lemons'' and into a non-disclosure state, or at least into another state where dealers find the disclosures non-threatening, (i.e., ineffective in warning buyers).[7]

The practice of moving ''lemon buybacks'' to other states is extensive. Public accounts of a State of Florida investigation still underway shows that about 60 percent of buybacks in the state are resold in other states.[8] Documentation of buybacks by the Lemon Law Administrator for the State of Washington shows that over a 5 year period, 324 of the 452 buybacks, or 71 percent, were next titled in another state, mostly in Oregon and Utah, but also as far away as North Carolina, Virginia, and New Jersey.[9]

[2] ''Top 10 Consumer Complaint List'', National Ass'n of Attorneys General, Washington, DC, April, 1994.

[3] ''Fourth Annual Survey of Consumer Protection Agencies,'' National Ass'n. of Consumer Agency Administrators and Consumer Federation of America, Washington, DC, October, 1995.

[4] NAAG Resolution, ''Mandatory Disclosures in the Resale of Lemon Vehicles'', adopted at Winter Meeting, Ft. Lauderdale, FL, December, 1991.

[5] 15 U.S.C. Sec. 2310.

[6] Center for Auto Safety letter to NAAG, May 1, 1995.

[7] Disclosure forms required in some states are presented at the time of sale, along with a raft of other forms to sign, and are easily overlooked. Disclosures on the vehicle title may not be seen at all by the used car purchaser financing the purchase, as the title goes directly to the finance company.

[8] ''Do You Own a Lemon?'', *Palm Beach Post*, June 18, 1995, 1A. (The Florida AG's office declines comment on this account as its investigation is pending.)

[9] Letter from Paul N. Corning, Lemon Law Administrator, State of Washington, October 27, 1995.

The used car buyer of a ''laundered'' lemon not only pays too much for the car due to the deceptive non-disclosure of the car's history, but that buyer also enjoys few of the legal protections that work for new car buyers. Many state lemon laws do not apply at all; others offer only some of the protections accorded new car buyers. Even so, it is not clear there is any practical way for the used car buyer to look back into the vehicle's history and to discover the deception, unless the consumer could somehow gain access to state motor vehicle records in the state of original sale.

Moreover, even if a used car buyer were to later discover the deception in the sale of their vehicle without the state-mandated disclosure, their remedies are rarely equivalent to those accorded the new car ''lemon'' buyer. Individual actions for fraud under state law are difficult to sustain, absent statutory provisions for special remedies and attorneys fees recovery. Faced with the high cost of waging suit for fraud or deception, the aggrieved used car buyer is more likely to resell or trade in the car at a substantial loss. While understandable, this only passes the problem on to the next used car buyer.

''Lemon Laundering'' Imposes an Economic Injury on the Used Car Buyer

The model intended by the state lemon laws is that the new car buyer is made whole by recovering the original value of the bargain, either through a refund or replacement with a new vehicle, plus the costs associated with enforcing the right. Under the model, these costs are returned to the manufacturer, where they should be borne. (The costs are not a penalty, but an incentive to manufacturers to produce fewer lemons, and to provide good warranty service to correct defects as they arise.) The manufacturer's costs, then, are the difference between the refunded original retail price of the car, and the depreciated price paid for the vehicle at auction. One would reasonably expect the auction price to reflect the fact that the ''lemon'' disclosure will depress the vehicle's resale value on the used car lot—that is, *if* the label does in fact appear there. ''Lemon laundering'' allows the manufacturer to avoid this rather significant portion of these costs, thus undermining the market-perfecting incentives on which the lemon laws are premised.

The economic loss can only be avoided by the used car buyer care who sees an effective ''lemon'' label, and who can then secure a reduced price or negotiate for warranty or service contract protection against a reoccurrence of the ''lemon'' problem. When the label is removed (or effectively concealed), the apparent value of the vehicle is increased, and the vehicle can be resold as if that car never had any severe safety or quality defects. Since the manufacturer and the dealer at the wholesale auction both implicitly understand that ''laundering'' the label is possible (perhaps with only the cost of moving the car to another state), the manufacturer can realize nearly the full wholesale price. Even where the manufacturer complies with a state disclosure law, the temptation of a dealer to ''launder'' the lemon disclosure is great—when resold in a non-disclosure state at a higher price, the dealer realizes an extra profit in the transaction. In either case, with or without manufacturer collusion, the loss is shifted to the consumer used car buyer.

The warranty that comes with the used vehicle will likely be of little value—the seller will be sure to offer only a very restrictive warranty or, as the Commission found in the course of its Rulemaking,[10] the vehicle may be sold ''as is,'' or with a warranty that requires substantial and unlimited buyer co-payments for repairs (so-called ''50-50 warranties,'' wherein 50 per cent of the repair costs, *as computed by the seller*, are assessed to the buyer).

The Commission Can Augment State Protections for Used Car Buyers, Without Preempting Them

The Commission's jurisdiction over used car sales is self-evident.[11] The remaining question, then, is why the FTC should enter this area when some states have addressed the problem through disclosure laws. The commission should act for the same reasons the Commission acts in so many areas touched on by state consumer protection laws: certain aspects of the problem can only be addressed by a Federal action, because state laws can be defeated by moving the transaction out of the jurisdiction, and because varying state standards allow a type of ''forum-shopping'' that defeats statutory protections.

In the used car market, vehicles move about the wholesale market through a web of brokers, auctions, and even through multi-state chain franchisees. This interstate nature of the market enable ''lemon laundering'' to persist even though the practice is circumscribed in some states.

Petitioners believe that Federal protections fashioned by the Commission can supplement and complement state laws, and need not preempt them.

There are several areas of potential action by the Commission. One would be a re-examination of the Used Motor Vehicle Trade Regulation Rule (''TRR''), with the possible addition of a disclosure on the Federal window sticker that would recognize the ''lemon'' label from any jurisdiction. Alternatively, we believe an FTC investigation, in conjunction with knowledgeable state officials, will uncover the methods by which manufacturers in concert with dealers and auction firms ''launder'' lemon disclosures through transactions whose primary purpose is to defeat the protections of state disclosure laws. This practice should be declared an unfair or deceptive trade practice through litigation. Commission cases against dealers and dealer chains are a valuable tool for enforcement and a strong deterrent; the Commission's own enforcement ''sweeps'' of use car dealers for TRR violations are an effective example of Federal enforcement, one that should be applied to lemon laundering practices. Petitioners are confident the Commission can fashion a non-burdensome disclosure and record-keeping scheme that will put an end to the practice.

There is Ample Precedent for FTC Intervention in Matters That are Partly Addressed Under State Law, but Where the Remedies are Insufficient To Protect Consumers

Considerable Commission precedent exists for FTC action here. Petitioners note that the Commission historically has actively engaged issues which have been partly, but not altogether successfully, addressed by state consumer protection laws.

Petitioners refer to the Commission to its actions against automobile manufacturers in the so-called ''secret warranty'' cases,[12] where disclosure schemes were erected to make sure that vehicle owners received from manufacturers material information regarding non-safety defects and warranty extensions. Once disclosed, the information enabled consumers to protect themselves in two ways. In some cases, consumers were able to prevent damage to their cars by seeking early repairs. In others, they were able to have the costs of repair borne under manufacturer extend warranty policies, which before the Commission's orders had been closely guarded and allowed by the manufacturers in only selective cases. The Section 5 theory relied upon by the Commission in those actions applies equally to the matter at hand.

Petitioners also cite the Commission's actions against Paccar, Inc. and other large truck manufacturers to remedy the harmful effects of deception in vehicle sales.[13] In the order entered in *Paccar* and companion cases, the Commission ended a practice of truck manufacturers who, at the end of a ''model year,'' applied to state titling authorities (where not prohibited by state policies) to redesignate the title of unsold vehicles to show a new, updated model year. This had the effect of avoiding the drop in sale value of older unsold trucks on dealer lots when the new model year units are also for sale. The Commission took the position that the practice was deceptive. This closely parallels the situation in lemon laundering: critical information is concealed (model year, or lemon status) from the buyer, leading the buyer to make inaccurate assumptions about the value of the vehicle. Petitioners hasten to point out that here, too, the Commission's action was taken despite the fact that some states had addressed the problem.

Most relevant to the lemon laundering practice is the Commission's reasoning in *Peacock Buick*.[14] There the Commission found it to be deceptive for a car dealer to offer cars for sale as ''new'' alongside other unquestionably new cars, absent some explicit disclosure, when in fact the cars had been previously used and in some cases

[10] See Statement of Basis and Purpose, Trade Regulation Rule, Sale of Used Motor Vehicles, 49 Fed. Reg. 45696–45700 (1984).

[11] *Id.*, at 45703. The Commission's authority derives from its general Section 5 authority, as well as a specific grant of power to regulate used car sales by rulemaking in Title I of the Magnuson-Moss Act, 15 U.S.C. 2309(b).

[12] *Ford Motor Co.*, 96 F.T.C. 362 (1980); *General Motors Corp.*, 102 F.T.C. 1741 (1983).

[13] 94 F.T.C. 263 (1974) (see also companion cases at pp. 236–289). Petitioners note that the beneficiaries of the Commission's actions here were primarily large industrial and truck freight firms.

[14] 86 F.T.C. 1532 (1975), aff'd 553 F.2nd 97 (4th Cir., 1977).

damaged and repaired. The Commission's decision notes in part,

''Even in the absence of affirmative misrepresentation, it is misleading for the seller of late model used cars to fail to reveal the particularized uses to which they have been put * * * When a later model car is sold at close to list price * * * the assumption likely to be made by some purchasers is that, absent disclosure to the contrary, such car has not previously been used in a way that might substantially impair its value.'', *at 1557–8.* ''Absent a clear and early disclosure of the prior use of a late model car, deception can result from the setting in which a sale is made and the expectations of the buyer * * *'' *at 1555.*

The facts in the typical ''lemon laundering'' situation clearly conform to the Commission's Policy Statement on Deception.[15] The misrepresentation in question is committed by omission; it is likely to mislead consumers acting reasonably under the circumstances; and it is material, in that it is important, it is likely to affect the consumer's choice of a product, and its omission is likely to cause the consumer to suffer injury.

Summary

The practice of ''lemon laundering'' presents a compelling case for deception and consumer injury. The type of deception evidenced by the practice is similar to that addressed in Commission precedents, and conforms to the Commission's stated Policy on Deception. The problem demands a remedy from the Commission, with its expertise in fashioning effective consumer disclosures. Petitioners are confident the Commission can fashion a remedy, through rulemaking or enforcement proceedings, that will preserve state laws protections and will bring effective consumer protection to all used car buyers.

Petitioners stand ready to assist the Commission to develop the factual record of these practices and to fashion appropriate remedies.

Respectfully submitted,

Lawrence Kanter,

Counsel.

The following organizations join as Co-petitioners in this matter:

Consumers for Auto Reliability & Safety, Sacramento, CA
Consumer Federation of America, Washington, DC
U.S. Public Interest Research Group, Washington, DC
Consumer Action, San Francisco, CA
New York Public Interest Research Group, New York, NY
Florida Public Interest Research Group, Tallahassee, FL
Oregon State Public Interest Research Group, Portland, OR
Center for Auto Safety, Washington, DC
Public Citizen, Washington, DC
Virginia Citizens Consumer Council, Yorktown, VA
California Public Interest Research Group, Los Angeles, CA
Connecticut Public Interest Research Group, Hartford, CT
Massachusetts Public Interest Research Group, Boston, MA

[15] Letter to Hon. John Dingell, October 14, 1983; incorporated in the Commission's decision in *Cliffdale Associates,* 103 F.T.C. 110 (1984).

[FR Doc. 96–10562 Filed 4–29–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Survey of Ambulatory Surgery—(0920–0334)—Extension

The National Survey of Ambulatory Surgery (NSAS) has been conducted annually since 1994 by the National Center for Health Statistics, CDC. It is the only source of clinical information nationally on utilization of ambulatory surgery. It complements surgery data obtained in another NCHS survey, the National Hospital Discharge Survey (NHDS), which provides annual data concerning the nation's use of inpatient medical and surgical care provided in short-stay, non-Federal hospitals. These NHDS data have been used for more than two decades to analyze the types of surgical treatment provided to hospital inpatients. However, due to advances in medical technology, many surgical treatments and diagnostic procedures are now provided in ambulatory settings which are outside the scope of the NHDS. The NSAS, a national probability sample of hospital-based and freestanding ambulatory surgery centers in the U.S., has been designed to provide valid data about medical and surgical care received in ambulatory surgery locations. Data for the NSAS are collected annually on approximately 120,000 ambulatory surgery cases. The data items which are abstracted from medical records are the basic core of variables from the Uniform Hospital Discharge Data Set (UHDDS) as well as surgery times, total charges and information on anesthesia. These NSAS data will be used for a variety of planning, administrative, and evaluation activities by government, professional, scientific, academic, and commercial institutions. Data collected through the NSAS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. For example, selected government agencies are interested in specific NSAS data to track the incidence of selected ambulatory procedures, e.g., estimates of tubal sterilization, estimates of endoscopies and related digestive tract procedures, and estimates of endoscopic removal of pre-cancerous polyps. In addition, NSAS data will provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. The total cost to respondents is estimated at $256,000.

Respondents	No. of responses	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Induction	40	1	1.5	60
Out-of-scope Verification	140	1	0.066	9
Sample Listing Sheet:				
ASC Personnel	224	12	0.5	1,344
Census Personnel	267	12	0	0
Medical Abstract:				
ASC Personnel	324	250	0.2	16,200
Census Personnel	167	250	0.03333	1,392
Annual Update	491	1	0.083	41
Quality Control	245	200	.0333	163
Total				19,209

Dated: April 24, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10627 Filed 4–29–96; 8:45 am]

BILLING CODE 4163–18–P

National Center for Health Statistics; ICD–9–CM E Code Revisions

AGENCY: National Center for Health Statistics, Centers for Disease Control and Prevention (CDC), DHHS.

ACTION: Notice.

SUMMARY: The National Center for Health Statistics has approved the following expansion to the External Cause Codes in the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). These ICD–9–CM E-Code revisions will become effective October 1, 1996. The official guidelines for the application of E-codes for morbidity purposes will also be updated at that time. The official government version of the ICD–9–CM which will include all the revisions effective October 1, 1996, will be found on the ICD–9–CM CD–ROM which will be available through the Government Printing Office.

E967 Child and adult battering and other maltreatment

- E967.0 By father or stepfather
- E967.2 By mother or stepmother
- E967.3 By spouse or partner
- E967.4 By child
- E967.5 By sibling
- E967.6 By grandparent
- E967.7 By other relative
- E967.8 By non-related caregiver

FOR FURTHER INFORMATION CONTACT: Donna Pickett, R.R.A., Co-chair, ICD–9–CM Coordination and Maintenance Committee, National Center for Health Statistics, CDC, telephone (301) 436–7050.

Dated: April 24, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10628 Filed 4–29–96; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 619]

HIV-Related Tuberculosis Preventive Therapy Regimen Demonstration Cooperative Agreements

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds to continue the cooperative agreement program started in FY 1992 through announcement number 261 entitled ''Human Immunodeficiency Virus (HIV) Related Tuberculosis (TB) Preventive Therapy Regimen (PTR) Demonstration Cooperative Agreements.'' Current recipients will compete to extend the project period for an additional three years to allow sufficient time to actively monitor and ensure compliance with drug therapy, assess toxicity, and appropriately evaluate patients for up to two years after completion of preventive therapy. All applicants, however, who meet the eligibility criteria will be considered. See the section entitled *Eligible Applicants.*

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of ''Healthy People 2000,'' see the section *Where To Obtain Additional Information.*)

Authority

This program is authorized under Section 317E of the Public Health Service Act, [42 U.S.C. 247b–6], as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke- free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, and colleges; and research institutions, hospitals, other public and private organizations, State and local governments or their bonafide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply. Applicants must have the ability to (1) identify, obtain informed consent, and enroll a minimum of 25 dually-infected (TB/HIV-infected) persons and start them on one of two TB preventive regimens according to the randomization schedule provided by CDC and (2) conduct patient follow-up according to accepted clinical study practices. A copy of the prescribed regimens is included in the application kit. Applicants must be able to complete all phases of the project within the proposed three year project period.

Preference will be given to competing continuation applications submitted by the current cooperative agreement recipients funded in FY 1992 through competitive announcement number 261 entitled ''Human Immunodeficiency

Virus (HIV)-Related Tuberculosis (TB) Preventive Therapy Regimen (PTR) Demonstration Cooperative Agreements.'' Current recipients are: Beth Israel Medical Center, Cathedral Healthcare System, Inc., City of Chicago, Johns Hopkins University (Brazil), Johns Hopkins University (Haiti), Trustees of Health and Hospitals of Boston, and the University of New Jersey.

Availability of Funds

Approximately $2,000,000 is available in FY 1996 to fund up to seven awards. It is expected that the average award will be $285,000, ranging from $232,000 to $508,000. Awards are expected to begin on or about September 30, 1996, for a 12-month budget period within a three-year project period. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to improve preventive treatment regimens for HIV-related TB through applied research. Applied research, as used in the context of this announcement, means the process of the development and evaluation of practical operational approaches and solutions to HIV-related TB problems *and* the evaluation of new technology (e.g., new drugs, new drug regimens, new methods of testing drug effectiveness, and applicability.)

Specific objectives of this project are to:

A. Determine the efficacy of a rifampin/pyrazinamide drug regimen (as prescribed by CDC) in preventing the development of TB in HIV-infected persons at risk of developing TB.

B. Describe the host factors that affect the efficacy of TB preventive therapy.

C. Evaluate the toxicity and acceptability of the drug regimen in the prevention of TB.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Develop and implement strategies that are applicable to TB/HIV-infected persons in the United States including: (a) methods and strategies to successfully identify, enroll, and administer appropriate preventive drug therapy to HIV- infected persons co-infected with *M. tuberculosis;* and (b) methods to actively monitor and ensure compliance with drug therapy, assess toxicity, and appropriately evaluate patients for up to two years after completion of preventive therapy.

2. Identify and enroll a minimum of 25 dually-infected (TB/HIV-infected) persons into one of two prescribed preventive therapy regimens. (A copy of the prescribed regimen is included in the application kit.)

3. Implement specified follow-up procedures to monitor toxicity and efficacy in dually-infected persons receiving the prescribed preventive therapy.

4. Develop and implement an evaluation plan that measures the effectiveness of the trial regimen employed.

5. Compile and disseminate findings.

B. CDC Activities

1. Provide consultation and technical assistance in planning, developing, implementing, and evaluating strategies.

2. Provide up-to-date scientific information and coordinate the exchange of information among recipients.

3. Assist in data management, analysis, and the evaluation of programmatic activities.

4. Assist in the preparation and publication of findings.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria. (100 total points maximum)

1. The extent to which the applicant has demonstrated the ability to enroll at least 25 dually-infected (TB/HIV-infected) persons and start them on one of two TB preventive regimens according to the randomization schedule provided by CDC (a copy of the prescribed regimens is included in the application kit). In addition, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. Specifically, the following items will be addressed:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The appropriateness of the proposed justification when representation is limited or absent.

c. Whether the design of the study is adequate to measure differences when warranted.

d. Whether the plans for recruitment and outreach for study participants include establishing partnerships with community(ies) and recognition of mutual benefits. (60 points)

2. The ability of the applicant to perform active follow-up procedures on all participants who receive preventive therapy (defined as persons who are currently receiving drugs or those who have completed the drug therapy portion of their treatment) including methods to deal with noncompliant patients; and the extent to which qualified and experienced personnel are available to carry out the proposed follow-up activities. (20 points)

3. The adequacy of the proposed plans to evaluate progress in implementing methods and achieving objectives. (20 points)

4. Other (Not Scored).

Budget

The budget must be reasonable, clearly justifiable, and consistent with the intended use of funds.

Human Subjects

Procedures adequate for the protection of human subjects must be documented: (1) protections appear adequate and no comments or concerns are raised, or (2) protections appear adequate, but comments are made regarding the protocol, or (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate resulting in unacceptability of the entire application.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers are 93.947, Tuberculosis Demonstration, Research, Public and Professional Education; and 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Other Requirements

Confidentiality: Applicants must have in place systems to ensure the confidentiality of all patient records.

Human Subjects: The applicant must comply with the Department of Health

and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of the IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities: It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951 (a copy is included in the application kit).

Pre- and Post-test Counseling and Partner Notification: Recipients are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with State laws and regulations and CDC guidelines regarding pre- and post-test counseling and partner notification of HIV-seropositive patients. A copy of the guidelines will be included in the application kit. Recipients must also comply with State and local health department requirements relating to specific reportable diseases or conditions. Recipients must provide referrals for HIV diagnosis and treatment.

HIV/AIDS Requirements: Recipients must comply with the document entitled ''Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions'' (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance form (CDC 0.1113), which is included in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., Room 300, Mailstop E–15, Atlanta, GA 30305, on or before July 1, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Questions on application procedures and the application package, and business management technical assistance may be obtained from Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6777, or Internet address: MYL5@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Veronica Greene, D.D.S., M.P.H., Division of Tuberculosis Elimination, National Center for STD, HIV, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–10, Atlanta, GA 30333, telephone (404) 639–8123.

Please refer to Announcement Number 619 when requesting information or submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the *Introduction* through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: April 24, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10629 Filed 4–29–96; 8:45 am]

BILLING CODE 4163–18–P

The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention Announces the Following Meeting

Name: Scientific and Technical Discussion of the Draft Document, ''Criteria for a Recommended Standard: Occupational Exposures to Metalworking Fluids (MWFs).''

Times and Dates: 9 a.m.–5:30 p.m., June 13, 1996. 9 a.m.–5:30 p.m., June 14, 1996.

Place: Drawbridge Inn, Yeomans Hall, I–75 and Buttermilk Pike, Fort Mitchell, Kentucky 41017.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of this meeting is to discuss the scientific and technical content of the draft NIOSH document, ''Criteria For a Recommended Standard: Occupational Exposures to Metalworking Fluids (MWFs),'' prior to finalizing the criteria document for publication and transmittal to the Department of Labor. This review will focus on all aspects of the criteria document including: composition and formulation of MWFs, potential adverse health effects from exposure to MWFs, occupational exposure data, and the feasibility of controlling exposures to the NIOSH recommended exposure limit of 0.5 mg/m^3 (total particulate).

Contact Persons for More Information: Technical information may be obtained from Brenda Boutin, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio 45226, telephone 513/533–8345, e-mail address: hhal@NIOSDT1.em.cdc.gov.

Persons wishing to attend or make a presentation at the meeting, obtain a copy of

the criteria document, or reserve overnight accommodations at the Drawbridge Inn, should respond by May 10, 1996, to Kellie Wilson, NIOSH, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, telephone 513/533–8362, fax 513/533–8588, e-mail address: kmp0@NIOSDT1.em.cdc. gov. Information may also be obtained by calling 1–800–35–NIOSH or by the Internet NIOSH Homepage: http:/www.cdc.gov/niosh/homepage. htm1.

Dated: April 23, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–10601 Filed 4–29–96; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. June 6 and 7, 1996, 8 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, June 6, 1996, 8 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, June 7, 1996, 8 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; Jeanne L. Rippere or Stephanie Mason, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 1600 Rockville Pike, Rockville, MD 20857, 301–827–2244, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before May 24, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion. On June 6, 1996, the subcommittee will continue its discussion concerning the alcohol content of oral health care mouthwash drug products begun at its June 28 and 29, 1994, meeting. On June 7, 1996, the subcommittee will continue its discussion of hydrogen peroxide, sodium bicarbonate, the combination of hydrogen peroxide and sodium bicarbonate, and sanguinaria. The subcommittee will also begin a discussion of sodium lauryl sulfate. For further information on the agenda of this meeting, see the background document published elsewhere in this issue of the Federal Register.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 24, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–10780 Filed 4–26–96; 2:36 pm]

BILLING CODE 4160–01–F

[Docket No. 81N–033P]

Background Document for the Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a background document for the meeting of the Dental Drug Products Panel Plaque Subcommittee of the Medical Devices Advisory Committee (the subcommittee). This meeting is announced elsewhere in this issue of the Federal Register, and it is scheduled for June 6 and 7, 1996. This background document is being taken to ensure that all interested parties are aware of the subcommittee's concern regarding the relationship, if any, of alcohol-containing mouthwashes and oral cancer and the development of studies to investigate the relationship. This relationship will be the subject of the subcommittee's discussion on June 6, 1996.

DATES: Written comments or data should be submitted by May 10, 1996, in order to be considered for discussion at the June 6, 1996, subcommittee meeting.

ADDRESSES: Single copies of the background briefing document may be requested in writing from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, at a cost of 10 cents per page. Requests should be identified with the docket number found in brackets in the heading of this document. The background briefing document is available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Comments and data should be identified with the docket number listed above. Individuals or groups wishing to submit data or comments relevant to alcohol-containing mouthwashes should send them to the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Three copies of written comments should be submitted, except that individuals may submit one copy. The comments and data received are available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeanne L. Rippere or Stephanie Mason, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 1600 Rockville Pike, Rockville, MD 20857, 301–827–2244.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register, FDA announced that a meeting of the Dental Drug Products Panel Plaque Subcommittee will be held on June 6 and 7, 1996. The purpose of the meeting scheduled for June 6, 1996, is to continue the subcommittee's discussion concerning the alcohol content of oral health care mouthwash drug products begun at its meeting of June 28 and 29, 1994. After evaluating the available data, the subcommittee concluded that it should meet in a workshop environment with representatives of the National Cancer Institute, the National Institute of Dental Research, other professional groups, the agency, and industry to address any new information regarding a causal relationship between alcohol-containing mouthwashes and oral cancer. The subcommittee recommended that this workshop should address the development of sound scientific studies to determine the relationship, if any, between alcohol-containing mouthwash products and cancer of the oral cavity.

FDA has established a docket number (81N–033P) as a public record of the comments, views, and other information submitted to the agency from interested persons and organizations regarding alcohol in oral health care mouthwash drug products. After publication of the subcommittee's report, this docket will be the repository of all data and information collected by the agency for the over-the-counter (OTC) antiplaque/antigingivitis drug review, but currently it will contain only those comments and data that are not confidential under the OTC drug review. (See the request for data and information on dental and oral health care drug products for antiplaque use published in the Federal Register of September 19, 1990 (55 FR 38560 at 38562).) Copies of the background briefing documents have been placed in this docket and may be seen in the Dockets Management Branch (address above) or obtained from the agency's Freedom of Information Staff (address above). Copies of the background briefing document will also be available at the committee meeting.

Dated: April 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–10781 Filed 4–26–96; 2:36 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice is publishing the following summaries of proposed collections for public comment. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed

information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New; *Title of Information Collection:* National Payer Identifier (PAYER–ID); *Form No.:* HCFA–856; *Use:* The PAYER-ID will allow payers of health care claims to be identified by a unique numeric identifier. PAYER–ID numbers will be assigned, but not limited to the following groups: Medicare, Medicaid, VA, public health service, large employers and unions, HMOs, large insurers, etc.; *Frequency:* One time (Reporting); *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, State, local or tribal government; *Number of Respondents:* 85,000; *Total Annual Responses:* 8,500; *Total Annual Hours Requested* 85,000.

To request copies of the proposed paperwork collection referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Zaneta Davis, 7500 Security Boulevard, Room C2–26–17, Baltimore, Maryland 21244–1850.

Dated: April 22, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff.

[FR Doc. 96–10571 Filed 4–29–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

Ryan White Comprehensive AIDS Resources and Emergency Act of 1990 Women's Initiatives (WIN)—New

The Health Resources and Services Administration's Maternal and Child Health Bureau proposes to collect information about HIV-related services provided to women of child-bearing age and their children. Information will be collected annually from eight sites funded by HRSA under cooperative agreements and their 320 local service providers that are funded under Sections 2618(a) and 2671 of the Public Health Service Act. The eight funded sites will collect the information by telephone from their providers, and forward the data collection forms to a HRSA contractor. There are no plans to collect or transmit the data electronically.

The purpose is to document current care system characteristics and facilitate planning for services to women with HIV and their children. The information will be used within and outside HRSA to inform the administration and Congress about HIV counseling and testing services for pregnant women, services and referral resources for pregnant women with HIV, antiretroviral therapies, and outreach related to perinatal HIV transmission reduction. Annual burden estimates are as follows:

Type of respondent	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Providers	320	1	.33	106
Funded Sites	8	40	1.0	320
Total	328	.....	.....	426

Faculty Loan Repayment Program (FLRP) Application (0915–0150)—Extension and Revision

Under the HRSA FLRP program, disadvantaged graduates from certain health professions schools may enter into a contract under which HRSA with the Department of Health and Human Services will make payments on eligible graduate educational loans in exchange for a minimum of two years of service as a full-time faculty member of a health professions school. Applicants must complete an application and provide information on all eligible education loans. Once HRSA has selected the participants, HRSA will request verification from their lenders of loan balances and terms of their outstanding educational loans.

Estimated annual response burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total annual hour burden
Applicants	75	1	1	75

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total annual hour burden
Lenders	112	1	.5	56

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 24, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–10617 Filed 4–29–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92–463, as amended, notice is hereby given of the thirty-third meeting of the Fogarty International Center (FIC) Advisory Board, May 21, 1996, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 12:15 p.m.

The agenda will begin with a report by the Director, FIC. Presentations will include reports on the NIH AIDS research programs evaluation and the international aspects of the Office of AIDS Research review. FIC follow-up and plans for the FIC AIDS International Training Program in response to these reviews also will be presented. An update on the status of the implementation of the FIC long-range plan will focus on emerging and re-emerging infectious diseases, a forthcoming colloquium on ebola virus research and a workshop on malaria research in Africa. There also will be a report on global vaccine development.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, as amended, the meeting will be closed to the public from 1:30 p.m. to adjournment for the review of applications for awards under the Senior International Fellowship Program and the International Research Fellowship Program; and the Fogarty International Research Collaboration Awards and HIV, AIDS and Related Illnesses Collaboration Awards.

Paula Cohen, Committee Management Office, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program.)

Dated: April 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–10591 Filed 4–29–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Biobehavioral Bases of CHD Risk (Telephone Conference Call).

Date: May 8, 1996.

Time: 2:00 p.m.

Place: Rockledge Center II, Rm. 7182, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle. (Catalog of Federal Domestic Assistance programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–10593 Filed 4–29–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism on May 30, 1996.

The meeting will be open to the public, as noted below, to discuss Institute programs and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ida Nestorio at 301–443–4376.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463 for the review, discussion and evaluation of individual research grant applications. These applications 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 programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and the roster of committee members may be obtained from: Ms. Ida Nestorio, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892–

7003, Telephone: 301–443–4376. Other information pertaining to the meeting may be obtained from the contact person indicated.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Executive Secretary: James F. Vaughan, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–4375.

Date of Meeting: May 30, 1996.

Place of Meeting: Conference Room E1 & E2, Building 45, Natcher Building, NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 30, 1996—8:00 am to 2:30 pm.

Agenda: Discussion of Institute extramural research programs, and other program and peer review issues relevant to Council activities.

Closed: May 30, 1996—2:30 pm to adjournment.

Agenda: To review and evaluate grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.281, Scientist Development Award, Research Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: April 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–10589 Filed 4–29–96; 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: Maternal Immunization for the Prevention of Infectious Diseases in Neonates and Infants.

Date: May 23, 1996.

Time: 9:00 a.m.

Place: Bethesda Ramada Hotel, Ambassador II Conference Room, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–2550.

Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4CO6, Bethesda, MD 20892–7610, (301) 496–7042.

Purpose/Agenda: To evaluate contract proposals.

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.

(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: April 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–10590 Filed 4–29–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the Board of Scientific Counselors, National Institute on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, May 20–21, 1996, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public for the review of the Longitudinal Studies Branch from 9:00 a.m. until 12:00 p.m.; and from 1:30 until 4:30 p.m. on Monday, May 20; and from 9:00 a.m. until 12:00 p.m. on Tuesday, May 21. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 20, from 8:00 to 9:00 a.m.; 12:30 to 1:30 p.m.; and 4:30 p.m. until recess; and on May 21, from 8:00 to 9:00 a.m. and 1:30 to 3:00 p.m. for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, (NIA), including consideration of personnel qualification and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer, NIA, Gateway Building, Room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Dr. Dan L. Longo, Scientific Director, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, Maryland 21224, will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93. 866, Aging Research, National Institutes of Health)

Dated: April 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–10592 Filed 4–29–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; 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:

Name of SEP: National Institute on Aging Special Emphasis Panel.

Date: May 6–7, 1996.

Time: 7:30 p.m. on May 6 to adjournment on May 7, 1996.

Place: Courtyard Marriott, 8585 Marriott Drive, San Antonio, TX 78229.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, MD 20892–9205, (301) 496–9666.

Purpose/Agenda: To evaluate and review grant applications, cooperative agreement applications, or contract proposals.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–10594 Filed 4–29–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–813258

Applicant: Dr. Kirk J. Larsen, Luther College, Decorah, Iowa.

The applicant requests a permit to take (capture and release) American burying beetles (*Nicrophorus americanus*) in northeastern Iowa, counties of Howard, Winneshiek, Allamakee, Clayton, and Fayette. Activities are proposed for the purpose of enhancement of survival of the species through scientific research.

PRT–813259

Applicant: Thomas C. Erdman, Richter Museum of Natural History, University of Wisconsin-Green Bay, Green Bay, Wisconsin.

The applicant requests a permit to take (capture, band, and release) Peregrine falcons (*Falco peregrinus*) at the Little Suamico Ornithological Station, Oconto County, Wisconsin. Banding of these endangered birds is proposed for the purpose of enhancement of survival of the species through scientific research.

PRT–813261

Applicant: Jan E. Riffe, National Biological Service, Upper Mississippi Science Center, La Crosse, Wisconsin.

The applicant requests a permit to take (capture and relocate) Higgins' Eye Pearly Mussel (*Lampsilis Higginsi*) in the St. Croix River, Minnesota and Wisconsin. Activities are proposed for the purpose of enhancement of survival of the species in the wild through scientific research.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Service Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); (612/725–3526).

Dated: April 4, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–10630 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–814105

Applicant: Dr. Nicola Anthony, University of Wisconsin, Madison, Wisconsin.

The applicant requests a permit to take (collect) Karner blue butterflies (*Lycaeides melissa samuelis*) at various locations in Wisconsin. Proposed collection activities are for the purpose of enhancement of survival of the species through scientific research.

PRT–814107

Applicant: Mark C. Hove, University of Minnesota, St. Paul, Minnesota.

The applicant requests a permit to take (capture and release) Higgins' eye (*Lampsilis higginsi*) and winged mapleleaf (*Quadrula fragosa*) in the St. Croix River, Minnesota and Wisconsin. Proposed activities are for the purpose of enhancement of survival of the species through scientific research.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Service Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); Fax: (612/725–3526).

Dated: April 24, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–10631 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–813745

Applicant: Niagara Mohawk Power Corporation, Syracuse, New York

The applicant requests a permit to take (habitat management activities/emergency right-of-way maintenance procedures) Karner blue butterflies (Lycaeides melissa samuelis) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, and must be received by the Regional Director on or before May 30, 1996.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Hadley, Massachusetts 01035.

FOR FURTHER INFORMATION CONTACT: Debbie Mignogno, Assistant Endangered Species Coordinator, Phone: (413) 253–8627; Fax: (413) 253–8482.

Dated: April 17, 1996.

Susan Essig,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 96–10661 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–930–00–1320–00; (UTU–67939)]

Notice of Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in lands hereinafter described in Carbon County, Utah, will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). *However, no bid will be accepted for less than fair market value as determined by the authorized officer.* A company or individual is limited to *one sealed bid.* If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

DATES: The lease sale will be held in *the Bureau of Land Management Conference Room, 324 South State Street, Suite 302, Salt Lake City, Utah, at 1:00 p.m. on Thursday, May 30, 1996.* At that time, the sealed bids will be opened and read. *No bids received after 10:00 a.m., Thursday, May 30, 1996,* will be considered.

COAL OFFERED: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon County, Utah, approximately 3 miles west of Scofield, Utah, within the Manti-LaSal National Forest and are described as follows:

T. 12 S., R. 6E., SLM, UT
Sec. 26, S2SE, SESW;
Sec. 34, lots 1–4, S2NE, SENW, E2SWNW, N2S2;
Sec. 35, all.
T. 13 S., R. 6 E., SLM, UT
Sec. 2, all;
Sec. 3, all;
Sec. 10, lots 1 , 2, NE, E2NW;
Sec. 11, N2, N2S2.

Containing 3,291.00 Acres

Two economically recoverable coal beds, the Lower O'Conner and Upper O'Conner, are found in this tract. The Lower O'Conner seam averages 9.1 feet in thickness and the Upper O'Conner seam averages 6.3 feet in thickness. This tract contains an estimated 24.1 million tons of recoverable high volatile C bituminous coal. The estimated coal quality using weighted average of samples on an as-received basis is:

	Lower O'Conner	Upper O'Conner
BTU/lb	12,756	12,627
Percent moisture	5.95	7.5
Percent sulphur	.44	.53
Percent ash	4.63	4.02
Percent fixed carbon	44.69	45.81
Percent volatile matter	44.73	42.68

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rate of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with 30 CFR 203.200.

NOTICE OF AVAILABILITY: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303 or in the Public Room (Room 400). All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: The unleased coal in this tract is included in the Utah Schools and Lands Improvement Act of 1993 (Public Law 103–93) as a Federal interest which the State of Utah may select to satisfy the value of the exchange of State for Federal lands authorized in the Act. In accordance with the Act, the Federal interest, i.e., the unleased coal, in this tract was offered to the State or Utah on October 20, 1993. Consummation of the exchange under the Act may, in the future, allow for the State of Utah to succeed to some or all of the United States interest in this tract.

Douglas M. Koza,

Acting State Director.

[FR Doc. 96–10578 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–912–0777–52; GP6–0133]

Call for Nominations for Native American Tribal Representative to the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for a Native American tribal representative for the Eastern Washington Resource Advisory Council, established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the BLM and Forest Service on management of public lands. This is an additional vacant position to those identified in a Federal Register Notice published April 15, 1996. Public nominations will be received through May 30, 1996.

The Council, which was established in August, 1995, is made up of 15 members. The Native American tribal representative has resigned from the Council, and we are seeking nominees to replace this position for the balance of its term through August of 1997.

The Council, which covers eastern Washington, has to date identified two issues that they would like to work on with the BLM and the Forest Service: Standards for rangeland health and guidelines for grazing management, and the Interior Columbia Basin Ecosystem Management Project.

This council is authorized under the Federal Land Policy and Management Act (FLPMA), which directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council membership must be balanced and representative of the various interests concerned with the management of public lands. These include three categories:

Category One: holders of federal grazing permits, representatives of energy and mining development, timber industry, transportation or rights-of-way, off-road vehicle use and developed recreation.

Category Two: representatives of environmental and resource conservation organizations, dispersed recreation, archeological and historic interests, and wild horse and burro groups.

Category Three: representatives of State and local government, Native American tribes, academicians involved in natural sciences, employees of State agencies responsible for the management of natural resources, land, or water, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Washington. The Eastern Washington Council covers eastern Washington (with the exception of the area south of the Snake River drainages).

Nominees will be evaluated based on their experience working with Native American tribal issues and their knowledge of the geographic area covered by the Council. Nominees must also have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The BLM Oregon/Washington State Director, the Forest Service Regional Forester, and the Washington Governor's Office will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council.

This nomination period will also be announced through press releases issued by the BLM Oregon/Washington State Office. Nominations for Resource Advisory Councils should be sent to: Elaine Zielinski, Bureau of Land Management, Oregon/Washington State Director, P.O. Box 2965, Portland, OR, 97208.

DATES: All nominations must be received by the BLM Oregon/Washington State Office on or before May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Brenda Lincoln Wojtanik, OR 912, Bureau of Land Management, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon, 97208, (Telephone 503–952–6437).

Eric Hoffman,

Acting State Director, Oregon/Washington.

[FR Doc. 96–10626 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–33–P

[Docket No. 4310–DN]

Notice of a Public Meeting; Montana, MT–060–06–1020–00

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Advisory Council will meet May 21 and 22, 1996, at the 7 Lazy P Guest Ranch, north west of Choteau, Montana. The meeting will begin at 8 a.m. on May 21. The business of the day will include reviewing a draft letter to interest groups and individuals inquiring of the potential for creating a coordinated resource management group concerning oil and gas exploration and development along the Rocky Mountain Front; reviewing possible options to buy back, abandon, or terminate mineral leases along the Front; and a field trip to the area being considered for additional exploration.

On May 22, the meeting will begin at 8 a.m. The topics of the day will include standards and guidelines; the council's charter; the Mixed Grass Prairie ACEC; mineral exploration proposal in the Bitter Creek Wilderness Study Area; black-footed ferret/prairie dog issues; Native American participation in council activities; and the nomination process for those council positions that expire in 1996.

There will be a public comment period at 11:30 a.m. on May 22.

DATES: May 21 and 22, 1996.

LOCATION: 7 Lazy P Guest Ranch, northwest of Choteau, Montana.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period as detailed above.

Dated: April 16, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–10645 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–84–P

[ID–933–1430–01; IDI–31741]

Notice of Public Meetings for Proposed Land Withdrawal: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Department of the Air Force proposes to withdraw 11,583.34 acres under Alternative Site No. 1 or 9,673.34 acres under Alternative Site No. 2 of public land from all forms of appropriation under the public land laws, mining laws and mineral leasing laws, for the Mountain Home Air Force Base Enhanced Training in Idaho (ETI) site. Several public meetings will be held to gather comments on the proposal, at the dates, times, places and addresses described in this Notice.

EFFECTIVE DATE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3197.

The Department of the Air Force proposes that 11,583.34 acres under Alternative Site No. 1 to 9,673.34 acres under Alternative Site No. 2 of public land be withdrawn for a period of 20 years to provide protection of the ETI. The lands are descried as follows:

Boise Meridian

(Alternative Site No. 1)—Proposal: Clover Butte Drop Zone

T. 12 S., R. 8 E.,
Sec. 10, SE¼SE¼;
Sec. 11, S½S½;
Sec. 12, S½S½;
Sec. 13;
Sec. 14;
Sec. 15, E½E½;
Sec. 22, E½E½;
Secs. 23 to 26 inclusive;
Sec. 27, E½E½;
Sec. 34, E½E½;
Sec. 35.
T. 12 S., R. 9 E.,
Sec. 7, lot 4, SE¼SW¼ and S½SE¼;
Sec. 8, S½S½;
Secs. 17 to 20 inclusive;
Secs. 29 to 32 inclusive;

(No Drop Zone)

T. 11 S., R. 4 E.,
Sec. 23, S½SW¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 21.
T. 13 S., R. 4 E.,
Sec. 4, N½NE¼NW¼SW¼.

(Emitters)

T. 8 S., R. 9 E.,
Sec. 34, SE¼SE¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 15, NW¼NW¼SW¼SW¼.
T. 11 S., R. 4 E.,
Sec. 23, NE¼NE¼NE¼SW¼.
T. 11 S., R. 5 E.,
Sec. 17, SE¼SE¼NE¼NE¼.
T. 12 S., R. 3 E.,
Sec. 26, NE¼NE¼NW¼NE¼.
T. 12 S., R. 10 E.,
Sec. 30, SW¼SW¼SW¼SW¼ within lot 4.
T. 13 S., R. 9 E.,
Sec. 10, NE¼NE¼NW¼NW¼.

The areas described aggregate 11,583.34 acres in Owyhee County.

(Alternative Site No. 2)—Proposal; Grasmere Drop Zone

T. 11 S., R. 4 E.,
Secs. 25 to 27 inclusive;
Secs. 34, N½, SE¼ and E½SW¼;
Sec. 35.
T. 11 S., R. 5 E.,
Sec. 30, lots 1 to 4 inclusive;
Sec. 31, lots 1 to 4 inclusive.
T. 12 S., R. 4 E.,
Secs. 1 to 4 inclusive;
Sec. 9;
Sec. 10, NW¼, S½, W½NE¼ and SE¼NE¼;

Sec. 11, S½, N½NE¼, SE¼NE¼ and NE¼NW¼;
Sec. 12;
Sec. 13, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, NW¼NE¼, and N½SW¼NE¼;
Sec. 14, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, N½NE¼, N½SW¼NE¼ and N½SE¼NE¼;
Sec. 15, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, N½NE¼, N½SW¼NE¼ and N½SE¼NE¼.

(No Drop Zone)

T. 12 S., R. 9 E.,
Sec. 20, S½SW¼SW¼SW¼.
T. 9 S., R. 6 E.,
Sec. 21.
T 13 S., R. 4 E.,
Sec. 4, N½NE¼NW¼SW¼.

(Emitters)

T. 8 S., R. 9 E.,
Sec. 34, SE¼SE¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 15, NW½NW¼SW¼SW¼.
T. 11 S., R. 4 E.,
Sec. 23, NE¼NE¼NE¼SW¼.
T. 11 S., R. 5 E.,
Sec. 17, SE¼SE¼NE¼NE¼.
T. 12 S., R. 3 E.,
Sec. 26, NE¼NE¼NW¼NE¼.
T. 12 S., R. 10 E.,
Sec. 30, SW¼SW¼SW¼SW¼ within lot 4.
T. 13 S., R. 9 E.,
Sec. 10, NE¼NE½NW¼SE¼.

The areas described aggregate 9,673.34 acres in Owyhee County.

Six (6) public meetings are scheduled at the following dates, times, places, and addresses:

1. June 4, 1996, 6:00 to 9:00 p.m., Elk's Lodge, 327 S. 3rd West, Mtn. Home, Idaho
2. June 6, 1996, 6:00 to 9:00 p.m., Rim Rock High School, Bruneau, Idaho
3. June 10, 1996, 6:00 to 9:00 p.m., Boise State University, Jordan Ballroom, 1910 University Drive, Boise, Idaho
4. June 11, 1996, 6:00 to 9:00 p.m., Boise State University, Jordan Ballroom, 1910 University Drive, Boise, Idaho
5. June 13, 1996, 6:00 to 9:00 p.m., Three Creek School, Three Creek, Idaho
6. June 17, 1996, 6:00 to 9:00 p.m., College of Southern Idaho, Fine Arts Auditorium, 315 Falls Avenue, Twin Falls, Idaho

These meetings are the first step in soliciting public comments on the proposed withdrawal. Information gathered at these meetings will be used in the development of an environmental impact statement (EIS). Comments given at these meetings should focus on the merits of the proposal, the feasibility of the identified alternatives, the availability of other alternatives, issues which should be addressed in the EIS, any other comments the public wishes the Air Force and BLM to consider, and any questions concerning the withdrawal proposal. Those who desire to submit written statements, should file them not later than June 3, 1996, to BLM/USAF, P.O. Box 329, Boise, Idaho 83701–0329.

Dated: April 24, 1996.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 96–10652 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Louisiana Barrier Shoreline Restoration Effort

AGENCIES: Minerals Management Service (MMS), Department of the Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce; State of Louisiana Department of Natural Resources.

ACTION: Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) to Support Phase 1 of the Louisiana Barrier Shoreline Feasibility Study (Barataria-Terrebonne Basin Barrier Island Restoration Effort).

PURPOSE OF THE NOI: The NOI announces the decision to prepare an EIS and initiate the scoping process. The scoping process affords Federal, State, local government agencies, and other interested parties the opportunity to identify significant issues and alternatives to be analyzed in the EIS.

DATES: Comments must be submitted on or before June 14, 1996.

PROPOSED ACTION: The purpose to which the Federal agencies are responding in the barrier island project and the proposed major Federal action to be considered are as follows:

Purpose: The restoration, protection, and enhancement of Louisiana coastal wetlands, and for other purposes.

Proposed Action: Restoration of the Louisiana Barrier Shoreline as Identified in Phase 1 of the Louisiana Barrier Shoreline Feasibility Study (Barataria and Terrebonne Basins).

SUMMARY AND BACKGROUND ON THE PROPOSED ACTION: Under the auspices of the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA), the feasibility and benefits of restoring the barrier islands of coastal Louisiana are currently being evaluated with respect to their role in wetlands protection and enhancement. A feasibility study is underway to assess and quantify wetland loss problems linked to diminishing protection from barrier islands along the Louisiana coast, to identify solutions to these problems, and to determine the barrier configuration that will best protect Louisiana's coastal resources from environmental degradation. The feasibility study is being conducted in three phases: Phase 1, currently ongoing, encompasses the Barataria-Terrebonne island chain; Phase 2 will focus on the Chenier Plain coast; Phase 3 will focus on the Chandeleur Islands.

Within the Phase 1 study area, the State of Louisiana is proposing to renourish Isles Dernieres and Timbalier Islands using Federal offshore sand deposits. In addition to renourishment, other coastal restoration methods, such as dune building, vegetation planting, hard structures, and related actions may be employed. On April 19, 1995, the Governor of the State of Louisiana contacted the MMS to request a noncompetitive lease to use Federal sand resources from Ship Shoal for restoration of the Louisiana barrier islands. The MMS has determined that the use of Federal sand from Outer Continental Shelf (OCS) areas such as Ship Shoal for barrier island restoration and subsequent wetlands protection meets the negotiated agreement requirements under Section 8(k)(2)(A)(i) of the OCS Lands Act (43 U.S.C. 1337(k)(2)(A)(i)).

The National Environmental Policy Act (NEPA) process is initiated when Federal agencies consider major actions which may significantly affect the environment. Because the environmental consequences of barrier island restoration are not fully understood and the extraction of Federal sand for the purposes of barrier island and wetlands restoration is considered a major Federal action, an EIS will be prepared.

This specific EIS will support the Phase 1 portion of the feasibility study. Impacts associated with Phases 2 and 3 will be evaluated in subsequent NEPA documents. The EIS will be used to assist the CWPPRA Task Force in making funding decisions regarding Phase 1 restoration methods as well as aid the MMS with respect to the request for a noncompetitive lease to the State of Louisiana for the use of Federal sand. The EIS will consider all reasonable restoration methods, the environmental consequences resulting from such methods, any alternatives to using material from the Ship Shoal area, and possible mitigation measures or stipulations which could be applied on the OCS or in the renourishment areas to ensure that a balance between orderly resource development and protection of

the human, marine, and coastal environments is maintained. Alternatives not recommended in the feasibility study, but identified by various involved parties during the EIS process, may also be included for analysis. Various aspects related to the EIS cannot be definitively determined until a scoping meeting, required under 40 CFR 1501.7, is conducted in the State of Louisiana.

Scoping Process: This notice constitutes the beginning of the public scoping process. Interested individuals, organizations, and other agencies are encouraged to provide written comments within 45 calendar days of this notice to the address below. Respondents should mark their submittal ''Comments Regarding Preparation of a Louisiana Barrier Island Restoration EIS.'' The MMS will review all comments received for the purpose of determining the scope of the EIS.

As of the writing of this notice, a public scoping meeting was scheduled to be held May 14, 1996, beginning at 7:00 P.M., at the Municipal Auditorium in Houma, Louisiana. Written notice providing final details on the location, date, and times of this meeting will be published in local and regional newspapers, as appropriate. Persons interested in attending the scoping meeting may also call the number below for exact details and final arrangements.

Comments and Questions: Please direct written comments and written or verbal questions on the proposed action and EIS to Mr. Barry S. Drucker, Project Coordinator, U. S. Department of the Interior, Minerals Management Service, 381 Elden Street, Mail Stop 4030, Herndon, Virginia, 22070. Phone: (703–787–1300), Fax: (703–787–1284).

Dated: April 22, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–10595 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–MR–P

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the McLean Hilton in McLean, Virginia on May 21–22, 1996.

The agenda will cover the following principal subjects:

—5-Year Proposed Program
—National Resource Assessment
—Marine Minerals Panel
—Can the Gulf of Mexico Remain the Backbone of the U.S. Natural Gas Deliverability?
—Advances in Technology on the OCS
—Alaska Regional Stakeholders Task Force Report
—G&G Data Preservation and its Application to Policy

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 10, 1996, to the Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Tuesday, May 21 and Wednesday, May 22, 1996.

ADDRESSES: The McLean Hilton at Tysons Corner, 7920 Jones Branch Drive, McLean, Virginia 22102; (703) 847–5000.

FOR FURTHER INFORMATION CONTACT: Terry Holman at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

Dated: April 19, 1996.

[FR Doc. 96–10572 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Niobrara National Scenic River Advisory Commission

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Wednesday, May 8, 1996; 1:30 p.m.

ADDRESSES: American Legion Hall, Bassett, Nebraska.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chairman at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chairman may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

Agenda Topics Include

1. Final review of the Niobrara National Scenic River draft general management plan and environmental impact statement.
2. Review of written comments submitted during the public review period for the draft plan.
3. Discussion and preparation of advisory commission comments to be included with the plan when it is submitted for final selection of the management alternative.
4. The opportunity for public comment and proposed agenda, date, and time, of the next advisory group meeting.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Niobrara National Scenic River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan and management and operation of the Scenic River. The Niobrara National Scenic River includes the 40-mile segment from Borman Bridge southeast of Valentine, Nebraska to its confluence with Chimney Creek; and the 30-mile segment from the confluence with Rock Creek downstream to State Highway 137.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591 or telephone 402–336–3970.

Dated: April 6, 1996.

David N. Given,

Acting Field Director, Midwest Field Area.

[FR Doc. 96–10612 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–70–M

Sleeping Bear Dunes National Lakeshore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (P.L. 92–463).

MEETING DATE AND TIME: Friday, July 12, 1996; 9:30 a.m. until 12 noon.

ADDRESSES: Sleeping Bear Dunes National Lakeshore Headquarters, 9922 Front Street, Empire, Michigan 49630.

AGENDA TOPICS INCLUDE: The Chairman's welcome; minutes of the previous meeting; statement of purpose; public input; update on park activities; old business; new business; next meeting date; adjournment. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The advisory commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Superintendent Ivan Miller at the above address or telephone 616–326–5134.

Dated: April 6, 1996.

David N. Given,

Acting Field Director, Midwest Field Area.

[FR Doc. 96–10611 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–70–P

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 April 20, 1996. Pursuant to § 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, DC 20013–7127. Written comments should be submitted by May 15, 1996.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Jefferson County

Loveland Building and Coors Building, 1122 and 1120 Washington Ave., Golden, 96000544

Montezuma County

Lebanon School, 24925 Co. Rd. T, Dolores vicinity, 96000543

IOWA

Johnson County

Clark House, 829 Kirkwood Ave., Iowa City, 96000545

MISSOURI

Webster County

Hosmer Dairy Farm Historic District, Co. Farm Rd. 522, approximately .5 mi. SW of jct. with MO Rt. E, Marshfield vicinity, 96000549

MONTANA

Missoula County

Cook Farm, 5185 Old Marshall Grade Rd., Missoula, 96000546

Headquarters Building and Daily Company Annex (Missoula MPS) 113—119 W. Front St., Missoula, 96000547

Phillips County

Sleeping Buffalo Rock, Jct. of MT 243 and US 2, Saco vicinity, 96000548

NEW JERSEY

Cape May County

Baker, J. Thompson, House, 3008 Atlantic Ave., Wildwood City, 96000551

Hudson County

Church of Our Lady of Grace, 400 Willow Ave., Hoboken, 96000550

Warren County

Kennedy House and Mill, 306 NJ 173, Greenwich Township, Stewartsville vicinity, 96000552

NEW YORK

Albany County

District School No. 7, NY 143, approximately .25 mi. W of jct. with Co. Rt. 103, Coeymans Hollow, 96000562

Harmanus Bleecker Library, 161 Washington Ave., Albany, 96000559

Greene County

North Settlement Methodist Church, Co. Rt. 10, E of jct. with Co. Rt. 32C, Ashland, 96000561

Orange County

Bookstaver, Jacob, House, 198 Schmitt Ln., Montgomery, 96000558

Canterbury Presbyterian Church (Cornwall MPS) 30 Clinton St., Cornwall, 96000556

Cromwell Manor (Cornwall MPS) Angola Rd., approximately .25 mi. S of jct. with US 9W, Cornwall, 96000555

Firthcliffe Firehouse (Cornwall MPS) 196 Willow Ave., Cornwall, 96000554

Haines, Benjamin, House, 114 Coleman Rd., Montgomery, 96000560

Mountainville Grange Hall (Cornwall MPS) NY 32, S of jct. with Creamery Rd., Cornwall, 96000557

Tioga County

Nichols High School, 84 Cady Ave., Nichols, 96000553

NORTH CAROLINA

Bladen County

South River Presbyterian Church, NE side of NC 210, 1.7 mi. SE of jct. with US 701, Garland vicinity, 96000563

Davidson County

Uptown Lexington Historic District, Main St. from 3rd Ave. to 2nd St., Lexington, 96000570

Davie County

Shutt, John Edward Belle, House and Outbuildings, 2177 NC 80, S, Advance, 96000567

Franklin County

Sterling Cotton Mill, SE jct. of Seabord RR tracks and E. Green St., Franklinton, 96000568

Halifax County

Weldon Historic District, Roughly bounded by US 301, Woodlawn Ave., Cedar St., 8th and 9th Sts., and CSX RR tracks, Weldon, 96000565

Macon County

Church of the Incarnation, 111 N. 5th St., Highlands, 96000566

Polk County

Saluda Main Street Historic District, Main St. from Cullipher St. to Carolina St., Saluda, 96000569

Rowan County

Boyden High School, 500 Lincolnton Rd., Salisbury, 96000564

RHODE ISLAND

Newport County

Emmanuel Church, 42 Dearborn St., Newport, 96000574

Providence County

Saint Martin's Church, 50 Orchard Ave., Providence, 96000571

Washington County

Bradford Village Historic District, Roughly, Bowling Ln. from the Pawcatuck R. to Vars Ln. and Main St. from the Bradford Br. to Church Ave., Westerly, 96000573

Wakefield Historic District, Roughly, Main St. from Belmont Ave. to Columbia St., South Kingstown, 96000572

VIRGINIA

Clarke County

Soldier's Rest, .3 mi N of Fairfax Ave., approximately .5 mi. E of jct. of US 340 and VA 7, Berryville vicinity, 96000579

Hanover County

Dewberry, Approximately 1 mi. NE of jct. of VA 738 and VA 601, Hanover vicinity, 96000576

Immanuel Episcopal Church, SR 606, 1.7 mi. E of jct. with US 360, Mechanicsville vicinity, 96000577

Northumberland County

Sunnyside, S side of US 360, E of jct. with VA 201, Heathsville, 96000580

Warren County

Rose Hill, 900 block of N. Royal Ave., Front Royal, 96000578

Roanoke Independent City

The Coffee Pot, 2902 Brambleton Ave., SW, Roanoke, 96000575

[FR Doc. 96–10610 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Wyoming State Office, Bureau of Land Management, Cheyenne, WY

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the Wyoming State Office, Bureau of Land Management, Cheyenne, WY.

A detailed assessment of the human remains was made by Bureau of Land Management professional staff in consultation with representatives of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Indian Reservation, WY; the Shoshone-Bannock Tribes, ID; the Uintah and Ouray Tribes of the Uintah & Ouray Agency, UT; the Northern Cheyenne Tribe, MT; and the Crow Tribe, MT.

In 1983, human remains representing one individual were illegally removed from federal lands by two oil field workers and were recovered during a Federal criminal investigation and returned to the control of the Bureau of Land Management. The 502 associated funerary objects include a saddle, leather horse tack, German silver bridle ornaments, .45/70 rifle cartridges, a .22 caliber revolver, a metal knife, one pair beaded moccasins, brass U.S. military General Service buttons, silver conchas, a silver bracelet, a silver belt buckle, a choker of blue glass beads and elk teeth, vials of glass beads, and fragments of fabric and leather. No known individual was identified.

In 1985, this individual was reinterred by the Bureau of Land Management in consultation with Eastern Shoshone traditional religious practitioners. During recent inventory of the associated funerary objects, additional human remains including two braids of human hair wrapped in cloth were discovered from this same individual. Based on the associated funerary objects and the condition of the remains, the burial is estimated to date to the late 1870s—early 1880s. The ''checker-diagonal'' beaded design on the moccasins is most commonly used among the Eastern Shoshone or the Blackfeet. Further, osteological analysis of the human remains, the burial location, manner of interment, and associated funerary objects all indicate this individual was likely Eastern Shoshone.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 502 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Eastern Shoshone Tribe of the Wind River Indian Reservation, WY.

This notice has been sent to officials of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Indian Reservation, WY; the Shoshone-Bannock Tribes, ID; the Uintah and Ouray Tribes of the Uintah & Ouray Agency, UT; the Northern Cheyenne Tribe, MT; and the Crow Tribe, MT. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Al Pierson, State Director, or Tim Nowak, Native American Coordinator, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009; telephone: (307) 775–6035, before May 30, 1996. Repatriation of the human remains and associated funerary objects to the Eastern Shoshone Tribe of the Wind River Indian Reservation may begin after that date if no additional claimants come forward.

Dated: April 24, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology & Ethnography Program

[FR Doc. 96–10613 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on February 5, 1996. The February 5, 1996, notice should be used as a reference point to identify changes. The number in parenthesis corresponds to the number in the February 5, notice. This notice is one means in which the public is informed about contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the Federal Register and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of new releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contract, and Repayment Office, Bureau of Reclamation, PO Box 25007,

Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1996. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior or, pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or area office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who request the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the February 5, 1996 Federal Register notice.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. New Contract Actions:

(20) South Boise Mutual Irrigation Company, Ltd. and United Water Idaho, Boise project, Idaho: Agreement amending contracts to approve the acquisition and municipal use of Anderson Ranch Reservoir water by United Water Idaho, and the transfer of Lucky Peak Reservoir water to the United States.

2. Contract Actions Modified:

(12) North Unit Irrigation District, Deschutes Project, Oregon: Municipal water service contract for approximately 125 acre-feet annually from the project water supply. This water supply was previously under contract with City of Madras; contract expired.

(16) Stanfield and Westland Irrigation Districts and 69 individual contractors, Umatilla Project, Oregon: Repayment contracts for reimbursable cost of dam safety repairs to McKay Dam. Modified to included 69 individual contractors.

3. Contract Actions Completed:

(19) Hermiston, Stanfield, Westland, and West Extension Irrigation Districts, Umatilla Project, Oregon: Temporary contracts to provide water service for 1996 to lands lying outside of their boundaries. (Contract for 1996 has been executed with Westland Irrigation District.)

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. New Contract Actions:

(19) Colusa County Water District, CVP, California: Amendment of existing distribution system repayment contract to allow for delivery of M&I water through the distribution system and payment of interest by the District for the portion of the costs of the distribution system allocated to the conveyance of the M&I water.

2. Contracts Actions Modified:

(9) U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD, CVP, California: Water service contracts to provide water supplies for refuges and private wetlands within the CVP pursuant to Federal Reclamation Laws; exchange agreements and wheeling contracts to deliver some of the increased refuge water supplies; quantity to be contracted for is approximately 450,000 acre-feet.

(3) Contract Actions Completed:

(10) San Juan Water District, CVP, California: Execute Warren Act contract to replace expiring long-term wheeling contract with San Juan WD and the Placer County Water Agency allowing the Agency to use CVP facilities to deliver its water to the District for use on District land within Placer County. Action: Contract executed February 29, 1996.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. New Contract Actions:

(48) City of Yuma, BCP, Arizona: Proposed supplemental and amendatory water delivery contract to amend the city's 50,000 acre-feet of Colorado River water diversion entitlement to a 50,000 acre-feet consumptive use entitlement.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. New Contract Actions:

(23) Ragged Mountain Water User Association, Paonia Project, Colorado; renewal for 5 years of an existing Supplemental Water Sales Contract No. 1–07–4–R1310 for the right to divert annually 2,000 acre-feet of Paonia Project water from storage in Paonia Reservoir.

(24) Collbran Conservancy District and Fourteen Private Ditch owners, Collbran Project, Colorado: 5-year water carriage agreements for nonproject irrigation water.

(25) Strawberry Water Users Association, Strawberry Valley Project, Utah: Contract to authorize the conversion of up to 71,000 acre-feet of irrigation water to municipal and industrial use, the replacement of some project facilities, and participation in construction of the Spanish Fork System with the Central Utah Water Conservancy District.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. New Contract Action:

(23) Pick-Sloan Missouri Basin Program, Kansas and Nebraska; Negotiate interim water service contracts with irrigation districts in the Republican River Basin in Kansas and Nebraska to continue delivery of the project water supplies pending completion of contract renewal process for renewal of long-term water supply contracts.

Dated: April 15, 1996.

Wayne O. Deason,

Assistant Director, Program Analysis Office.

[FR Doc. 96–10577 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Valley Concrete and Materials, Inc.*, Civ. No. 903–0–845 PHX CAM (D. Ariz.), was lodged with the United States District Court for the District of Arizona on or about April 22, 1996. The proposed consent decree concerns a compliant filed by the United States against Valley Concrete and Materials, Inc., pursuant to section 309 of the Clean Water Act (''CWA''), 33 U.S.C. § 1319, to obtain injunctive relief and impose civil penalties upon the Defendant for discharges of dredged or fill material into the Verde River near Cottonwood, Arizona in violation of CWA section 301, 33 U.S.C. § 1311(a), and for violation of an EPA Administrative Order issued pursuant to CWA section 309(a), 33 U.S.C. § 1319(a).

The Consent Decree requires Valley Concrete and Materials, Inc. to pay a civil penalty of $15,000.00 to the United States Treasury. The Consent Decree also prohibits additional illegal discharges by the Defendant at the Verde River site.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: David A. Carson, Suite 945—North Tower, 999 18th Street, Denver, Colorado 80202 and should refer to *United States* v. *Valley Concrete and Materials, Inc.* DJ Reference No. 90–5–1–1–3649.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, Room 1400, United States Courthouse, 230 North First Avenue, Phoenix, Arizona, 85025–0093, and at the United States Department of Justice, Environment and Natural Resource Division, Suite 945—North Tower, 999 18th Street, Denver, Colorado 80207 (contact Erin Perkins at (303) 312–7385).

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 96–10576 Filed 04–29–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Notification; Center for Emissions Control, Inc.; Correction

In notice document 95–7180 concerning Cable Television Laboratories, Inc., appearing in the issue of Thursday, March 23, 1995 at 60 Fed. Reg. 15307, make the following corrections: In the third column; third paragraph; the notice should read ''On August 8, 1988 CableLabs filed its original notification pursuant to Section 6(a) of the Act''.

The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on September 7, 1988 (53 Red. Reg. 34593). The last notification as to changes in membership and additional activities was filed on September 26, 1994. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on March 20, 1995 (60 FR 14779).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10573 Filed 4–29–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mid Atlantic Regional Consortium for Advanced Vehicles (MARCAV)

Notice is hereby given that, on April 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* (''the Act''), the participants in the Mid Atlantic Regional Consortium for Advanced Vehicles (''MARCAV'') Joint Ventures have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following party has become a member in MARCAV: Tribology Systems, Inc. of World Flywheel Consortium, Paoli, PA.

No other changes have been made in either the membership or the planned activities of the Consortium.

On July 24, 1995, MARCAV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 29, 1996 (61 FR 7805).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10575 Filed 4–29–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—''Precision Balancing for Enhanced Engine Integrity Program''

Notice is hereby given that, on April 4, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to

actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Southern Natural Gas Company, Birmingham, AL; Tennessee Gas Pipeline Company, its subsidiary and affiliate companies, Houston, TX; and Woodward Governor Company, Fort Collins, CO; and its general areas of planned activities are to document, from a mechanical integrity perspective, the impact of precision continuous engine autobalancing on mechanical wear and failure.

Membership in the program remains open, and SwRI intends to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–10574 Filed 4–29–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[DEA #144W]

Controlled Substances: 1996 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Withdrawal of an interim notice regarding levorphanol and establishment of the revised 1996 aggregate production quota for heroin.

SUMMARY: DEA is withdrawing the portion of the interim notice published on March 18, 1996 (61 FR 11063) which established the revised 1996 aggregate production quota for levorphanol, and is adopting without change the revised 1996 aggregate production quota for heroin.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington DC, 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On March 18, 1996, an interim notice establishing revised 1996 aggregate production quotas for heroin and levorphanol was published in the Federal Register (61 FR 11063). The basis for the proposed increase in the levorphanol aggregate production quota was that there was only one bulk manufacturer of levorphanol. A comment was filed that pointed out that there is more than one manufacturer of levorphanol. Given that this was the basis for the increase in the levorphanol aggregate production quota, DEA is withdrawing the revised 1996 aggregate production quota for levorphanol.

No comments were received regarding heroin, therefore, the revised 1996 aggregate production quota for heroin is adopted without change.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the revised 1996 aggregate production quota for heroin be established at 5 grams, expressed as anhydrous base.

Dated: April 24, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–10616 Filed 4–29–96; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, May 3, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Acting Secretary of the Board, Telephone (703) 518–6300.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. 96–10703 Filed 4–25–96; 4:24 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, in Room 714, from 9:00 a.m. to 5:30 p.m., on Friday, May 17, 1996.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 1996.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the

Acting Advisory Committee Management Officer, Michael Shapiro, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, or call 202/606–8322.

Michael Shaprio,

Acting Advisory Committee Management Officer.

[FR Doc. 96–10656 Filed 4–29–96; 8:45 am]

BILLING CODE 7537–01–M

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Seminars and Institute Program in Ancient, Medieval, Renaissance Studies submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

2. *Date:* May 2, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Seminars and Institute Program in Philosophy, Politics, and Culture submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

3. *Date:* May 3, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Seminars and Institute Program in American History & Culture submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

4. *Date:* May 3, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Seminars and Institute Program in Theory: Philosophical, Social, and Political submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

5. *Date:* May 6, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Seminars and Institute Program in Literature and the Arts submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

6. *Date:* May 6.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Seminars and Institute Program in Western History & Culture submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

7. *Date:* May 7.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Seminars and Institute Program in Foreign Language, Literature, and Cultures submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

8. *Date:* May 8.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Seminars and Institute Program in American Literature & Culture submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

9. *Date:* May 8.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Seminars and Institute Program in World Cultural Studies submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

10. *Date:* May 9.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Seminars and Institute Program in Literature, Culture & Arts submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

11. *Date:* May 10.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

12. *Date:* May 13.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

13. *Date:* May 15.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

14. *Date:* May 17.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

15. *Date:* May 21.
Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications for the Seminars and Institute Program in Literature, Culture & Arts submitted to the Division of Research and Education Programs, for projects at the March 1, 1996 deadline.

16. *Date:* May 22.

Time: 8:30 a.m. to 5:00 p.m.

Room: 317.

Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

17. *Date:* May 24.

Time: 8:30 a.m. to 5:00 p.m.

Room: 317.

Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

18. *Date:* May 29.

Time: 8:30 a.m. to 5:00 p.m.

Room: 317.

Program: This meeting will review applications for the Education Development and Demonstration Program in Teaching Technology, Special Opportunity submitted to the Division of Research and Education Programs, for projects with April 5, 1996 deadlines.

Michael S. Shapiro,

Acting, Advisory Committee Management Officer.

[FR Doc. 96–10655 Filed 4–29–96; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–8 issued to Southern Nuclear Operating Company, Inc. (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Unit 2, located in Houston County, Alabama.

The proposed amendment would modify Technical Specification 3/4.4.6, ''Steam Generator Surveillance Requirements,'' which provides tube inspection requirements and acceptance criteria to determine the level of degradation for which a tube may remain in service. The proposed amendment would add definitions required for the L*-type criteria and prescribe the portion of the tube subject to those criteria.

This requested Technical Specification (TS) change is a followup to a Notice of Enforcement Discretion (NOED) granted to the licensee that is in effect from the time of issuance on April 23, 1996, until approval of this exigent TS. NRC Inspection Manual, Part 9900, ''Operations—Notices of Enforcement Discretion,'' requires that a followup TS amendment be issued within 4 weeks from the issuance of the NOED.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Farley Nuclear Plant Unit steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical evaluations of the subject criteria demonstrate that the presence of the tubesheet enhances the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. The result of the hardroll of the tube into the tubesheet is an interference fit between the tube and the tubesheet. Tube rupture [cannot] occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA [loss-of-coolant accident] loadings.

The type of degradation for which the L* criterion has been developed (cracking with an axial or near axial orientation) has been found not to significantly reduce the axial strength of a tube. An evaluation including analysis and testing has been done to determine the strength reduction for axial loads with simulated axial and near axial cracks. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the L* criterion.

The SRE [sound roll expansion] L* length is sufficient to preclude significant leakage from tube degradation located below the L* length. The existing Technical Specification leak rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. Any leakage from the tube within the tube sheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube analysis included in the Farley Nuclear Plant Final Safety Analysis Report. A conservative leakage allowance for each L* tube is provided to determine the impact of L* criterion upon offsite doses in the event of a postulated double ended guillotine break of the main steam line outside of containment, but upstream of the main steam line isolation valves. Since Farley Unit 2 has implemented the Interim Plugging Criteria (IPC) for ODSCC [outside diameter stress corrosion cracking] at the tube support plates, projected steam line break (SLB) leakage at the end of the next successive operating cycle must be evaluated. Per Generic Letter 95–05, plants implementing the IPC can utilize SLB leakage limits higher than the originally assumed 1.0 gpm primary to secondary leakage value provided an analysis of offsite doses consistent with Standard Review Plan methodology is performed. This analysis performed for the Farley Unit plant indicates that primary to secondary leakage of 11.2 gpm in the faulted loop (0.1 gpm in the intact loops) will result in offsite doses at the site boundary of less than 10% of the 10 CFR [Part] 100 guidelines. The total projected SLB leakage from all leakage sources must remain below this value. [Per Westinghouse analysis] addressing the L* methodology, the number of tube ends to which L* criterion can be applied is limited to 600 per steam generator. Using a bounding SLB leakage allowance per L* tube, the SLB leakage component from 600 L* tube ends will be less than 0.33 gpm in the faulted loop. The proposed L* criterion does not adversely impact any other previously evaluated design basis accident. As the current Unit 2 IPC SLB leakage has been calculated to be less than 2 gpm in the faulted loop, [an] SLB leakage margin of over 9 gpm is provided for this cycle.

As noted above, tube rupture and pullout is not expected for tubes using the L* criterion. In addition to the L* length, a minimum length of SRE below the identified degradation must be established. The aggregate L* distance of SRE provides the structural integrity to prevent tube pullout.

Conservatively, it is assumed that the degraded band length does not provide any support in resisting tube pullout.

Therefore SNC [Southern Nuclear Company] concludes that Operation of the Farley Nuclear Plant Unit steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed L* criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism to result in an accident initiated outside of the region of the tubesheet expansion. The structural integrity of L* tube will be maintained during all plant conditions. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis. If it is postulated that a circumferential separation of an L* tube were to occur below the PLRL [pullout load reaction length], tube structural and leakage integrity will be maintained during all plant conditions.

Verification of the L* distance of non-degraded tube roll expansion prevents the postulated separated tube from lifting out of the tubesheet during all plant conditions. Verification of the L* criterion prevents tube displacement of any magnitude, and therefore, postulated axial cracks existing a minimum of 0.5 inch from either the bottom of the roll transition or top of tubesheet, whichever is lower, from migrating out of the tubesheet.

Therefore, SNC concludes that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The use of the L* criterion has been concluded to maintain the integrity of the tube bundle commensurate with the requirements of draft Regulatory Guide 1.121 under normal and postulated accident conditions. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The L* length has been verified by testing to be greater than the length of roll expansion required to preclude significant leakage during normal and postulated accident conditions. The leak testing acceptance criteria are based on the primary to secondary leakage limit in Technical Specifications and the leakage assumptions used in the FSAR [Final Safety Analysis Report] accident analyses. The L* distance provides for structural integrity during all plant conditions.

Implementation of the L* criterion will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS [reactor coolant system] flow margin, thus implementation of the L* criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Therefore, SNC, concludes based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP [Farley Nuclear Plant] technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15- day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene

which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 23, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 25th day of April 1996.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–10618 Filed 4–29–96; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on June 27–28, 1996. The location of the meeting will be in rooms 1F7/9, One White Flint North (OWFN) Building, 11555 Rockville Pike, Rockville, MD.

The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to the public. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purposes of this meeting will be (1) to discuss the March 27, 1996 NSRRC briefing with the Commission and (2) to review and discuss the reports and recommendations of the Subcommittees on Research in Support of Risk-Based Regulation (PRA); Instrumentation and Control (I&C) and Human Factors; and Subcommittee on Accident Analysis.

Participants in parts of the discussion will include senior NRC staff and other RES technical staff as necessary.

Any inquiries regarding this notice or any subsequent changes in the status and schedule of the meeting, may be made to the Designated Federal Officer, Dr. Jose Luis M. Cortez (telephone: 301–415–6596), between 8:15 a.m. and 5:00 p.m.

Dated at Rockville, Maryland this 24th day of April, 1996.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 96–10621 Filed 4–29–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 22, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 22, 1996—1:30 p.m. until 4:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of members to the ACRS.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 24, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–10620 Filed 4–29–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Instrumentation and Control Systems and Computers; Notice of Meeting

The ACRS Subcommittee on Instrumentation and Control Systems and Computers will hold a meeting on May 22, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 22, 1996—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue to discuss proposed Standard Review Plan Sections, Regulatory Guides, and Branch Technical Positions related to the digital instrumentation and control systems. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 24, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–10623 Filed 4–29–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on May 21, 1996, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 21, 1996—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the proposed Rule on Shutdown Operations and an associated Regulatory Guide as well as studies on shutdown risk at Surry and Grand Gulf nuclear plants. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineers, Mr. Michael T. Markley (telephone 301/415-6885) or Mr. Amarjit Singh (telephone 301/415-6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 24, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–10624 Filed 4–29–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of April 29, May 6, 13, and 20, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 29

Friday, May 3

11:30 a.m.
Affirmation Session (Public Meeting)
a. Final Rulemaking on ''Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,'' 10 CFR Part 51
b. Final Amendment to 10 CFR Part 30 Relating to the Frequency of Emergency Planning Exercises at Nuclear Power Plants
(Contact: Andrew Bates, 301–415–1963)

2:00 p.m.
Meeting with ACMUI and Dr. Robert Adler on Recommendations of NAS Report on Review of Medical Use Program (Public Meeting)
(Contact: Larry Camper, 301–415–7231)

Week of May 6—Tentative

Friday, May 10

10:00 a.m.
Briefing on Severe Accident Master Integration Plan (Public Meeting)
(Contact: Themis Speis, 301–415–6802)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of May 13—Tentative

Monday, May 13

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Wednesday, May 15

2:00 p.m.
Briefing on Performance Assessment Program in HLW, LLW, and SDMP (Public Meeting)
(Contact: Norman Eisenberg, 301–415–7285)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of May 20—Tentative

Wednesday, May 22

10:00 a.m.
Briefing on Status of NRC Operator Licensing Initial Examination Pilot Process (Public meeting)
(Contact: Staurt Richards, 301–415–1031)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

2:00 p.m.
Briefing by International Programs (Closed—Ex. 1)

Friday, May 24

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

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, D.C. 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: April 15, 1996.

Andrew L. Bates,

Senior Level Advisor, Office of the Secretary.

[FR Doc. 96–10738 Filed 4–26–96; 10:45 am]

BILLING CODE 7590–01–M

Materials Licensing Process: Availability of NUREGs

NRC is using Business Process Redesign (BPR) techniques to redesign its material licensing process to achieve an order of magnitude improvement in speed, while maintaining or improving the level of public safety. NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign,'' describes the methods used to acquire and analyze information about the existing materials licensing process and the steps necessary to radically change this process to the envisioned future process.

Fundamental to the success of the redesigned licensing process is the consolidating and updating of an extensive number of guidance documents that support the material licensing process into a single comprehensive repository called the materials electronic library (MEL). Draft NUREG–1541, ''Process and Design for Consolidating and Updating Materials Licensing Guidance,'' describes the MEL design and is the first of a planned series of staff reports that NRC will publish on MEL. These reports are intended to inform the reader about the MEL project, provide an ongoing status report, and request comments on various aspects of the project. This project's end result will be an electronic library accessible by NRC's staff and managers, Agreement and non-Agreement States, licensees, applicants, and the public at large.

Over the years, the NRC has used a number of regulatory guides, policy and procedures, standard review plans, and other documents to communicate the NRC's policy to licensees and to the NRC staff. Each of these documents was written to address either a particular use of material or a particular radiation safety issue. The net result has been a multitude of documents, many of which are now out of date, from which NRC staff and licensees must derive the requirements, policies, and materials needed for licensed activities. The intent of the MEL is to create a simple communication vehicle that can keep up with change.

Draft NUREG–1541 discusses the conceptual structure of MEL, how it was created, and seeks comments on MEL-related issues. The MEL's development strategy is a prototype of NRC's new process for developing ''regulatory products.'' During the comment period on this document, the staff is actively seeking comments from all readers, including but not limited to, licensees, applicants, the public, and Agreement and non-Agreement States. Comments will be useful in making needed ''mid-course'' corrections as early as possible in the development of MEL. Comments on this draft report will be most useful if received within 90 days of its publication, but comments received after that time will also be considered if practicable.

Submit comments on draft NUREG–1541 to the Chief, Rules Review and Directives Branch, U. S. Nuclear Regulatory Commission, Washington, DC 20555–001.

Copies of NUREG–1539 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

A free single copy of draft NUREG–1541 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN: BPR Team, Mail Stop TWFN 8F5, Washington, DC 20555–0001.

Copies of NUREG–1539 and draft NUREG–1541 are also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–001.

Dated at Rockville, Maryland, this 24th day of April, 1996.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–10619 Filed 4–29–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21915; 812–9744]

Medallion Financial Corp., et al.; Notice of Application

April 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Medallion Financial Corp. (''Medallion''), Tri-Magna Corporation (''Tri-Magna''), Medallion Funding Corp. (''MFC''), Alvin Murstein, and Andrew Murstein.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 12(d), 18(a), and 61(a) of the Act, under sections 17(d) and 57(a)(4) of the Act and rule 17d–1 thereunder permitting certain joint transactions, under section 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 57(c) of the Act for an exemption from sections 57(a) (1), (2), and (3) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Medallion to acquire all the outstanding stock of Tri-Magna Corporation through a merger and to acquire certain other companies. In addition, the order would permit Medallion to engage in certain joint transactions with its subsidiaries and would permit modified asset coverage requirements for Medallion and its subsidiaries on a consolidated basis.

FILING DATE: The application was filed on September 1, 1995 and amended on January 16, 1996. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Suite 2000, 205 East 42d Street, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Medallion is a closed-end investment company. It was organized for the purpose of acquiring: Tri-Magna, another closed-end investment company; Edwards Capital Company, L.P. (''ECC''), a privately-held limited partnership licensed as a Small Business Investment Company (an ''SBIC'') by the Small Business Administration (the ''SBA''); and Transportation Capital Corp. (''TCC''), a Specialized Small Business Investment Company (an ''SSBIC'') licensed by the SBA.[1] Tri-Magna, ECC, and TCC are referred to as the ''Acquired Companies.'' Medallion plans to file an election under section 54 of the Act to be regulated as a business development company (a ''BDC'') and, contemporaneous with the acquisition of TCC and ECC, will register each company under the Act as a closed-end investment company. Upon completion of these transactions, Medallion will engage directly and/or through its principal subsidiaries (the ''Subsidiaries'') primarily in the business of making loans to small businesses and, to a lesser degree, in the business of taxicab rooftop advertising.

2. Medallion proposes to acquire all the outstanding shares of Tri-Magna through a merger of Tri-Magna into Medallion (the ''Merger'') for $20.00 per share in cash plus an additional dividend of $.50 per share plus the accumulated earnings, if any, of Media to be paid immediately prior to the Merger and to acquire the remaining Acquired Companies for cash or Medallion stock or some combination thereof. Acquisitions for cash will be financed from the proceeds of the initial public offering of Medallion stock (the ''IPO''). The acquisitions will be closed contemporaneously with the IPO.

3. At a meeting held on October 18, 1995, the full board of directors of Tri-Magna voted unanimously to accept the recommendation of a committee of its independent directors (the ''Independent Committee'') to pursue the Merger, determining that the Merger is in the best interests of and is fair to the stockholders of Tri-Magna. The board of directors also unanimously recommended that the stockholders of Tri-Magna approve the Merger. On December 21, 1995, the Merger Agreement was executed and delivered by Tri-Magna and Medallion.

4. The consummation of the Merger is subject to certain conditions, including (a) approval of the Merger Agreement by the holders of at least a majority of the outstanding shares of Tri-Magna stock, (b) approval by all governmental agencies and other third parties from whom such approval is required, including the SEC and the SBA, (c) receipt by Tri-Magna of an opinion from Gruntal & Co., Incorporated (''Gruntal''), an investment banking firm engaged by the Independent Committee, opining as to the fairness from a financial point of view of the terms of the Merger to the stockholders of Tri-Magna, (d) the successful negotiation and closing of the acquisitions of the other Acquired Companies, and (e) the closing of the IPO.

5. Alvin Murstein and Andrew Murstein will serve as chief executive officer and as president, respectively, of Medallion following the Merger. Each of Alvin Murstein and Andrew Murstein currently holds 100 shares of Medallion's common stock through a trust. In addition, Alvin Murstein will make a capital contribution of approximately $1,000,000 to Medallion in exchange for shares of Medallion stock valued at the public offering price of Medallion shares sold in the IPO.

6. Myron Cohen, Robert Fanger, and Michael Miller (the ''Affiliated Advisers'') will form and register an

[1] Concurrently with these acquisitions, Medallion will merge with Tri-Magna and operate Tri-Magna's two subsidiaries, MFC, an SSBIC, and Medallion Taxi Media, Inc. (''Media''), a corporation providing taxicab rooftop advertising, as its own subsidiaries. In 1988, the SEC issued an order to MFC permitting it to create a holding company structure, with MFC as a wholly-owned subsidiary of such holding company, and permitting the holding company and its subsidiaries to engage in certain joint transactions and other activities otherwise prohibited under the Act. Medallion Financial Corporation, Investment Company Act Release Nos. 16253 (Feb. 4, 1988) (notice) and 16296 (Mar. 1, 1988) (order).

investment adviser (the ''Sub-Adviser'') that will enter into a sub-advisory contract (the ''Sub-Advisory Agreement'') with Medallion to provide investment advisory services. The Affiliated Advisers presently are officers and directors of Tri-Magna and collectively hold 14.9% of Tri-Magna's outstanding stock. Following the IPO, the Affiliated Advisers will resign their positions with Tri-Magna and will no longer own Tri-Magna stock. Pursuant to the Sub-Advisory Agreement, Medallion will pay the Sub-Adviser, in arrears, a monthly fee of $18,750 as compensation for the services to be rendered and the expenses to be paid by the Sub-Adviser.

7. The Sub-Advisory Agreement will be approved by a majority of the non-interested directors of Medallion and a majority of Medallion's voting securities outstanding immediately prior to the closing of the IPO. The Sub-Advisory Agreement will be subject to section 15 of the Act and will be terminable without penalty to Medallion on 60 days' written notice by either party or by vote of a majority of Medallion's outstanding voting securities and will terminate if assigned.

Applicants' Legal Analysis

Section 6(c)

1. Applicants request relief under section 6(c) of the Act from sections 12(d), 18(a), and 61(a). Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 12(d) and 60

1. Section 12(d)(1) limits the amount of securities a registered investment company may purchase of another registered investment company. Section 60 applies the provisions of section 12 to BDCs.

2. Since Medallion will operate those of its Subsidiaries licensed as an SBIC or SSBIC (the ''SBA Subsidiaries'') as wholly-owned subsidiaries, the acquisition of the securities of the SBA Subsidiaries, any loans or advances made to such SBA Subsidiaries by Medallion, and any other transfer of assets from Medallion to the SBA Subsidiaries will be exempt from sections 12(d)(1) (A) and (C) by virtue of rule 60a–1, which exempts from those sections the acquisition by a BDC of the securities of an investment company licensed by the SBA that is operated as a wholly-owned subsidiary of the BDC. The making of loans or advances by the SBA Susidiaries to Medallion, however, may violate section 12(d) if such loans or advances were deemed to be purchases by the SBA Subsidiaries of Medallion's debt securities. Accordingly, applicants request under section 6(c) an exemption from section 12(d)(1) to permit the acquisition by the SBA Subsidiaries of any securities of Medallion representing indebtedness.

Sections 18(a) and 61(a)

1. Section 18(a) prohibits a registered closed-end investment company from issuing any class of senior security unless such company complies with the asset coverage requirements set forth in that section. ''Asset coverage'' is defined in section 18(h) as the ration which the value of the total assets of an issuer, less all liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Under section 18(a)(1)(A), senior securities of closed-end investment companies representing indebtedness must had an asset coverage of 300% immediately after their issuance or sale and, under section 18(a)(2)(A), senior securities of such companies representing stock must have an asset coverage of 200%. Section 18(k) provides an exemption from the foregoing asset coverage requirements for investment companies licensed by the SBA. Section 61(a) applies section18 to BDCs, with certain exceptions.

2. Medallion will be a BDC and each of the SBA Subsidiaries will be closed-end investment companies registered under the Act and, accordingly, subject to the provisions of, and the exemptions available under, section 18 on an individual basis (as modified by section 61(a) with respect to Medallion). In addition, as a holding company for controlled, closed-end investment company subsidiaries, such as the SBA Subsidiaries, applicants believe that Medallion may be subject to the asset coverage requirements of section 61(a) on a consolidated basis because it may be deemed to be an indirect issuer of senior securities with respect to the SBA Subsidiaries' indebtedness. Accordingly, applicants request under section 6(c) an exemption from sections 18(a) and 61(a) to treat borrowings by any of the SBA Subsidiaries and the SBA's preferred stock interest in such SBA Subsidiaries as liabilities and indebtedness not represented by senior securities in applying the asset coverage requirements of section 18(a) to Medallion and the SBA Subsidiaries on a consolidated basis.

Sections 17(b) and 57(c)

1. Section 17(b) of the Act permits the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 57(c) permits the SEC to exempt a proposed transaction from sections 57(a)(1), (2), and (3) using substantially the same standard imposed by section 17(b).

Sections 17(a) and 57(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and any affiliated person of that company. Paragraphs (1), (2), and (3) of section 57(a) impose substantially the same prohibitions on transactions between BDCs and certain of their affiliates, including any director, officer, or employee of a BDC and any entity controlled by a director, officer, or employee of a BDC.

2. Medallion will be an affiliated person of its Subsidiaries by reason of its ownership of all their voting stock, and the Subsidiaries will be affiliated persons of Medallion and of each other by reason of their common control by Medallion. Applicants believe that Media and another Subsidiary that Medallion may organize in the future (''Newco'') will be fully-owned subsidiaries, as defined in rule 17a–3, and, therefore, transactions between each of them and Medallion will be exempt from section 17(a) under rule 17a–3.[2] In addition, applicants believe that additional investments in any of the Subsidiaries by Medallion in the form of stock purchases, capital contributions or loans do not violate section 17(a) since the seller (a Subsidiary) will be the issuer of any securities issued and will be controlled by the purchaser (Medallion). Applicants believe, however, that loans from the SBA Subsidiaries to Medallion will not be exempt from section 17(a), as such

[2] Rule 17a–3 provides in pertinent part that transactions solely between a registered investment company and one or more of its ''fully owned subsidiaries'' are exempt from section 17(a) Rule 17a–3 defines a ''fully owned subsidiary'' as a subsidiary that, among other things, is not indebted to any person other than its parent, the parent's other fully owned subsidiaries, and/or banks or insurance companies in any amount that is material in relation to the particular subsidiary.

Subsidiaries will not be fully-owned and the lender (the SBA Subsidiary) will be controlled by the borrower (Medallion). Accordingly, absent an exemptive order, such loans could be deemed to violate section 17(a).

3. Applicants also believe that from the perspective of the SBA Subsidiaries, purchases and sales of portfolio securities between Medallion and the SBA Subsidiaries also would be violations of section 17(a) as such transactions would not involve securities issued by Medallion or the SBA Subsidiaries.[3] Since Medallion, an ''upstream affiliated person,'' would be a participant to such transactions, the exemption provided by rule 17a–6 would not be available.

4. Applicants believe that small business or other concerns (''Portfolio Companies'') to which loans may be made by Medallion or the SBA Subsidiaries, which may become affiliated persons of Medallion and/or the SBA Subsidiaries, may borrow from, or sell securities issued by such concerns to, Medallion and the SBA Subsidiaries. Such transactions may be prohibited by section 17(a), since (a) in the case of a sale of securities by a Portfolio Company, the sale may not be part of a general offering to as class of the issuer's stockholders, or (b) in the case of a loan, the Portfolio Company may not be controlled by Medallion or the SBA Subsidiaries. In addition, such transactions may violate section 57(a) since rule 57b–1 only exempts transactions with affiliates of downstream affiliates of a BDC that are affiliated within the meaning of section 2(a)(3) (C) or (D). Accordingly, transactions between Medallion and Portfolio Companies of which an SBA Subsidiary owns 5% of the outstanding voting securities would not be exempted by rule 57b–1.

5. Applicants believe that the requested relief from sections 17(a) and 57(a) (1), (2), and (3) meets the standards for relief because the SBA Subsidiaries will be wholly-owned by Medallion and because no officers or directors of Medallion, the SBA Subsidiaries or any controlling persons or other ''upstream affiliated persons'' of Medallion will have any financial interest (other than as shareholders of Medallion) in (a) transactions with Portfolio Companies which may become affiliates of Medallion and/or the SBA Subsidiaries and (b) the purchase and sale of securities or other property or the borrowing of money or other property solely between Medallion and its SBA Subsidiaries, there can be no overreaching on the part of any person and no harm to the public interest will occur in such transactions.

Sections 17(d) and 57(a)(4) and Rule 17d–1

1. Section 17(d) and rule 17d–1 make it unlawful for an affiliated person of a registered investment company or any affiliated person of such person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company or a company controlled by it is a participant, unless an application respecting such transaction has been granted by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates, including any director, officer or employee of a BDC and any entity controlled by a director, officer, or employee of a BDC. Section 57(i) provides that the rules and regulations under section 17(d) shall apply to transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standards set forth under rule 17d–1 govern the order requested herein.

2. In passing upon applications filed pursuant to rule 17d–1, the SEC is directed by rule 17d–1(b) to consider whether the participation of the registered investment company in a joint enterprise or arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. The proposed Merger and the transactions contemplated thereby in which Tri-Magna, MFC, Medallion, the Affiliated Advisers, Alvin Murstein, and Andrew Murestein will participate may be deemed to be a joint enterprise or transaction in which they have a joint participation in the profits. In addition, applicants believe that it may become necessary or desirable for Medallion and its Subsidiaries to participate together with third persons which have no other affiliation with Medallion or its Subsidiaries in joint transactions such as investments in the same or different securities of the same issuer, either simultaneously or sequentially. Section 17(d) and rule 17d–1 may prohibit such joint participation by Medallion and the SBA Subsidiaries. Accordingly, applicants request an order of the SEC under sections 17(d) and 57(a)(4) of the Act and rule 17d–1 thereunder permitting Medallion and the SBA Subsidiaries to participate in any joint enterprise or joint arrangement involving other participants only to the extent that any such transaction would not be prohibited if Medallion and the SBA Subsidiaries were not separate companies.

4. Applicants believe that transactions with the Portfolio Companies would not result in overreaching on the part of any person. Applicants also believe that there can also be no overreaching on the part of any person and no harm to the public interest will occur in the purchase and sale of securities or other property or the borrowing of money or other property between Medallion and its SBA Subsidiaries, so long as Medallion and its Subsidiaries are the sole participants in such transactions because Medallion will own all the voting stock of the SBA Subsidiaries and, together, all three entities will in effect operate as a single economic unit. In addition, since the SBA Subsidiaries will have the same fundamental investment policies as those of Medallion, such transactions will be consistent with the fundamental policies of both. Finally, applicants believe that the relief requested herein is consistent with the purposes of the Act.

Applicants' Conditions

As a condition to the granting of the exemptive relief sought, each of Medallion and the SBA Subsidiaries will comply with the following conditions:

1. Medallion will at all times own and hold beneficially and of record all of the outstanding voting capital stock of the SBA Subsidiaries.

2. The SBA Subsidiaries will have the same fundamental investment policies as those of Medallion, as set forth in Medallion's registration statement; the SBA Subsidiaries will not engage in any other action described in section 13(a) of the Act, unless such action shall have been authorized by Medallion after approval of such action by a vote of a majority (as defined in the Act) of the outstanding voting securities of Medallion.

3. Medallion will not cause or permit the SBA Subsidiaries to enter into, renew or perform any investment advisory or underwriting contract or agreement, written or oral, as contemplated by section 15 of the Act, unless the terms of any such contract or agreement and any renewal thereof shall

[3] Applicants believe that such transactions would be exempt from the perspective of medallion under rules 57b–1 and 17a–6, since the SBA Subsidiaries will be ''downstream affiliated persons'' of Medallion. Applicants also believe that transactions between the SBA Subsidiaries and Media or Newco also would be exempt under rule 17a–6.

have been approved in compliance with said section 15; and where any vote of the stockholders of the SBA Subsidiaries would be required by said section 15, unless the stockholders of Medallion also shall have approved the same by a vote of a majority (as defined in the Act) of the outstanding voting securities of Medallion; or where any action of the directors of the SBA Subsidiaries would be required by said section 15, unless the board of directors of Medallion, including a majority of those directors who are not parties to any such contract or agreement or interested persons of any such party, also shall have approved the same.

4. Medallion will not, and will not cause or permit any SBA Subsidiary to, issue any senior security or sell any senior security of which Medallion or any SBA Subsidiary is the issuer except as hereinafter set forth:

(a) each of the SBA Subsidiaries may continue to have outstanding and may issue additional shares of its preferred stock to the SBA in accordance with applicable SBA regulations; and

(b) Medallion and each SBA Subsidiary may issue and sell to banks, insurance companies, and other financial institutions its secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, and each SBA Subsidiary may issue debt securities held or guaranteed by the SBA, provided the following conditions are met:

(i) such notes or evidences of indebtedness are not intended to be publicly distributed,

(ii) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire, any equity security, and

(iii) immediately after the issuance or sale of any such notes or evidences of indebtedness, Medallion and its Subsidiaries on a consolidated basis, and Medallion, individually, shall have the asset coverage required by section 18(a) of the Act, (as modified by section 61(a) for Medallion), except that, in determining whether Medallion and its Subsidiaries on a consolidated basis have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)), any SBA preferred stock interest in the SBA Subsidiaries and any borrowings by the SBA Subsidiaries shall not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

5. No person shall serve as a director of any SBA Subsidiary who shall not have been elected as a director of Medallion at its most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provisions thereof relating to the filling of vacancies. Notwithstanding the foregoing, the board of directors of each SBA Subsidiary will be elected by Medallion as sole stockholder.

6. Any small business or other concern to which loans may be made by Medallion or any of the SBA Subsidiaries, which may become an affiliated person of Medallion and/or the SBA Subsidiaries, may borrow from, or sell securities issued by it to, Medallion and the SBA Subsidiaries, provided that such transaction meets the requirements for an exemption pursuant to rule 17a–6 promulgated pursuant to the Act, except to the extent that it fails to meet the requirements of such rule solely because another member of the group of Medallion and its SBA Subsidiaries is also a party to the transaction or has, or within 6 months prior to the transaction had, or pursuant to an arrangement will acquire, a direct or indirect financial interest in the small business or other concern. In addition, Medallion and the SBA Subsidiaries may effect purchases and sales of securities and other property or the borrowing of money or other property, provided that Medallion and its SBA Subsidiaries are the sole participants in such transactions.

7. Medallion and its SBA Subsidiaries, as a group or individually, may participate in any join enterprise or joint arrangement involving other participants, provided that such transaction meets the requirements for an exemption pursuant to rule 17d–1 except to the extent it fails to meet the requirements of such rule solely because any of Medallion and its SBA Subsidiaries as a group are, or propose to be, participants in the joint enterprise or joint arrangement.

8. Medallion will acquire securities of its SBA Subsidiaries representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. Medallion and its SBA Subsidiaries will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10644 Filed 4–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21913; International Series Rel. No. 973; 812–9846]

The Mexico Equity and Income Fund, Inc.; Notice of Application

April 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANT: The Mexico Equity and Income Fund, Inc. (''Fund'').

RELEVANT ACT SECTIONS: Order requested under section 10(f) granting an exemption from that section.

SUMMARY OF APPLICATION: Applicant seeks an order that would permit it to purchase securities in underwritten public offerings in Mexico in which an affiliated person of its Mexican investment adviser or U.S. co-adviser participates as a principal underwriter.

FILING DATES: The application was filed on November 8, 1995, and amended on March 29, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 200 Liberty Street, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund, a Maryland corporation, is a closed-end management investment company registered under the Act. The

Fund's investment objective is to seek high total return through capital appreciation and current income through investment in equity and debt securities of Mexican issuers, including, to the extent available, convertible debt securities issued by Mexican companies. The Fund's fundamental policy requires it to invest at least 50% of its assets in equity and convertible debt securities issued by Mexican companies. The remainder of the Fund's assets must be invested in Mexican issuer debt securities (other than convertible debt securities) and, for cash management or temporary defensive purposes, in certain high quality short-term debt instruments.

2. The Fund's Mexican investment adviser is Acci Worldwide, S.A. de C.V. (''Acci''), a limited liability company organized under the laws of Mexico. The Fund's U.S. co-adviser is Advantage Advisers, Inc. (''Advantage''), a Delaware corporation that is a wholly-owned subsidiary of Oppenheimer & Co., Inc. Both Acci and Advantage are registered as investment advisers under the Investment Advisers Act of 1940. Acci is responsible for the management of the Fund's portfolio, subject to direct participation by Advantage in all investment decisions with respect to the Fund's portfolio of convertible debt securities. In the case of other securities transactions, Acci receives advice from, and consults with, Advantage regarding the Fund's overall investment strategy and decisions to buy, sell, or hold particular securities.

3. Acci is a wholly-owned subsidiary of Acciones y Valores de Mexico, S.A. de C.V. (''AVM''), one of the leading brokerage firms in Mexico. AVM is a controlled subsidiary of Grupo Financiero Banamex/Accival, a holding company formed for the purpose of owning over 99% of the voting stock of AVM and Banco Nacional de Mexico, S.A. (''Banamex''), Mexico's largest commercial bank. During the period 1991 through August 1995, AVM was lead manager or co-manager for 21 of the 74 initial public offerings of equity securities in Mexico (approximately 28.4% of total offerings). AVM-managed transactions raised approximately 58.5% of the U.S. $16.8 billion raised in such offerings.

4. Because AVM-managed transactions constitute such a significant portion of new publicly offered Mexican securities, the Fund believes that its inability to purchase and hold such securities may be disadvantageous to its shareholders. Accordingly, the Fund seeks an exemption from the prohibition contained in section 10(f) to permit it to purchase securities in underwritten public offerings in Mexico in which an affiliated person of Acci or Advantage participates as a principal underwriter (as defined in section 2(a)(29) of the Act).

Applicant's Legal Analysis

1. Section 10(f) of the Act prohibits a registered investment company from purchasing securities during the existence of any underwriting syndicate if a principal underwriter of those securities is either (a) an officer, director, member of an advisory board, investment adviser, or employee of the investment company, or (b) a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. By virtue of having investment advisers whose affiliated persons often act as a principal underwriter in underwritten Mexican public offerings, the Fund is prohibited by section 10(f) from purchasing securities from any member of any underwriting syndicate in such offerings. Accordingly, applicant believes that compliance with section 10(f) undermines the Fund's investment objectives.

2. Rule 10f–3 under the Act permits a registered investment company to make a purchase of securities otherwise prohibited by section 10(f) provided certain conditions are met. Paragraph (a)(1) of the rule requires the securities purchased to be part of an issue registered under the Securities Act of 1933 (''Securities Act''). The Fund is unable to comply with the provisions of paragraph (a)(1) because the Mexican securities in which it invests are not required to be registered under the Securities Act, and the Fund lacks the ability to cause Mexican issuers to register these securities under the Securities Act. Applicant therefore proposes that the public offering rules of the Mexican authorities be substituted for the U.S. public offering requirement of rule 10f–3(a)(1), and represents that all purchases of Mexican securities otherwise prohibited by section 10(f) will comply with all other provisions of rule 10f–3. Applicant also represents that audited financial statements for at least the last two years will be available with respect to the issuers of all securities covered by the requested order.

3. Before an issuer can make a public offering of its securities in Mexico, it must file a registration statement with the Comision Nacional Bancaria y de Valores (''CNBV''). The registration statement requests approval of the offering and registration of the securities in the securities section of the Registro Nacional de Valores e Intermediarios, the National Registry of Securities and Securities Brokers, which is a record maintained by the CNBV. The registration statement must contain all the information the CNBV considers material to an evaluation of the securities to be offered, and requires an issuer to submit the prospectus to be delivered to all prospective investors for CNBV approval. In addition, the issuer seeking approval must represent that (a) the characteristics of the securities and the terms of the offering are such that the securities will have significant circulation and will cause no dislocation of the market; (b) the securities possess, or have the potential for, broad circulation in relation to the size of the market or the issuer; and (c) the issuer is solvent and has liquidity. Although the Ley del Mercado de Valores, the Mexican securities law, does not set any specific quantitative standards regarding the size of an offering, it does require that every public offering be large enough, in the opinion of the CNBV, to assure investors of the liquidity of the securities. As a result, securities in a public offering must be issued in sufficient quantity to be available to a wide group of offerees, thereby assuring investors and the CNBV that a market for the securities will develop.

4. Where underwriters make a ''firm commitment'' in a Mexican public offering, their commitment to purchase the securities being offered is firm, and the obligations of the various underwriters are several and not joint. In the underwriting agreement, each underwriter is obligated to purchase securities from the issuer at a fixed price, and the issuer receives proceeds based on this net price regardless of the marketing results of the underwriting group. The price of the issue is determined by negotiation between the issuer and the underwriters.

5. Once the offering price for a security is set, underwriters offer the securities to the public at the offering price disclosed in the prospectus. Pursuant to the policies of the CNBV, the securities thereafter may be publicly offered only at the disclosed price, which may not vary during the offering period. This helps guarantee that publicly offered securities are offered to and purchased by affiliated and unaffiliated persons on the same terms. Although Mexican law does permit securities to be publicly offered at a premium to market price under certain circumstances, this situation rarely occurs. The Fund will not purchase Mexican securities at such a premium.

6. Applicant believes that the terms of the requested order are consistent with the protection of investors and the intention of the SEC in exempting transactions from section 10(f) pursuant to rule 10f–3. The requested order departs from rule 10f–3 only in that the offerings will not be subject to registration under section 5 of the Securities Act as required by subsection (a)(1) of rule 10f–3.

7. Applicant states that adherence to the conditions contained in the application will provide an adequate substitute for the registration requirement of rule 10f–3. In addition, the nature of a public offering and a firm commitment underwriting in Mexico make it highly likely that a wide group of offerees will take part in the offering, and that the securities will be offered to and purchased by affiliated and unaffiliated persons on the same terms. Furthermore, where an issuer's financial statements are available for the last two years, applicant believes that it will be assured of having the basic financial information needed to evaluate the security. Together with the public offering requirement, such statements also provide assurance that the securities were issued in the ''ordinary course'' of business. Applicant therefore believes that exemption from the provisions of section 10(f) in accordance with the conditions set forth in the application is consistent with the protection of investors and the purposes intended by the passage of section 10(f) of the Act and rule 10f–3 thereunder.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief will be subject to the following conditions:

1. All securities purchased in Mexico under circumstances subject to section 10(f) of the Act will be purchased in public offerings conducted in accordance with the laws of Mexico.

2. All subject foreign issuers of securities in which the Fund invests pursuant to the requested order will have available to prospective purchasers, including the Fund, financial statements, audited in accordance with Mexican accounting standards, for at least the two years prior to purchase.

3. All purchases made by the Fund pursuant to the requested order will comply with all provisions of rule 10f–3 except for the registration requirement set forth in rule 10f–3(a)(1).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10583 Filed 4–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37139; File No. SR–Amex–96–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Trading of Options on the Amex Gold BUGS SM Index

April 23, 1996.

I. Introduction

On February 9, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of standardized options on the Amex Gold BUGS SM Index (''Index'').

Notice of the proposed rule change appeared in the Federal Register on March 20, 1996.[3] On April 15, 1996, the Amex amended its proposal.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. General

The Amex proposes to trade options on the Index, a modified equal-dollar weighted index developed by the Amex and comprised of 14 gold mining company stocks (or ADRs thereon) which are traded on the Amex or the New York Stock Exchange, Inc. (''NYSE''). In addition, the Amex proposes to amend Commentary .01 to Amex Rule 901C, ''Designation of Stock Index Options,'' to indicate that 90% of the Index's numerical index value must be accounted for by stocks which meet the then current criteria and guidelines provided in Amex Rule 915, ''Criteria for Underlying Securities'' and to indicate that these criteria must also be satisfied immediately following each quarterly rebalancing.

The Exchange believes that an index of gold mining stocks whose values are affected strongly by the price of gold will be attractive to many investors. According to the Amex, gold companies generally manage the risks associated with fluctuating prices by hedging their future production. The Amex notes that companies that hedge their gold production for longer periods are less affected by the fluctuating price of gold. In an effort to give investors an index with a significant exposure to the near term movements in gold prices, the Exchange has included in the Index those gold mining companies that do not hedge their gold production for extensive periods into the future. Specifically, the Amex states that only companies that have a hedging ratio of less than 1½ years production will be considered for inclusion in the Index.

B. Eligibility Standards for Index Components

The Amex states that the Index conforms with Exchange Rule 901C, which specifies criteria for the inclusion of stocks in an index on which standardized options will be traded. According to the Amex, the Index also conforms to most of the criteria set forth in Amex Rule 901C, Commentary .02 (which provides for the commencement of trading of options on an index 30 days after the date of filing), except that the Index is calculated using a modified version of the equal-dollar weighting method and four of the components of the Index do not meet the six month minimum trading volume criteria.[5]

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1995).

[3] *See* Securities and Exchange Act Release No. 36953 (March 11, 1996), 61 FR 11448.

[4] *See* Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation, Commission, dated April 15, 1996 (''Amendment No. 1''). In Amendment No. 1, the Amex replaced one of the Index's component stocks, Hemlo Gold Mines, with Cambior Inc., because Hemlo Gold Mines is expected to merge with Battle Mountain Gold Company in June 1996. The Amex also removed Santa Fe Pacific Gold Corp. from the Index because it no longer meets the Amex's requirement for the hedging of gold production. In addition, the Amex represented that (1) the Exchange will promptly notify the Commission if the Index fails to meet the maintenance criteria provided in the proposal; and (2) the Index will be maintained so that foreign country securities or American Depositary Receipts (''ADRs'') thereon that are not subject to comprehensive surveillance sharing agreements will not represent more than 20% of the weight of the Index.

[5] Under Amex Rule 901C, Commentary .02, the Amex may list options on a stock industry index pursuant to Section 19b(3)(A) under the Act provided that the index satisfies certain criteria. Commentary .02 requires, among other things, that the index be calculated based on either the capitalization weighting, price weighting, or equal-dollar weighting methodology, and that the trading volume for each component stock of the index in each of the last six months be not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in

According to the Amex, all of the Index's component securities meet the following standards: (1) all of the Index's component securities are traded on the Amex or the NYSE; (2) the component stocks comprising the top 90% of the Index by weight have a market capitalization [6] of at least $75 million, and those component stocks constituting the bottom 10% of the Index by weight have a market capitalization of at least $50 million; and (3) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.

C. Index Calculation

The Index is calculated using a modified equal-dollar weighting methodology. Three of the Index's 14 component companies are given higher weightings based upon their market value. The following is a description of how this modified equal-dollar weighting calculation method works. As of the market close on February 5, 1996, a portfolio of gold mining company stocks was established representing an investment of approximately (1) $16,000 in two components in the Index; (2) $12,000 in one of the components; (3) $2,000 in two components; and (4) $4,300 in the remaining 12 components (rounded to the nearest whole share). The value of the Index equals the current market value (*i.e.,* based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 200.00 at the close of trading on February 5, 1995. Each quarter thereafter, following the close of trading on the Thursday prior to the third Friday of March, June, September, and December, the Index portfolio will be reviewed and adjusted if any one of the three components initially representing higher weightings in the Index value currently represents 25% or more of the Index value, or if any one of the other components initially representing lower weightings in the Index value currently represents 5% or more of the Index value. The Index portfolio will be rebalanced, if necessary, by changing the number of whole shares of each component stock so that the three components initially given higher weights will again represent less than 25% of the Index value and the remaining lower-weighted components will each represent less than 5% of the Index value. In any event, the five highest weighted components cannot represent more than 60% of the Index value at each quarterly rebalancing.[7]

The Exchange has chosen to rebalance the Index following the close of trading on the Thursday prior to the third Friday of March, June, September and December, since it allows an option contract to be held for up to three months without a change in the Index portfolio while, at the same time, maintaining the equal-dollar weighting feature of the Index. If necessary, a divisor adjustment will be made at the rebalancing to ensure the continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the Corporate Action. In the event of a stock addition or replacement, the new component stock will be added to the Index at a weight determined by the Exchange and the Index will be rebalanced. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

D. Maintenance of the Index

The Exchange will maintain the Index so that upon quarterly rebalancing: (1) the total number of component securities will not increase or decrease by more than 33⅓% from the number of components in the Index at the time of its initial listing and in no event will the Index have fewer than nine components; (2) components stocks constituting the top 90% of the Index by weight will have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10% of the Index by weight will have a minimum market capitalization of $50 million; (3) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities individually will meet the then current criteria for standardized option trading set forth in Amex Rule 915; (4) stocks constituting 85% of the Index will have a monthly trading volume of at least 500,000 shares for each of the last six months; (5) no single component will represent more than 25% of the weight of the Index and the highest weighted components will represent no more than 60% of the Index at each quarterly rebalancing; and (6) in order to maintain the character of the Index, companies whose gold production hedging policies change to greater than 1½ times annual production will be considered for removal from the Index. In addition, the Index will be maintained so that foreign country securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements will not in the aggregate represent more than 20% of the weight of the Index.[8]

The Amex will not open for trading any additional option series if the Index fails to satisfy any of the maintenance criteria set forth above unless the Exchange determines that such failure is not significant and the Commission concurs in that determination or unless the continued listing of options on the Index has been approved by the commission pursuant to Section 19(b)(2) of the Act.

E. Expiration and Settlement

The options on the proposed Index will be European-style (*i.e.,* exercises permitted only at expiration) and cash-settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. Options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). The last trading day in an expiring option series normally will be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Amex plans to list options series with expirations in the three near-term calendar months and in the two

the aggregate account for no more than 10% of the weight of the index, the trading volume must be at least 500,000 shares in each of the last six months.

[6] In the case of ADRs, this represents market capitalization as measured by total world-wide shares outstanding.

[7] *See infra* Section II.D.

[8] *See* Amendment No. 1, *supra* note 4.

additional calendar months in the March cycle. In addition, the Amex may list longer term option series having up to 36 months to expiration. In lieu of such long-term options on a full value Index, the Amex may instead list long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term Index options will be subject to the same rules which govern the trading of all of the Amex's index options, including sales practice rules, margin requirements, and floor trading procedures, and all Index options will have European-style exercise. Position limits on reduced-value long term Index options will be equivalent to the position limits for full value Index options and will be aggregated with such options. For example, if the position limit for the full value Index options is 9,000 contracts on the same side of the market, then the position limit for the reduced value Index options will be 90,000 contracts on the same side of the market.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange's regular way opening sale prices for the component stocks. In the case of securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system (''NASDAQ''), the first regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

F. Exchange Rules Applicable to Stock Index Options

Amex Rules 900C, ''Applicability and Definitions,'' through 980C, ''Exercise of Stock Index Option Contracts,'' will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, margin requirement, trading halts, exercise prices, and position and exercise limits. The Index is deemed to be a stock index option under Amex Rule 901C (a) and a stock index industry group under Amex Rule 900C (b)(1).[9] With respect to paragraph (b) of Amex Rule 903C, ''Series of Stock Index Options,'' the Exchange proposes to list near-the-money option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by paragraph (c) of Amex Rule 904C, ''Position Limits,'' will result in a position limit of 9,000 contracts for options on the Index.[10]

G. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. Further, the Intermarket Surveillance Group (''ISG'') Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[11]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] Specifically, the Commission finds that the trading of Index options, including full-value and reduced-value long-term Index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the gold mining industry.[13] The Amex states that the Index is designed to provide significant exposure to the near term movements in gold prices and, accordingly, is comprised of gold mining companies that do not hedge their gold production for extensive periods into the future.

The trading of options on the Index and on a reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex has addressed these issues adequately.

A. Index Design and Structure

The Commission believes it is appropriate for the Exchange to designate the Index as a narrow-based index for purposes of index options trading. The Index is comprised of 14 stocks intended to track gold mining companies whose values are strongly affected by the price of gold. The Commission also finds that the reduced-value Index is a narrow-based index because it is composed of the same component securities as the Index, and merely dividing the Index value by ten will not alter its basic character. Accordingly, the Commission believes that it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options and long-term full-value and reduced-value Index options.[14]

The Commission also believes that the large capitalizations, liquid markets, and relative weighings of the Index's component stocks minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded, with a mean and median average monthly trading volume for the six month period ending March 29, 1996, of 6,429,400 shares and 3,500,655 shares, respectively. Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $6.6 billion to a low of $145 million as of March 29, 1996, with the

[9] Under Amex Rule 900C(b)(1), a stock index industry group is an index of stocks representing a particular industry or related industries.

[10] Amex Rule 904C(c) provides that the position limit for an industry index option will be 9,000 contracts if the Amex determines at the commencement of trading of the options that any single stock in the underlying stock index industry group accounted, on average, for 20% or more of the numerical index value or that any five stocks in the group together accounted, on average, for more than 50% of the numerical index value, but that no single stock in the group accounted, on average, for 30% or more of the numerical index value, during the 30-day period immediately preceding the review.

[11] ISG was formed on July 14, 1983, to among other things, coordinate more effectively surveillance and investigative information sharing arrangements to the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. (''NASD''); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.,* the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[12] 13 U.S.C. 78f(b)(5) (1988).

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the gold mining sector in the U.S. stock markets.

[14] *See supra* Section II.F.

mean and median being $1.8 billion and $759 million, respectively. Third, because the index is modified equal dollar-weighted, as described above, no one particular stock or group of stocks dominates the Index. Specifically, as of March 29, 1996, no one stock accounted for more than 16.79% of the Index's total value and the percentage weighting of the five highest weighted stocks in the Index accounted for 59.19% of the Index's value.

The Amex's proposed inclusion of Class B common and the Class B and Class C convertible preferred stock of Freeport McMoran Cooper & Gold presents some concern since options trading is not currently allowed on convertible preferred stock. However, given the *de minimis* representation of these components in relation to the overall Index (4.2% of the Index's weight) and the Index requirement that over 90% of the weight of the Index must comply with the listing criteria for standardized options trading set forth in Amex Rule 915, the Commission believes it is appropriate to include these components in the Index.[15] The Commission notes that, currently, 91.29% of the weight of the Index complies with the listing criteria for standardized options trading set forth in Amex Rule 915.

Fourth, the proposed maintenance criteria will serve to ensure that: (1) The Index remains composed substantially of liquid highly capitalized securities; and (2) the Index is not dominated by one or several securities that do not satisfy the Exchange's options listing criteria. Specifically, in considering changes to the composition of the Index, 90% of the weight of the Index and 80% of the number of components in the Index must at all times comply with the listing criteria for standardized options trading set forth in Amex Rule 915.

The Amex will notify Commission staff promptly at any time the Amex determines that the Index fails to satisfy any of the foregoing maintenance criteria.[16] Further, in such an event, the Exchange will not open for trading any additional series of Index options or Index long-term options unless the Exchange determines that such failure is not significant, and Commission staff concurs in the determination.

Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help deter as well as detect any illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options (including full-value and reduced-value long-term Index Options), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index long-term full-value and reduced-value options will be subject to the same regulatory regime as the other standardized index options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options and full-value or reduced-value Index long-term options.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[17] In this regard, the Commission notes that the Amex and the NYSE are members of the ISG.[18] The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value long-term Index options less readily susceptible to manipulation.[19]

The Commission notes that foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.[20] Accordingly, because the Amex and the NYSE are members of the ISG, at least 80% of the securities comprising the Index are subject to an arrangement that ensures the availability of information necessary to detect and deter potential trading abuses. As a result, the Amex should be able to adequately investigate any potential manipulations of Index options or their underlying securities. In addition, the Commission believes that the limitation on the foreign securities or ADRs may be included in the Index will help to ensure that Index options are not used as surrogate instruments to trade options on stocks and/or ADRs that otherwise are not eligible for options trading.

D. Market Impact

The Commission believes that the listing and trading of Index options, including full-value and reduced-value Index LEAPS on the Amex, will not adversely affect the underlying securities markets. First, because of the ''modified equal dollar-weighting'' method that will be used, as described above, no one security or group of securities represented in the Index will dominate the weight of the Index immediately following a quarterly rebalancing. Second, the Index maintenance criteria ensure that the Index will be substantially comprised of securities that satisfy the Exchange's listing standards for standardized options trading, and that one or a few stocks do not dominate the Index. Third, the currently applicable 9,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index long-term options will be issued and guaranteed by the Options Clearing Corporation just like any other

[15] This conclusion is strengthened by the fact that the Freeport McMoran Copper & Gold convertible preferred components, when added along with the Freeport McMoran Copper & Gold common stock component, result in a total weighting of only 16.59% of the Index's total value. The Commission notes that it would be concerned if the Freeport McMoran components, taken together, dominated the Index. The Amex's maintenance criteria, along with the quarterly rebalancings of the Index, should help to ensure that such domination is not likely to occur.

[16] *See* Amendment No. 1, *supra* note 4.

[17] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849.

[18] *See supra* note 10.

[19] *See, e.g.,* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (order approving the listing of index options and index LEAPS on the Chicago Board Options Exchange Biotech Index).

[20] The Index will be maintained so that foreign country securities or ADRs thereon that are not subject to a comprehensive surveillance sharing agreement will not in the aggregate represent more than 20% of the weight of the Index. *See* Amendment No. 1, *supra* note 4.

standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Index options (including full-value and reduced-value long-term Index options) based on the opening prices of component securities is reasonable and consistent with the Act. As has been noted previously, valuing index options for exercise settlement on expiration based on opening rather than closing prices of index component securities may help to reduce adverse effects on markets for such securities.[21]

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of the notice of filing thereof in the Federal Register. Specifically, Amendment No. 1 strengthens the Exchange's proposal by eliminating from the Index the stock of one company which is expected to merge with another company and replacing one Index component which no longer meets the Amex's requirement for the hedging of gold production. In addition, Amendment No. 1 strengthens and clarifies the proposal by indicating that the Exchange will promptly notify the Commission if the Index fails to meet the maintenance criteria provided in the proposal and representing that the Index will be maintained so that foreign country securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements will not represent more than 20% of the weight of the Index. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 21, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Amex–96–08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

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[21] *See* Securities Exchange Act Release No., 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[22] 15 U.S.C. 78s(b)(2) (1988).

[23] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37141; File No. SR–CBOE–96–13]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Exchange's Member Death Benefit Program

April 24, 1996.

I. Introduction

On March 11, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to revise its Member Death Benefit Program to expand its coverage to include certain recently active members and to establish a defined benefit of $50,000.

Notice of the proposal was published for comment and appeared in the Federal Register on March 20, 1996.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Background

The Exchange's Member Death Benefit Program is set forth in CBOE Rule 3.24 and functions in the following manner. The Member Death Benefit Program covers any natural person who is a nominee of a member organization, a Chicago Board of Trade exerciser, a lessee of an Exchange membership, or an owner of an Exchange membership that is not being leased to a lessee. The Exchange refers to the foregoing individuals as ''active members.'' Each active member designates a beneficiary under the Program. Upon the death of an active member, the Exchange pays a member death benefit to that member's designated beneficiary. The amount of the benefit is equal to the number of active members at the time of the member's death multiplied by $25. Because this benefit is based on the number of active members, the amount of the benefit fluctuates as the number of active members fluctuates. As of December 31, 1995, there were 1,384 active members. Therefore, if a benefit were to have been paid on that date, it would have been equal to $34,600. After a member death benefit has been paid under the Program, the Exchange bills each active member $25 in order to recoup the cost of the benefit.

III. Description of the Proposal

The Exchange proposes to revise the Member Death Benefit Program in two primary respects. First, the Exchange proposes to expand the coverage of the Member Death Benefit Program to cover any individual who (i) was an active member within 90 days prior to the date of his or her death and (ii) was an active member during at least 274 out of the 365 days preceding the date of his or her last termination from active member status. This expanded coverage would be in addition to the Program's current coverage of any individual who is an active member at the time of his or her death. Second, the Exchange proposes to establish a defined member death benefit under the Program of $50,000. This $50,000 benefit would replace the current member death benefit under the Program which is based on the number of active members at the time of a member's death. Accordingly, instead of being billed $25 by the Exchange after a member death benefit payout has occurred, under the proposed rule change each active member will be assessed an amount equal to $50,000 divided by the number of active members at the time of the assessment.

The proposed rule change also makes two clarifications concerning the administration of the Member Death Benefit Program. First, the proposed rule change clarifies that in no event shall more than one member death benefit be paid by reason of the death on an individual who is eligible to receive the member death benefit. Second, the proposed rule change clarifies that the active members who will be assessed after a member death

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36961 (March 13, 1996), 61 FR 11452.

benefit has been paid by the Exchange will be those individuals who are active members at the time of the assessment. The actual date upon which such assessments will occur will be at the discretion of the Exchange. Finally, the proposed rule change makes certain editorial changes to Rule 3.24 that do not affect its substance.

The purpose of the Member Death Benefit Program is to provide a death benefit to the designated beneficiaries of active members. The Exchange believes that the proposed rule change will further that purpose and provide for a fairer and more appropriate way to provide the member death benefit. For example, currently if an individual who has been an active member for three quarters of the previous year temporarily leaves his seat in order to take a short vacation, that individual would not be covered by the Member Death Benefit Program in the event that the individual ere to pass away while on vacation. The same is true if the individual were to temporarily leave his seat because of an illness or accident and then were to pass away shortly thereafter. The proposed rule change is intended to cover these types of individuals under the Member Death Benefit Program because they have been active members for much of the year preceding the time of their death.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act in particular, in that it is designed to (i) provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and (ii) remove impediments to and perfect the mechanism of a free and open market and a national market system by serving to assist the Exchange in attracting and retaining active members through the enhancement of the financial security of their families in the event of their death.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b) of the Act.[4] The Commission believes that the Exchange's proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities.

The Commission believes that proposed amended Rule 3.24 reasonably addresses the Exchange's interest in providing death benefits to an active member's designated beneficiary. Under proposed Rule 3.24, the Exchange establishes a defined benefit of $50,000 to be paid to a designated beneficiary of an ''active member'', as defined above, upon which each active member will be assessed an amount equal to $50,000 divided by the number of active members at the time of assessment. The Commission believes that the revised Member Death Benefit Program is reasonable and should provide enhanced benefits to a wider range of the Exchange's members.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–CBOE–96–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–37140; File No. SR–CHX–95–25]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2, 3, and 4 to Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Establishment of a Minor Rule Violation Procedure and Reporting Plan

April 23, 1996.

Pursuant to Sections 19 (b)(1) and (d)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s (b)(1) and (d)(1), and Rules 19b-4 and 19d–1(c)(2) thereunder,[1] notice is hereby given that on October 11, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change,[2] and on December 8, 1995 filed Amendment No. 1 thereto.[3] The original filing, as amended by Amendment No. 1, was published for comment in Securities Exchange Act Release No. 36576 (December 12, 1995), 60 FR 65362 (December 19, 1995). On January 17, 1996 the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change,[4] on March 5, 1996 the Exchange submitted Amendment No. 3 to the proposed rule change,[5] and on April 17, 1996 the Exchange submitted Amendment No. 4 to the proposed rule change.[6] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the original filing as amended by Amendment No. 1, the Exchange proposed to add a minor rule violation procedure (''Procedure'') as Article XII, Rule 9 of the Exchange's rules, adopt a minor violation reporting plan (''Plan''),[7] and renumber existing Article

[1] 17 CFR 240.19b-4 and 19d-1(c)(2).

[2] The Exchange has submitted to the SEC concurrently with the proposed rule change a minor rule violation reporting plan in accordance with Rule 19d-1(c)(2) under the Act. *See* Letter from David Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, SEC, dated October 6, 1995.

[3] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, SEC, dated December 8, 1995 (''Amendment No. 1'').

[4] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Jon Kroeper, Attorney, SEC, dated January 12, 1996 (''Amendment No. 2'').

[5] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, SEC, dated March 3, 1996 (''Amendment No. 3'').

[6] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Jon Kroeper, Attorney, SEC, dated April 16, 1996 (''Amendment No. 4'').

[7] In Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1994), the SEC adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations to submit for SEC approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by a self-regulatory organization against any person for violation of a rule of the self-regulatory organization that has been designated as a minor rule violation pursuant to a plan filed with the SEC shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies with respect to the matter.

The SEC has approved minor disciplinary rule plans by virtually every stock exchange and the National Association of Securities Dealers, Inc. *See, e.g.,* Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4–260) (Amex); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (File No. 4–284) (NYSE); Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985) (File No. 4–285) (PSE).

XII, Rule 9 as Article XII, Rule 10.[8] Amendment No. 2 adds a number of clarifications to the Procedure, amends the Recommended Fine Schedule, and revises the Plan to provide a method for modifying the list of rule violations that constitute minor rule violations under the Plan.[9] Amendment No. 3 revises the Procedure by removing the President of the CHX from any role in the imposition or setting aside of fines under the Procedure and further amends the Recommended Fine Schedule.[10] Amendment No. 3 also revises the Procedure and Plan by removing seven rule violations from the list of rule violations that would be designated minor rule violations under the Procedure and Plan and clarifies the operation of four other rules on such list.[11] Amendment No. 4 revises the Procedure to provide for the imposition of a fine under the Procedure in the event the Staff disagrees with the Minor Rule Violation Panel's recommendation that the Exchange commence a formal disciplinary proceeding, and amends language from Amendment No. 2 in light of changes to the Procedure contained in Amendment No. 3.[12]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose [13]

As amended, the Procedure authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, associated person or registered or non-registered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. The Committee on Floor Procedure will have the same authority for violations relating to decorum on the Exchange trading floor. The Procedure specifically states that the Committee on Floor Procedure and the Panel shall not, collectively, impose more than one fine pursuant to the Procedure relating to the same underlying violation and incident.

If the fine is to be imposed by the Exchange (as opposed to the Committee on Floor Procedure) the fine shall be imposed in accordance with the method set forth in paragraph (b) of the Procedure. Specifically, prior to imposing the fine, the staff of the Exchange shall present the facts supporting such violative conduct to a Minor Rule Violation Panel (''Panel''), which shall consist of three floor members (one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees) appointed by the President of the Exchange. The Panel is then authorized either to impose the fine, reject the staff's recommendation, or recommend that the Exchange commence a formal disciplinary proceeding under Article XII of the CHX rules. In the event that the Panel recommends that the Exchange commence a formal disciplinary proceeding, the staff shall either issue a report to the President, in accordance with Article XII, Rule 1(a), recommending that formal charges be brought, or advise the Panel that the staff will not recommend that the Exchange commence a formal disciplinary proceeding. If the staff decides not to recommend the commencement of a formal disciplinary proceeding, the panel is required to impose a fine in accordance with the provisions of the Procedure.

If a fine is to be imposed under the Procedure, the Exchange will serve a written statement on the person against whom a fine is imposed setting forth the rule violated, the act or omission constituting the violation, the fine imposed and the date of imposition, the date the fine must be paid and the date by which such determination must be contested, such date to be not less than 15 days after the date of service of the written statement.

If the person against whom a fine is imposed pursuant to the Procedure chooses not to contest the matter and pays the fine, he or she waives his or her right to a disciplinary proceeding under Article XII of the Exchange's rules and any right to review or appeal (to the extent such right would otherwise exist under current Exchange rules). Alternatively, any person may choose to contest a fine by submitting a written answer, at which point the matter becomes a ''disciplinary proceeding'' subject to the applicable provisions of Article XII, including all disciplinary sanctions available thereunder (except for contests of a fine by the Committee on Floor Procedure, which will be subject to the provisions of Article XII, Rule 3).[14]

Under the Procedure, the Exchange will periodically prepare and announce to its members and member organizations a list of Exchange rules and policies as to which the Exchange may impose fines pursuant to the Procedure as well as the fines that may be imposed for their violation.[15] The Procedure, however, expressly states that the Exchange is not required to impose a fine under the Procedure with respect to any violation of any rule included on such list. In addition, whenever the Exchange determines that a rule violation is not minor in nature, it has the discretion to commence disciplinary proceedings under Article XII of the CHX rules.

The Exchange also proposes to adopt, pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder, a Plan for the reporting of minor rule violations. Under its Plan, the Exchange designates certain specified rule violations as minor rule violations [16]

[8] *See* Securities Exchange Act Release No. 36576 (December 12, 1995), 60 FR 65362 (December 19, 1995); Amendment No. 1, *supra* note 3.

[9] *See* Amendment No. 2, *supra* note 4.

[10] *See* Amendment No. 3, *supra* note 5.

[11] *See* Amendment No. 3, *supra* note 5.

[12] *See* Amendment No. 4, *supra* note 6.

[13] This discussion consolidates the ''Purpose'' discussion as submitted in SR–CHX–95–25 and Amendment No. 1 thereto, see *supra* note 8, and also discusses Amendment Nos. 2, 3, and 4 to the proposal being filed herein.

[14] Any fine imposed under the Procedure that is contested may be publicly reported by the Exchange to the same extent that CHX disciplinary proceedings may be publicly reported. *See* CHX Rules, Article XII, Rule 9 (Pending Proceedings).

[15] The Exchange will file with the SEC, for its approval pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder, any proposed additions to, deletions from, or other modifications to either the list of rule violations set forth in Article XII, Rule 9 that are deemed to be minor rule violations or the related Recommended Fine Schedule.

As part of the proposed rule filing, the Exchange has submitted a Recommended Fine Schedule which contains recommended dollar amounts for the first, second, and third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation in the Procedure and Plan. With one exception, the recommended dollar amounts are as follows: First Violation—$100; Second Violation—$500; Third and Subsequent Violation—$1,000. For violations of Article XI, Rule 4 (Financial and Operational Reports) the recommended fines will be those currently set forth in Interpretation and Policy .02 to such rule (*i.e.*, 1–30 days late—$100; 31–60 days late—$200; 61–90 days late—$400).

[16] Under the Plan, the Exchange may make additions to, deletions from, or other modifications to the list of rule violations that constitute minor rule violations under the Plan. SEC Rule 19d–1(c)(2) requires that the SEC approve by order, after appropriate notice of the terms of substance of the

and requests that it be relieved of the current reporting requirement of Rule 19d–1(c)(1) under the Act regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.[17] The Plan, however, would not cover any fine imposed pursuant to the Procedure that is contested. Such violations and fines would continue to be reported as they occur.

In the original rule filing, the Exchange proposed a list of rule and policy violations that would be designated minor rule violations in both its Procedure and Plan.[18] As amended by the Exchange, seven violations are removed from such list,[19] and the operation of the following four rule violations that are subject to the Procedure and Plan is clarified: Article XXX, Rule 11 (Record of Orders);[20] Article XX, Rule 11 (Cabinet Securities);[21] Article XXX, Rule 2 (Precedence to Orders in Book);[22] and Article XXX, Rule 3 (Precedence Solely on Competitive Basis).[23]

The purpose of the Procedure is to provide a more appropriate response to certain rule violations. At the present time, when the staff of the CHX discovers a technical, inadvertent, or otherwise minor rule violation, often, the Exchange's only practical response is to issue a written letter of caution to the person(s) involved, focusing attention on the necessity of fully complying with all Exchange rules and policies and warning against future violations. Such written admonitions, however, may not always successfully deter future violations. The other alternative, the initiation of a formal disciplinary proceeding may, in many cases, be too time consuming, too costly, and carry too severe a penalty for such minor violations. The ability to impose a fine on a discretionary basis may constitute a more effective deterrent than a cautionary letter while avoiding the severe penalty or attendant publicity of a disciplinary hearing. The Procedure provides for an appropriate response to minor rule violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.

The purpose of the Plan is to provide the CHX with the flexibility to fashion reporting requirements that would result in the Commission receiving the necessary information regarding minor rule violations in the least burdensome way possible.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[24] and will advance the objectives of Section 6(b)(6) of the Act[25] in that it will provide a procedure whereby members can be ''appropriately disciplined'' in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. In accordance with Sections 6(b)(7) and 6(d)(1) of the Act,[26] the proposed rule change provides a fair procedure for imposing such sanctions. Finally, the proposed plan is consistent with Section 6(d)(1) of the Act and Rule 19d-1(c)(2) thereunder, which authorizes self-regulatory organizations to adopt minor rule violation reporting plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants, or Others

The Exchange understands that the Commission has received comments on SR–CHX–95–25 and Amendment No 1. thereto.[27] The Exchange believes that issues raised by the commenter are addressed herein, and in a letter from George T. Simon, Attorney, Foley & Lardner, to Jonathan G. Katz, Secretary, Commission, dated March 4, 1996 (''March 4, 1996 CHX Letter'').[28]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

filing or a description of the subjects and issues involved and opportunity for interested persons to submit written comment, any amendment to an exchange's minor rule violation reporting plan submitted under such rule. In this regard, the Plan provides that every filing of a proposed rule change by the Exchange pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder that adds to, deletes from or otherwise modifies the list of rule violations contained in Article XII, Rule 9(h) of the CHX rules for which the Article XII, Rule 9 Procedure may be used will be deemed a request by the Exchange for SEC approval to modify the list of CHX rules that are designated minor rule violations for purposes of the Exchange's SEC Rule 19d–1(c)(2) reporting plan.

[17] The Exchange's quarterly report to the SEC will include: the CHX's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition.

[18] *See supra* note 8.

[19] Specifically, the seven proposed minor rule violations that were removed from the Procedure and Plan are the following: Article VII, Rule 9 (Transactions Off the Floor); Article XXX, Rule 4 (The Specialist's Book); Article VIII, Rule 11, (Submission of Books to Board); Article XXX, Rule 22 (Stop Orders); Article XXXIV, Rule 4 (Trading from Off the Floor); Article XX, Rule 7 (Recognized Quotations); and Article XX, Rule 23 (Agency Cross Rule).

[20] The only violation of this rule that may be considered a minor rule violation is a failure of a specialist to properly time-stamp an order ticket entrusted to him or it.

[21] The provision of this rule that may be considered a minor rule violation is the provision that states that although oral bids and offers in securities in the cabinet are permitted, they cannot conflict with bids and offers resident in the cabinet. A violation of this provision would occur if a floor broker fails to ''clear the cabinet'' (*i.e.*, fails to satisfy bids or offers in the cabinet) before effecting an agency cross in a cabinet security at the same price or a price worse than the price of the bid or offer resident in the cabinet.

[22] The only portion of this rule that is considered a minor rule violation is the prohibition on a specialist trading for his or its own account ahead of customer orders on the specialist's book.

[23] The only violation of this rule that may be considered a minor rule violation is a specialist's failure to fill an incoming ITS commitment to the fullest extent possible based on orders in the specialist's book.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(6).

[26] 15 U.S.C. 78f(b)(7) and (d)(1).

[27] *See* Letter from C. Philip Curley, Attorney, Robinson Curley & Clayton, P.C., to Margaret H. McFarland, Deputy Secretary, SEC, dated January 5, 1996; Letter from C. Philip Curley, Attorney, Robinson Curley & Clayton, P.C., to Jonathan G. Katz, Secretary, SEC, dated March 7, 1996 (''March 7, 1996 Comment Letter'').

[28] The SEC notes that the March 7, 1996 Comment Letter was submitted in response to the March 4, 1996 CHX Letter. The two comment letters received by the SEC regarding the CHX's proposal and the March 4, 1996 CHX Letter was available in the SEC's public reference room in File No. SR–CHX–95–25.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–25 and should be submitted by May 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–10584 Filed 4–29–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–020]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for July 1, 1996, through June 30, 1997. The application may be reviewed at the PWSRCAC office, 750 W. 2nd Ave., Suite 100, Anchorage, Alaska, 99501–2168, between the hours of 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 277–7222. The Coast Guard seeks comments on the application from interested groups. The Coast Guard will publish a later notice in the Federal Register to notify the public of its decision regarding the recertification request.

DATES: Comments must be received on or before June 14, 1996.

ADDRESSES: Comments may be mailed to the Commandant (G–MRO–1), ATTN: J. Jackson, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Response Operations Division, (202) 267–0500.

SUPPLEMENTARY INFORMATION: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act), the Coast Guard may certify, on an annual basis, on alternative voluntary advisory group in lieu of Regional Citizens' Advisory councils for Cook Inlet and Prince William Sound Alaska. The Coast Guard published guidelines on December 31, 1992, to assist groups seeking recertification under the Act (57 FR 62600). The Coast Guard issued a policy statement on July 7, 1993, (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of PWSRCAC, the currently certified advisory group for the Prince William Sound region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at the terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the Federal Register to advise the public of the Coast Guard's determination.

Dated: April 23, 1996.

G.N. Naccara,

Captain, U.S. Coast Guard, Director of Field Activities Marine Safety, Security and Environmental Protection.

[FR Doc. 96–10558 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Advisory Circular 21–20B, Supplier Surveillance Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 21–20B, Supplier Surveillance Procedures. Advisory Circular 21–20B provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts, regarding Supplier Surveillance Procedures.

ADDRESSES: Copies of AC 21–20B can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave, Landover MD 20785.

Issued in Washington, DC on April 22, 1996.

Frank Paskiewicz,

Acting Manager, Production and Airworthiness Certification Division.

[FR Doc. 96–10672 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Federal Aviation Administration.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for emergency processing clearance by May 3, 1996.

DATES: April 25, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 30 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB

may be obtained from Judith Street; (202) 267–9895; ABC–100; 800 Independence Avenue, S.W.; Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Item Submitted to OMB for Review

The following information collection request was submitted to OMB on April 25, 1996:

DOT No: 4074.

OMB No: 2120—New.

Administration: Federal Aviation Administration (FAA).

Title: Request for Identification of Former Government Employees; Complying With Federal Workforce Restructuring Act of 1994.

Summary: The Federal Aviation Administration is attempting to identify former Government employees who accepted incentive payments in exchange for volunteering separation from government employment and now may be performing personal services in violation of the Federal Workforce Restructuring Act of 1994.

Need for Information: The Office of the Inspector General for the Department of Transportation issued a report which attempted to evaluate whether the FAA is complying with the Federal Workforce Restructuring Act of 1994, Public Law 103-226. The Inspector General recommended that the FAA (1) identify all FAA employees who took the buyout and returned to work as employees of FAA contractors, (2) determine whether the Act was violated and take appropriate action against those who violated the Act, and (3) recoup incentive payments from those former employees who violated the Act.

Respondents: FAA Support Contractors. An estimated 350 contractors.

Burden Estimate: A one time burden of an estimated 1190 hours.

Issued in Washington, D.C. on April 25, 1996.

Phillip A. Leach,

Information Clearance Officer, M–32.

[FR Doc. 96–10668 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–P

[Summary Notice No. PE–96–23]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 20, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address:

nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part II of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 25, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28506.

Petitioner: Corporate Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.153(b).

Description of Relief Sought: To permit Corporate Aviation, Inc., to operate a Gulfstream II aircraft (Registration No. N658PC, Serial No. 658) equipped with an alternate system as provided by § 135.153(b), rather than an FAA-approved ground proximity warning system, after April 20, 1996.

Docket No.: 28521.

Petitioner: City of Glendale, California.

Sections of the FAR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought: To permit the City of Glendale, California, to conduct short-haul Class D rotorcraft-load combination rescue operations in its two McDonnell Douglas 500 aircraft, which are single-engine helicopters, without meeting the single-engine hover capability requirements of § 133.45(e)(1).

Docket No.: 28524.

Petitioner: Southland Aviation.

Sections of the FAR Affected: 14 CFR 91.313(e).

Description of Relief Sought: To permit Omni Engineering, Inc., crewmembers to operate a Grumman HU–16D, Albatross aircraft (Registration No. N695S, Serial No. 146426), which is currently certified as a restricted category aircraft, over densely populated areas, in congested airways, and near busy airports where passenger transport operations are conducted.

[FR Doc. 96–10669 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication

of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 20, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address:

nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 25, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28544.

Petitioner: Learjet, Inc.

Sections of the FAR Affected: 14 CFR 25.783(h).

Description of Relief Sought: To permit, exemption, for Lear Model 45, from the minimum emergency exit requirements of § 25.783(h) for the passenger entry door, to allow an oversized Type III hatch in lieu of the required Type II floor-level exit.

Docket No.: 28551.

Petitioner: Dassault Aviation.

Sections of the FAR Affected: 14 CFR 25.571(e)(1).

Description of Relief Sought: To permit exemption, for the Mystere-Falcon 900EX, from the bird speed requirements of § 25.571(e)(1) to allow compliance with the requirement using bird impact velocity of Vc at sea level or 0.85 Vc at 8,000 feet, whichever is more critical.

[FR Doc. 96–10670 Filed 4–29–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32893]

The Indiana & Ohio Rail Passenger Corporation—Acquisition by Trackage Rights and Operation Exemption—Cincinnati Terminal Railway Corp., Indiana and Ohio Railroad Company, Indiana & Ohio Railway Company, Inc., and Indiana & Ohio Central Railroad Company, Inc.

The Indiana & Ohio Rail Passenger Corporation (IORP), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, and operate over, trackage rights from the Cincinnati Terminal Railway Corp., the Indiana and Ohio Railroad Company, the Indiana & Ohio Railway Company, Inc., and the Indiana & Ohio Central Railroad Company, Inc. The trackage over which IORP's operations will be conducted are: (1) With Cincinnati Terminal Railway Corp., from MP 0.4 in Cincinnati, OH, to MP 16.4 at Evendale, OH, for a total of 16 miles; (2) with Indiana and Ohio Railroad Company, from MP 17.75 at Valley Junction, OH, to MP 43.90 at Brookville, IN, for a total of approximately 26.2 miles; (3) with Indiana & Ohio Railway Company, Inc., from (a) MP 5.9 near Monroe, OH, to MP 12.0 near Hageman, OH, (b) MP 31.1 near Hageman, OH, to MP 36.9 at South Mason, OH, (c) MP 27.7 at Lebanon, OH, to MP 31.1 near Hageman, OH, and (d) MP 39.76 at Brecon, OH, to MP 50.5 at Norwood, OH, for a total of approximately 26 miles; and (4) with Indiana & Ohio Central Railroad Company, Inc., from (a) MP 44.96 at Midland City, OH, to MP 74.45 near Thrifton, OH, (b) MP 9.1 near Columbus, OH, to MP 52.56 near Logan, OH, (c) MP 202.7 at Springfield, OH, to MP 228.83 at Fayne, OH, (d) MP 129.4 near Bell, OH, to MP 130.1 near Springfield, OH, (e) MP 0.0 near Bell, OH, to MP 17.2, near Mechanicsburg, OH, and (f) MP 98.8 at Bellfontaine, OH, to MP 129.4 at Bell, OH, for a total of approximately 147.6 miles.

The purpose of the transaction is to provide rail passenger service in the States of Indiana and Ohio.

The parties intended to consummate the proposed transaction on or after April 12, 1996.

This proceeding is related to *The Indiana & Ohio Rail Passenger Corporation—Trackage Rights Exemption—Cincinnati Terminal Railway Corp., Indiana and Ohio Railroad Company, Indiana & Ohio Railway Company, Inc., and Indiana & Ohio Central Railroad Company, Inc.*, STB Finance Docket No. 32894, wherein IORP has concurrently filed a notice of exemption for trackage rights.[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32893, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 In addition, a copy of each pleading must be served on Robert L. Calhoun, Sullivan & Worcester, LLP, 1025 Connecticut Avenue, NW., Suite 1000, Washington, DC 20036.

Decided: April 23, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–10639 Filed 4–29–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 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. 10901.

[2] IORP has concurrently filed a notice of exemption in STB Finance Docket No. 32894 under 49 CFR 1180.2(d)(7) to acquire trackage rights as a rail carrier. Because acquisition of trackage rights by a noncarrier, which would become a Class III carrier after completion of the transaction, appears to be covered by the exemption procedures under section 1150.31, the notice of exemption filed in STB Finance Docket No. 32894 might be unnecessary unless one or more of the trackage rights transactions will occur after another of the transactions, in which case IORP will have already become a carrier and thus require exemption under section 1180.2(d)(7).

[1] The ICC Termination Act of 1995, Pub. L. No. 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.

[STB Finance Docket No. 32894]

The Indiana & Ohio Rail Passenger Corporation—Trackage Rights Exemption—Cincinnati Terminal Railway Corp., Indiana and Ohio Railroad Company, Indiana & Ohio Railway Company, Inc., and Indiana & Ohio Central Railroad Company, Inc.

The Indiana & Ohio Rail Passenger Corporation (IORP) has filed a verified

notice under 49 CFR 1180.2(d)(7) and has entered into agreements for local and overhead trackage rights with Cincinnati Terminal Railway Corp., the Indiana and Ohio Railroad Company, the Indiana & Ohio Railway Company, Inc., and the Indiana & Ohio Central Railroad Company, Inc. The trackage over which IORP's operations will be conducted are: (1) with Cincinnati Terminal Railway Corp., from MP 0.4 in Cincinnati, OH, to MP 16.4 at Evendale, OH, for a total of 16 miles; (2) with Indiana and Ohio Railroad Company, from MP 17.75 at Valley Junction, OH, to MP 43.90 at Brookville, IN, for a total of approximately 26.2 miles; (3) with Indiana & Ohio Railway Company, Inc., from (a) MP 5.9 near Monroe, OH, to MP 12.0 near Hageman, OH, (b) MP 31.1 near Hageman, OH, to MP 36.9 at South Mason, OH, (c) MP 27.7 at Lebanon, OH, to MP 31.1 near Hageman, OH, and (d) MP 39.76 at Brecon, OH, to MP 50.5 at Norwood, OH, for a total of approximately 26 miles; and (4) with Indiana & Ohio Central Railroad Company, Inc., from (a) MP 44.96 at Midland City, OH, to MP 74.45 near Thrifton, OH, (b) MP 9.1 near Columbus, OH, to MP 52.56 near Logan, OH, (c) MP 202.7 at Springfield, OH, to MP 228.83 at Fayne, OH, (d) MP 129.4 near Bell, OH, to MP 130.1 near Springfield, OH, (e) MP 0.0 near Bell, OH, to MP 17.2, near Mechanicsburg, OH, and (f) MP 98.8 at Bellfontaine, OH, to MP 129.4 at Bell, OH, for a total of approximately 147.6 miles.

The purpose of the transaction is to provide rail passenger service via trackage rights in the States of Indiana and Ohio.

The transaction was expected to be consummated on or about April 12, 1996.

This proceeding is related to *The Indiana & Ohio Rail Passenger Corporation—Operation Exemption—Cincinnati Terminal Railway Corp., Indiana and Ohio Railroad Company, Indiana & Ohio Railway Company, Inc., and Indiana & Ohio Central Railroad Company, Inc.,* STB Finance Docket No. 32893, wherein IORP has concurrently filed a notice of exemption to operate via the acquired trackage rights.[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. 32894, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Robert L. Calhoun, Sullivan & Worcester, LLP, Suite 1000, 1025 Connecticut Avenue, N.W., Washington, DC 20036.

Decided: April 23, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–10640 Filed 4–29–96; 8:45 am]

BILLING CODE 4915–00–P

[2] Because the related filing in STB Finance Docket No. 32893 for an exemption from 10901 under 49 CFR 1150.31, includes acquisition of trackage rights by noncarriers, a separate notice of exemption for trackage rights in STB Finance Docket No. 32894 might be unnecessary unless one or more of the trackage rights transactions will occur after another of the transactions, in which case IORP will have already become a carrier and thus require exemption under section 1180.2(d)(7).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 940–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 940–EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return.

DATES: Written comments should be received on or before July 1, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return.

OMB Number: 1545–1110.

Form Number: Form 940–EZ.

Abstract: Form 940–EZ is a simplified version of Form 940 that most employers with uncomplicated tax situations (e.g., only pay unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers use the form.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit and Farms.

Estimated Number of Respondents: 4,089,000.

Estimated Time per Respondent: 6 hr. 34 min.

Estimated Total Annual Burden Hours: 26,882,133.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: April 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–10666 Filed 4–29–96; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Capital Distributions.

DATES: Written comments should be received on or before July 1, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0059. These submissions may be hand delivered to 1700 G Street, NW., Washington, DC from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Copies of the Form with instructions are available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Capital Distributions

OMB Number: 1550- 0059

Form Number: OTS Form 1583

Abstract: This collections ensure uniform treatment for capital distributions made by savings associations. It also ensures adequate supervision of distributions of capital by savings associations, thereby fostering safety and soundness.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 610.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 2,440.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; 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: April 22, 1996.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–10636 Filed 4–29–96; 8:45 am]

BILLING CODE 6720–01–P

Submission for OMB Review; Comment Request

April 22, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0015.

Form Number: H–(e) ____, OTS Form 1393, Application certification (OTS Form no. 1606).

Type of Review: Extension.

Title: Savings and Loan Holding Company Application.

Description: This information is necessary to determine whether a company meets the statutory standards to become a savings and loan holding company.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 212.

Estimated Burden Hours Per Respondents: 72.4 hours.

Frequency of Response: Occasional.

Estimated Total Annual Burden: 107,710 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–10637 Filed 4–29–96; 8:45 am]

BILLING CODE 6720–01–P

Submission for OMB Review; Comment Request

April 22, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0020.

Form Number: H–(b)10.

Type of Review: Extension.

Title: Savings and Loan Holding Company Registration Statement.

Description: This information is collected to determine if a savings and loan holding company has adhered to the statutes, regulations, and condition of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings institution.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 138.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Occasional.

Estimated Total Annual Burden: 1104 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–10638 Filed 4–29–96; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a revision and three-year extension of an information collection entitled ''Exchange Visitor Program Application'' (IAP–37), and ''Update of Information on Exchange Visitor Program Sponsor'' (IAP–87), under OMB control number 3116–0210 which expires June 30, 1996. Estimated burden hours per response is 60 minutes for the IAP–37 and 20 minutes for the IAP–87. With regard to the IAP–37, respondents will required to respond only one time; the IAP–87 will require a response as often as changes are made to the Program Sponsors Exchange Visitor Program.

DATES: Comments are due on or before May 30, 1996.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY 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 Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on February 28, 1996 (61,40 FR 7580). As this collection was originally due to expire on March 31, 1996, USIA requested an extension which OMB granted until June 30, 1996. Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0210) is estimated to average 60 minutes per response for the IAP–37 and 20 minutes for the IAP–87, including the 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202. NEOB, Washington, DC 20503.

Title: ''Exchange Visitor Program Application''; ''Update of Information on Exchange Visitor Program Sponsor.''

Form Numbers: IAP–37, IAP–87.

Abstract: Under the requirements of Public Law 87–256 and the Mutual Educational and Cultural Exchange Act of 1961, USIA has been delegated the authority to designate the Exchange Visitor Program for U.S. Government agencies, public and private educational and cultural exchange. The purpose of the Exchange Visitor Program is intended to promote interchanges of persons engaged in Education, Arts, and Sciences and to promote mutual understanding between the people of the U.S. and other countries. The USIA IAP–37 form is used when organizations wishing to sponsor exchange visitors from abroad must apply to USIA for a designation that will permit them to function as sponsors. The USIA IAP–87 form is used by the Exchange Visitor Sponsors to change the name of their institution and/or organization, the names of the personnel involved, address, or telephone number if warranted. The form is also used to order supply of other forms, code books, or cancel the program.

Proposed Frequency of Responses:
No. of Respondents—1,550.
Recordkeeping Hours—1.20.
Total Annual Burden—3,900.

Dated: April 24, 1996.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96–10597 Filed 4–29–96; 8:45 am]

BILLING CODE 8230–01–M

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting approval for a revision and three-year extension of an information collection entitled ''USIA Travel Survey'', IAP–128 under OMB control number 3116–0211 which expires May 31, 1996. Estimated burden hours per response is ten minutes. Respondents are required to respond only one time.

DATES: Comments are due on or before May 30, 1996.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, DC 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC 20503, Telephone (202) 395–5871.

SUPPLEMENTARY 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 Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on February 28, 1996 (61 FR7581). Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0211) is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: ''USIA Travel Survey.''

Form Numbers: IAP–128.

Abstract: To assess the reliability and performance of the Travel Management Center (TMC) contracted by the General Services Administration (GSA). Respondents are the travelers who use the services of TMC. The travelers include U.S. Government employees, non-profit grantee institutions, individual grant recipients and private citizens.

Proposed Frequency of Responses:

No. of Respondents—1680.

Recordkeeping Hours—80.

Total Annual Burden—361.

Dated: April 24, 1996.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96–10598 Filed 4–29–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''In the Light of Italy: Corot and Early Plein-Air Painting'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C. from on or about May 26, 1996 to on or about September 2, 1996, at the Brooklyn Museum, Brooklyn, New York,. from on or about October 11, 1996 to January 12, 1997, and at the Saint Louis Art Museum, St. Louis, Missouri from on or about February 21, 1997 to May 18, 1997 is in the national interest.

Public Notice of this determination is ordered to be published in the Federal Register.

Dated: April 24, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–10599 Filed 4–29–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A Copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202 619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

Corrections

Federal Register
Vol. 61, No. 84
Tuesday, April 30, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-95-305]

Shelled Almonds and Almonds in the Shell; Grade Standards

Correction

In Proposed Rule document 96–9829 beginning on page 17580 in the issue of Monday, April 22, 1996 make the following correction:

On page 17580, in the first column, under **DATES**, in the third line ''July 21, 1996'' should read ''June 21, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-190-008]

Colorado Interstate Gas Company; Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–8725 appearing on page 15792 in the issue of Tuesday, April 9, 1996, the docket number should read as set forth above.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 268 and 403

[EPA # 530-Z-96-002; FRL-5452-7]

RIN 2050-AD38

Land Disposal Restrictions Phase III -- Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

Correction

In rule document 96–8249 beginning on page 15660 in the issue of Monday, April 8, 1996 make the following correction:

On page 15660, in the third column, under **EFFECTIVE DATE** ''April 5, 1996'' should read ''April 8, 1996''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA # 530-Z-96-002; FRL-5438-3]

RIN 2050-AD38

Land Disposal Restrictions Phase III -- Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

Correction

In rule document 96–7597 beginning on page 15566 in the issue of Monday, April 8, 1996 make the following corrections:

On page 15566, in the first column, in the penultimate line ''July 1, 1996'' should read ''July 8, 1996''.

§268.39 [Corrected]

On page 15599, in the third column, in §268.39(c), in the first line ''July 8, 1996'' should read ''January 8, 1997''.

BILLING CODE 1505–01–D

federal register

Tuesday
April 30, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 58

Office of the Secretary; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 58

[Docket No. FR–3514–F–04]

RIN 2501–AB67

Office of the Secretary; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final two rules, one interim and one proposed, which amended the existing environmental regulations in 24 CFR part 58, governing entities that assume HUD responsibilities, by making the environmental review procedures consistent under the various programs to which these regulations apply. This final rule takes into consideration the public comments received on both rules, and also makes streamlining and editorial changes to the existing environmental regulations governing entities that assume HUD responsibilities.

EFFECTIVE DATE: This rule becomes effective May 30, 1996, except for § 58.1(b)(6)(i) and § 58.2(a)(5)(v)(A), which pertain to public housing development and modernization programs. These sections will become effective on October 14, 1996, unless the Department publishes a document in the Federal Register that specifies a different effective date.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–2894. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708–1201. Hearing or speech-impaired individuals may call the Federal Information Relay Service number at 1–800–877–TTY (1–800–877–8339) and refer to (202) 708–1201.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises and restates the procedures for recipients of HUD assistance and other responsible entities in applicable HUD programs to carry out environmental reviews in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) (''NEPA''), the NEPA implementing regulations of the Council on Environmental Quality (CEQ), and other NEPA related federal laws. This rule makes final two rules, one interim rule and one proposed rule, which amended 24 CFR part 58. The interim rule was published on March 13, 1995 (60 FR 13518), and the proposed rule was published on September 25, 1995 (60 FR 49466). This final rule takes into consideration the public comments received on both rules.

Applicable HUD programs under 24 CFR part 58 include any program in which specific statutory authority allows the environmental review responsibilities to be assumed by responsible entities. Currently, applicable HUD programs, and therefore those covered by part 58, only include: (1) Title I Community Development Block Grant Programs, (2) the Rental Rehabilitation Program and the Housing Development Grant Program, (3) the HOME programs under the Cranston-Gonzalez National Affordable Housing Act (NAHA), (4) the homeless programs authorized by Title IV of the Stewart B. McKinney Homeless Assistance Act, (5) Grants to States and units of general local government for reduction and abatement of lead-based paint, (6) Indian Housing and most Section 8 programs under Title I of the United States Housing Act of 1937, (7) Special projects appropriated under an appropriation Act of HUD, (8) the FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, and (9) the Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996.

The interim and proposed rules did not refer to the last program cited above, the Self-Help Homeownership Opportunity Program, because the Housing Opportunity Program Extension Act was approved on March 28, 1996, after those rules were published. However, section 11(m) of that Act provides that a grant under that program shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, which authorized the provisions in the current interim rule providing for States and units of general local government to assume environmental responsibilities for special projects under item (7) above. Accordingly, grants under the new Self-Help Homeownership Opportunity Program are already subject to the part 58 procedures, by being considered special project funds. The final rule adds specific references to the new program in order to provide a complete list of programs currently subject to part 58.

II. Discussion of Public Comments on the March 13, 1995 Interim Rule

The Department received two comments on the March 13, 1995 interim rule—one from a State housing development authority and one from a national organization of State housing agencies.

Both commenters requested, with respect to the FHA Multifamily Housing Finance Agency Pilot Program in particular, that the rule clarify that State housing finance agencies (HFAs) may assume environmental responsibilities. The Department has not changed the final rule in response to these comments. Section 542(c)(9) of the Housing and Community Development Act of 1992, as amended, provides that the Secretary of HUD may provide for agreements to endorse mortgages for insurance ''upon the request of qualified housing finance agencies * * *, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes'' environmental responsibilities.

However, the Department agrees that a State HFA may assume the responsibility for environmental reviews on behalf of the State if the HFA is an agency of the State government and is given authority to do so by the State. If an official of the State HFA will act as the Certifying Officer for the State, section 542 (c) requires that the official must have the authority to certify, among other things, that he or she ''is authorized and consents *on behalf of the State* * * * and himself or herself'' to accept Federal court jurisdiction for enforcement of the environmental responsibilities (emphasis added). The Certifying Officer's responsibilities are set out in § 58.13 of the rule, which indicates that he or she must represent the responsible entity, e.g., the State, rather than merely the State HFA.

Even where the State's Certifying Officer is outside the HFA, the HFA may contribute information or prepare a draft environmental assessment for the State, but the Certifying Officer must evaluate this work and take responsibility for the review in accordance with 40 CFR 1506.5 of the regulations of the Council on Environmental Quality.

One of the commenters, citing statements in §§ 58.4(b) and 58.10 of the interim rule that responsible entities ''shall'' or ''must'' assume environmental review responsibilities, requested that the final rule clarify that

the assumption of environmental responsibilities is voluntary. The Department agrees that assumption of environmental responsibilities by *non-recipient* recipient responsible entities is voluntary. However, the Department has concluded that no change in the rule is necessary on this point. The cited language (which is similar in the final rule) must be read in conjunction with § 58.11(d) of the interim and final rules. Section 58.11(d) indicates that if a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD may designate another responsible entity to perform the review or may perform the review itself.

III. Discussion of Public Comments on the September 25, 1995 Proposed Rule

The Department received 11 comments on the September 25, 1995 proposed rule. The Department received four from local governments, three from county governments, two from State housing agencies, and two from special interest groups. As a result of these, the Department has made certain changes to the proposed rule which are incorporated into today's final rule. The following discussion summarizes and provides HUD responses to those comments. Every comment was reviewed and considered, although all comments may not be specifically addressed in this preamble.

One city urged HUD to conduct a detailed federalism analysis in accordance with Executive Order 12612 on Federalism before taking any further action on this proposed rule. The charge is made that the proposed rule would constitute an unfunded mandate on local governments by transferring to States and local governments various environmental functions previously performed by HUD. This final rule does not change any requirements that were not in effect or put in effect by the interim rule, published in the Federal Register on March 13, 1995 (60 FR 13518) that became effective on April 12, 1995.

The second issue raised by this city was that the tenant-based Section 8 Existing Housing Program should be exempt from all environmental review requirements. Section 58.35(b)(1) makes all tenant-based rental assistance essentially exempt, except for extraordinary circumstances in which a categorically excluded activity may have a significant environmental effect.

A second city requested that § 58.34(a)(2) be more declarative with respect to environmental review requirements for payment of principal and/or interest to the Federal government. A change in § 58.34(a) was made to preserve and make more generic the exemption for payments of principal and interest that is in the interim rule.

A third city suggested that the final rule should make changes that would allow local communities more latitude in applying section 106 of the National Historic Preservation Act and applicable regulations in 36 CFR part 800. The Department does not have the authority to effect changes in the procedures of the State Historic Preservation Officer (SHPO) or to allow local communities more autonomy in determining which resources are historically significant.

A fourth city made a number of suggestions to be more specific and/or carry over some specific language in the interim rule into this final rule. Some clarifications have been made in § 58.35 of the final rule.

One county housing agency wanted more clarification about what would be considered ''adequate local news media'' when disseminating information to the public. Adequate local news media would be considered to be at least a newspaper of general circulation in the affected community. A change has also been made in § 58.21 to clarify that when there is no publication of Notices, the time periods start when there is a mailing and posting of a Finding of No Significant Impact (FONSI) or the Notice of Intent to Request Release of Funds (NOI/RROF). In addition, this county wanted a definition of ''an individual action'' in reference to the categorical exclusion of one- to four-family dwellings. Some clarifications have been made to § 58.35 to reflect current practices with respect to categorical exclusions.

A second county agency felt there was a contradiction in the requirement for the responsible entity to address in the Environmental Review Record (ERR) its compliance with § 58.6 while § 58.34 of the proposed rule stated that the responsible entity does not have to comply with the environmental requirements of this part in the case of exempt activities. The requirements of § 58.6 must be complied with and the responsible entity is required to address these requirements where applicable. These requirements apply to exempt activities, when there is no requirement for an environmental certification by the certifying officer that indicates that all environmental requirements have been met. A change has been made in § 58.34 to remove this contradiction.

A third county agency suggested that the Housing Opportunities for Persons With AIDS (HOPWA) program should be reviewed under part 58 because HOPWA projects are often funded jointly with CDBG. HUD has no authority to assign this responsibility to local governments. However, part 50 and part 58 reviews should not be done in such a manner that there is duplication. If a review has already been made of a jointly funded proposal, the prior review can be referenced in subsequent reviews. The county agency suggested additions to § 58.2 that would define in more detail ''financial services'' and when a decrease in unit density would require an environmental review.

The Department feels that these terms are adequately defined in §§ 58.34(a)(2) and 58.35(a) and that further detail would not be appropriate. The county agency also raised a question about the proposed deletion of the reference to Section 108 loans from § 58.34(a) of the interim rule. The intent of this rule is to make requirements more generic and not be program specific. In response to comments, there is no change in the exempt classification of the repayment of Section 108 loans to the Federal government and the comment is addressed generically in § 58.34(a)(11). This county suggested that changes be made in § 58.47 to address a concern about when there is a need to re-evaluate an environmental finding. Changes have been made in § 58.47 to expand the context when a change in conditions or a change in funding would require a re-evaluation.

One State housing agency requested that § 58.35(b)(5) be expanded to include homeownership assistance for new housing that is planned but may or may not yet be built. In response to this comment, the final rule expands this exclusion to cover assistance to homebuyers for units under construction as well as existing housing. However, housing that is not yet under construction cannot be covered by this exclusion because § 58.53(b) does not require compliance with the environmental laws and authorities listed in § 58.5. Assistance to purchase housing yet to be constructed, on a limited scale, as identified in § 58.35(a)(4), can be determined to be categorically excluded, but it cannot be exempt from the requirements of § 58.5.

A second State agency suggested that environmental reviews conducted by other entities on co-funded projects should be used whenever possible. This final rule encourages combining reviews conducted by other entities for jointly funded projects.

A national county association wanted to know what was meant by ''broader review'' in § 58.15 on Tiering. The tiering concept is explained very well in

the NEPA regulations of the Council on Environmental Quality but focuses on tiering in EIS situations. This final rule encourages the use of the tiering concept in non-EIS situations. Tiering, for HUD purposes, allows responsible entities that have assumed Federal environmental responsibilities to complete an environmental review and obtain a release of funds from HUD before the specific properties to be treated have been identified. Once the properties have been identified, the responsible entity must comply with environmental laws and authorities that could not be satisfied until the properties were identified. The responsible entity may use any available environmental information. Compliance with section 106 of the National Historic Preservation Act would normally occur when the properties to be treated have been identified.

Another commenter requested that the proposed change to § 58.22 prohibiting recipients from committing local (non-HUD) funds before the approval of RROF be dropped in favor of the language in the present interim rule. This suggestion has not been adopted, since the language of proposed § 58.22 better reflects the intent of the Council on Environmental Quality regulation.

The Department also received a comment on the Home Investment Partnership Program interim rule published on July 12, 1995 (60 FR 36020) that is relevant to this rule. The comment objected to the requirement contained in the Home environmental guidelines, and also contained in proposed § 58.22, that options on property entered into before completion of the environmental review be refundable, since refundability is not generally a provision for refundable options in favor of options being limited to a nominal portion of the purchase price.

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made in connection with development of the September 25, 1995 proposed rule in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act (NEPA). Since the changes made to the proposed rule in this final rule do not change the impact on the environment, the original Finding is still valid. The original Finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

Executive Order 12612, 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 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. As a result, the rule is not subject to review under the order. Specifically, this final rule modifies environmental requirements for recipients of HUD assistance and other entities that assume environmental review responsibilities for activities and projects where specific statutory authority exists to assign the environmental review responsibilities to the recipients or to allow States and local governments to assume those responsibilities on behalf of certain recipients.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order, *The Family*, has determined that this final rule will not have potential for significant impact on family formation, maintenance, and 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 final rule, as those policies and programs relate to family concerns.

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 final rule will not have a significant economic impact on a substantial number of small entities. This final rule streamlines part 58 and carries out the statutory mandate of providing for the assumption of environmental review responsibilities by certain recipients of HUD assistance or other entities in accordance with section 104(g) of the Housing and Community Development Act of 1974 and similar statutory provisions.

List of Subjects in 24 CFR Part 58

Environmental protection, Community Development Block Grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 58 is revised as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

Sec.
58.1 Purpose, scope and applicability.
58.2 Terms, abbreviations and definitions.
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58.22 Limitations on activities pending clearance.
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58.33 Emergencies.
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Subpart E—Environmental Review Process: Environmental Assessments (EA's)

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58.52 Adoption of other agencies' EISs.
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58.55 Notice of intent to prepare an EIS.
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Subpart H—Release of Funds for Particular Projects

58.70 Notice of intent to request release of funds.
58.71 Request for release of funds and certification.
58.72 HUD or State actions on RROFs and certifications.
58.73 Objections to release of funds.
58.74 Time for objecting.
58.75 Permissible bases for objections.
58.76 Procedure for objections.
58.77 Effect of approval of certification.

Authority: 12 U.S.C. 1707 *note;* 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p.123.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose, scope and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) The Rental Rehabilitation program and Housing Development Grant program authorized by section 17 of the United States Housing Act of 1937, in accordance with sections 17(i)(1) and 17(i)(2) with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, since section 17 was repealed by the Cranston-Gonzalez National Affordable Housing Act enacted November 28, 1990 (42 U.S.C. 1437o(i)(1) and (2));

(3) Grants to States and units of general local government under the Emergency Shelter Grant Program, Supportive Housing program (and its predecessors, the Supportive Housing Demonstration program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the Stewart B. McKinney Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Indian Housing Programs under Title I of the United States Housing Act of 1937, including the Mutual Help Program, in accordance with section 26 (42 U.S.C. 1437x); and

(iii) Assistance administered by a public housing agency or Indian housing authority under section 8 of the United States Housing Act of 1937, except for assistance provided under 24 CFR part 886, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading ''Annual Contributions for Assisted Housing'' in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note); and

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 834), in accordance with section 11(m)).

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.

(3) *Extraordinary Circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) (A) With respect to Public Housing Programs under § 58.1(b)(6)(i), a public housing agency;

(B) With respect to Indian Housing Programs under § 58.1(b)(6)(ii), an Indian housing authority;

(C) With respect to section 8 assistance under § 58.1(b)(6)(iii), a public housing agency or Indian housing authority;

(vi) Any direct grantee of HUD for a special project under § 58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), a qualified housing finance agency; and

(viii) With respect to the Self-Help Homeownership Opportunity Program under § 58.1(b)(9), any direct grantee of HUD.

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter.

(7) *Responsible Entity* means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(b)(1) through (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(b)(6) through (9), a State, unit of general local government, Indian tribe or Alaska native village, when it is the recipient under the program. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority; and

(E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

(8) *Unit Density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;
(2) CEQ—Council on Environmental Quality;
(3) EA—Environmental Assessment;
(4) EIS—Environmental Impact Statement;
(5) EPA—Environmental Protection Agency;
(6) ERR—Environmental Review Record;
(7) FONSI—Finding of No Significant Impact;
(8) HUD—Department of Housing and Urban Development;
(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;
(10) NEPA—National Environmental Policy Act of 1969, as amended;
(11) NOI/EIS—Notice of Intent to Prepare an EIS;
(12) NOI/RROF—Notice of Intent to Request Release of Funds;
(13) ROD—Record of Decision;
(14) ROF—Release of Funds; and
(15) RROF—Request for Release of Funds.

§ 58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the State, except for projects assisted by Section 17 Rental Rehabilitation assistance and Housing Development Grants. Approval by the State of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(3) For section 17 Rental Rehabilitation projects and Housing Development Grants, the State agency shall meet the responsibilities set forth in § 58.18. However, for section 17 projects, the State lacks authority to approve RROFs and therefore must forward to the responsible HUD Field Office the local recipient's certification and RROF, any objections to the release of funds submitted by another party, and the State's recommendation as to whether HUD should approve the certification and the RROF.

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in § 58.17 for Section 17 projects.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971–1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16

U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h–3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et. seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency— 40 CFR parts 6, 51, and 93).

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) *HUD environmental standards.* Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) (other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303 (a)(3)) and HUD Notice 79–33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

(j) *Environmental justice.* Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(11) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where a recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(c) 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, as defined in 24 CFR part 51, the responsible entity 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.

Subpart B—General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b), and in doing so must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5. The provisions of the CEQ regulations in 40 CFR parts 1500 through 1508 are applicable to this part.

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, Indian housing, special project or self-help homeownership opportunity recipient objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review

in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the ''responsible Federal official'' as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult, as appropriate, environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2(b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs (see 40 CFR 1501.5(b) and 1501.6). A single EIS may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 Historic Preservation requirements for prior section 17 grants.

A recipient of a section 17 grant shall comply with the historic preservation requirements of this part and existing grant agreements.

§ 58.18 Responsibilities of States Assuming HUD Responsibilities.

(a) States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The State must:

(1) Designate the State agency or agencies which will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(i) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(ii) Receive public notices, RROFs and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(2) Fulfill the State role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

(b) States administering section 17 Programs shall assume the responsibilities set forth in this section for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving RROFs and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in subpart H of this part. The State shall forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and RROF.

Subpart C—General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

(a) A recipient may not commit HUD assistance funds under a program listed in § 58.1(b) on an activity or project until HUD or the State has approved the recipient's RROF and the related certification of the responsible entity. In addition, until the RROF and related certification has been approved, the recipient may not commit non-HUD funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under § 58.34, or not subject to § 58.5 under § 58.35(b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance.

(b) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option

agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(c) *Relocation.* Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental Review Process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or *a combination of aggregation approaches,* which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) *Multi-year project aggregation.* (1) *Release of funds.* When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the Notice of the Intent to Request Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds (RROF). The combined Notice of FONSI and NOI/ROF shall state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to assure that these comments will receive full consideration.

§ 58.34 Exempt activities.

(a) Except for the applicable requirements of § 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters, imminent threats or physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to § 58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(ii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4) An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) *Categorical exclusions not subject to § 58.5.* The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homeownership of existing ''or new dwelling units not assisted with Federal funds'' including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property;

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity

makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where § 58.53 is applicable.

(e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the ''Environmental Review Record'' (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) *ERR Documents.* The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) *Other documents and information.* The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 and § 58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to § 58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by § 58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which ''notice'' their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.45 Public comment periods.

(a) Notice of finding of no significant impact: 15 days from date of publication or if no publication, 18 days from the date of mailing and posting.

(b) Notice of intent to request release of funds: 7 days from date of publication or if no publication, 10 days from date of mailing and posting.

(c) Concurrent or combined notices: Same as FONSI notice.

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b) The purpose of the responsible entity's re-evaluation is to determine if the original findings are still valid. If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must amend the original findings and update its ERR by including this re-evaluation and its determination based on its findings. If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal Register for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

(a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1502.2.

Subpart H—Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by § 58.43 and § 58.45 before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State Actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the State) may disapprove a certification and RROF if it has knowledge that the responsible entity has not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient has committed funds or incurred costs not authorized by this part before release of funds and approval of the environmental certification by HUD or the State.

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

Dated: March 27, 1996.

Henry G. Cisneros,

Secretary.

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April 30, 1996

Part III

Office of Management and Budget

Audits of Institutions of Higher Education and Other Non-Profit Institutions; Notice

OFFICE OF MANAGEMENT AND BUDGET

Audits of Institutions of Higher Education and Other Non-Profit Institutions

AGENCY: Office of Management and Budget.

ACTION: Final Revision of OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

SUMMARY: This revision of Office of Management and Budget (OMB) Circular A–133 establishes a uniform system of auditing for institutions of higher education and other non-profit organizations. One of the more significant revisions is that the threshold for when an entity is required to have an audit is raised from $25,000 to $300,000. This will significantly reduce audit costs for many small non-profit organizations. Other significant changes are: additional guidance for program-specific audits (§ _____.235), audit findings (§ _____.510), and audit findings follow-up (§ _____.315); a report submission due date which is shortened from 13 to 9 months and a report submission process that includes a certification form and streamlined filing requirements (§ _____.320); and, a new risk-based approach for major program determination (§ _____.520).

DATES: The standards set forth in § _____.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years ending on or after June 30, 1997. The standards set forth in this Circular that Federal agencies are to apply to non-profit organizations shall be adopted by Federal agencies in codified regulations not later than November 30, 1996, so that they will apply to audits of fiscal years ending on or after June 30, 1997, with the exception that § _____.305(b) of the Attachment applies to audits of fiscal years ending on or after June 30, 1999.

ADDRESSES: A copy of the Circular may be obtained from the OMB fax information line, 202–395–9068, document number 1133; OMB home page on the internet which is currently located at http://www.whitehouse.gov/WH/EOP/omb; or by writing or calling the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as may be appropriate in the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Sheila O. Conley, Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, telephone (202) 395–3993, fax (202) 395–4915.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget (OMB) received approximately 150 letters providing approximately 1600 individual comments in response to the Federal Register proposal of March 17, 1995 (60 FR 14594–14606). Letters came from Federal agencies (including Offices of Inspectors General), State governments (including State auditors), certified public accountants (CPAs), internal auditors, non-profit organizations (including colleges and universities), professional organizations, and others. All comments were considered in developing this final revision.

Section B presents a summary of the major public comments grouped by subject and a response to each comment. Other changes were made to increase clarity and readability.

B. Public Comments and Responses

Common Rule Format

Comment: Several commenters suggested that the implementation of the Circular be done using the ''common rule'' format so that all affected Federal agencies could codify the provisions of the Circular without change and prior to the effective date.

Response: Circular A–133 was reformatted to facilitate codification by Federal agencies.

Uniform Audit Requirements

Comment: In the preamble of the proposed revision, OMB stated a plan to seek modifications to the Single Audit Act of 1984 (31 U.S.C. Chapter 75) and OMB Circular No. A–128, ''Audits of State and Local Governments,'' such that one law and one circular could cover both State and local governments and non-profit organizations. Commenters strongly supported this change.

*Response*s: Even though Circular A–133 does not apply to State and local governments, provisions were made to easily adapt Circular A–133 to include State and local governments if the Single Audit Act is amended. For example, changes were made to the risk-based approach to determine major programs for circumstances that most likely will only occur in large Statewide single audits.

Increased Threshold for Audit

Comment: Commenters overwhelmingly supported raising the threshold for audit, with the majority supporting the proposed threshold of $300,000. A common statement in favor of this change was that it would reduce audit costs, while still providing adequate audit coverage of Federal programs.

Response: This final revision raises the audit threshold to $300,000. Pass-through entities should make appropriate changes in their agreements with subrecipients to reflect that Circular A–133 no longer requires an audit for entities expending less than the $300,000 threshold. Also, pass-through entities will need to consider this change, review their overall subrecipient monitoring process, and decide what, if any, additional monitoring procedures may be necessary to ensure subrecipient compliance for the subrecipients not required to have a Circular A–133 audit. It is expected these monitoring procedures could be more targeted and less costly than the full Circular A–133 audit.

Special Provision for Certain Small Subrecipients

Comment: Most commenters opposed the provision to allow Federal agencies to require pass-through entities to arrange for audits of subrecipients receiving less than the $300,000. A reason often cited was that this provision defeats the purpose of raising the audit threshold.

Response: This provision was included in the proposed revision to provide audit coverage of Federal programs, such as the Job Training Partnership Act (JTPA) programs, which are structured such that substantial service delivery and expenditure of Federal funds are made by subrecipients that expend less than $300,000 in Federal awards.

The provision has not been added to the Circular. However, it is important to note that both the pass-through entity and the pass-through entity's auditor have responsibilities for these funds even when an audit of the subrecipient is not required. The pass-through entity is still responsible to monitor the activities of the subrecipient and ensure that Federal awards are only used for authorized purposes. Additional monitoring procedures may be necessary when a material amount of program funds is passed through to subrecipients which are not audited.

The pass-through entity's auditor is responsible for performing sufficient tests to support an opinion on compliance for each major program. When subrecipients which are not audited expend a material amount of funds from a major program, the auditor will need to consider obtaining compliance assurances by reviewing the pass-through entity's records and monitoring procedures, performing additional procedures to determine compliance, such as testing the subrecipient's records, or a combination of procedures. In addition, the pass-through entity's auditor is responsible for determining whether the pass-through entity's system for monitoring subrecipients is adequate and whether subrecipient noncompliance necessitates adjustment of the pass-through entity's records.

Consideration of Triennial Audit

Comment: In the preamble of the proposed revision, OMB stated it was considering a triennial audit approach and requested comments on its feasibility. Commenters from non-profit organizations supported a triennial audit approach. Reasons cited were relief of audit burden and a reduction in the number of audits required to be reviewed as part of subrecipient monitoring.

However, Federal agency commenters were opposed to a triennial audit approach and cited problems, such as it would alert the non-profit organization in advance of which years should be audited, significantly complicate the risk-based approach for selecting major programs (e.g., under the risk-based approach a large program is only required to be audited once every three years and with triennial audits this could be once in every nine years), and result in only limited cost savings (e.g., under the triennial audit approach a financial statement audit and testing of internal control would still be required).

Response: The triennial audit approach was not added to the Circular. However, the Circular does provide significant audit relief to non-profit organizations by raising the audit threshold from $25,000 to $300,000, allowing a risk-based approach to selecting major programs, and streamlining the report distribution process by use of a certification form. The risk-based approach will permit low-risk non-profit organizations to reduce the percentage of Federal expenditures required to be covered as major programs. The certification form, as discussed later in this supplementary information, will simplify the pass-through entity's review of subrecipient reports which have no audit findings.

Risk-Based Approach To Determine Major Programs

Comment: Except for comments from CPAs, the commenters supported the risk-based approach as presented. CPA commenters opposed the risk-based approach and cited as reasons that it was inappropriate for the auditor to determine major programs, there could be problems in submitting a proposal to conduct a Circular A–133 audit when it is not known in advance which programs will be audited, and there would possibly be cost increases for the auditor to perform risk assessments. While State auditor commenters supported the risk-based approach, those from the larger States cited implementation problems in performing risk assessments on a large number of Type B programs.

Response: The auditor is best suited to determine major programs for reasons, such as independence and the understanding of risk to Federal programs obtained as part of the audit. Therefore, the proposal has been adopted, with no changes made to the requirement for the auditor to determine major programs. However, in recognition of the concerns expressed relative to larger audits, Appendix 1 (§ _____.520), Major Program Determination, was modified as follows:

Step 1 (§ _____.520(b)(1)) was modified to provide a sliding scale in determining Type A programs. This change only affects auditees with Federal expenditures over $100 million.

Step 2 (§ _____.520(c)(2)) was modified to permit a Federal agency, with OMB approval, to designate that a low-risk Type A program could not be considered low-risk. This designation could be for reasons, such as to help the Federal agency comply with Section 405 of the Government Management Reform Act (P.L. 103–356).

Step 3 (§ _____.520(d)(2)) was modified to add a sliding scale which defines relatively small Federal programs in terms of a percentage of total Federal expenditures. This benefits very large audits by reducing the number of Type B programs for which the auditor must perform risk assessments. The decrease in the total amount of Federal expenditures subject to audit will be relatively small because of the wide difference in size between the largest and smallest Federal programs.

Step 4 (§ _____.520(e)) was modified to only require one-half of the high-risk Type B programs to be audited as major and provide a limit that the number of these Type B programs audited as major need not exceed the number of low-risk Type A programs.

However, should the auditor choose not to exclude a low-risk Type A program, this would not affect the limit. The limit is on the number of low-risk Type A programs, not the number excluded. Also, even though larger dollar Type A programs may be excluded as low-risk, they may still need to be audited to meet the 50 percent rule.

To mitigate any implementation problems with the risk-based approach, the provision for deviation from use of risk criteria provided in § _____.520(i) applies to the first year this Circular is applicable and permits auditors to defer implementation of the risk-based approach for one year.

Implementation of the Risk-Based Approach To Determining Major Programs

Comment: A commenter inquired whether a Type A program may be considered low-risk when it was audited as a major program in accordance with the prior Circular A–133, issued March 8, 1990, and otherwise met the criteria in Appendix 1, step 2 to be classified as low-risk.

Response: The reference in Appendix 1, step 2 (§ _____.520(c)(1)) to the two most recent audit periods means audit periods in which the audit was performed either under the prior Circular A–133 or this revision. Therefore, a Type A program which meets the Appendix 1, step 2 (§ _____.520(c)(1)) criteria for low-risk based on the results of an audit performed in accordance with the prior Circular A–133 may be considered low-risk. Similarly, the reference in the criteria for a low-risk auditee in Appendix 3 (§ _____.530) to the preceding two years applies to audits performed either under the prior Circular A–133 or this revision.

Request for a Program To Be Audited as a Major Program

Comment: Several commenters expressed concern that the provision for a Federal agency or pass-through entity to request a program to be audited as a major program would significantly increase the work required for single audits and requested that it be removed. A few commenters also expressed concern that these programs would not count towards meeting the 50 percent rule.

Response: This provision has been adopted; however, a change was made to allow programs audited as major under this process to count towards

meeting the 50 percent rule. This process does not significantly change the authority Federal agencies and pass-through entities now have to perform additional audits as long as they pay for them. The addition is that these audits may be incorporated within the framework of the single audit and thereby eliminate duplicative audit planning and reporting. Since the Federal agency or pass-through entity must still pay the full incremental audit cost, OMB does not expect a significant increase in major programs from this provision.

It should be pointed out that any Type A program selected to be audited under this provision must be low-risk. If it were not low-risk, it would have been audited as a major program under the risk-based approach. Therefore, this provision will not reduce the number of high-risk Type B programs audited as major.

Required Level of Internal Control Testing

Comment: All CPA commenters and over half of the State auditor commenters opposed the proposed requirement for the auditor to plan the testing of internal control over Federal programs to achieve a low assessed level of control risk. Concerns included that it increases the amount of audit work, limits auditor's judgment, and is arbitrary. By contrast, one commenter stated support for the proposed requirement because it would force the auditor to look at internal control over Federal programs and to note reportable conditions when internal control is not adequate.

Response: The proposal has been adopted, with no changes. Some commenters appeared to understand this provision to mean that, when control exceptions are found, the auditor is required to continue testing until a low level of risk is achieved. This is not the case. The auditor is not required to expand testing to try to achieve a low level of risk. The auditor is only required to plan the audit for a low level of assessed risk and report the results of this testing.

It has been a longstanding Federal policy that the recipient of Federal funds is required to establish internal control systems to provide reasonable assurance that it is managing Federal funds in compliance with applicable laws and regulations. Also, the Single Audit Act (31 U.S.C. Chapter 75) requires the auditor to test internal control over Federal funds subject to that Act. Therefore, it is reasonable to require the auditor to plan the audit consistent with the level of internal control the recipient of Federal funds is required to maintain. Also, the Circular permits the auditor to not test internal controls which are inadequate and instead disclose a reportable condition or material weakness and perform additional tests of compliance as necessary in the auditor's judgment.

Schedule of Expenditures of Federal Awards

Comment: Most commenters supported the level of detail included in the proposal for the schedule of expenditures of Federal awards. One commenter suggested that it would be beneficial for pass-through entities to identify in the schedule the amount passed-through to subrecipients. This disclosure would tell program managers the amount of program expenditures that was subject to audit at the pass-through entity level.

Response: A provision has been added to encourage, but not require, pass-through entities to disclose in the schedule the total amount provided to subrecipients from each Type A program and from each Type B program which is audited as a major program. In most cases this information should be readily available and would improve the usefulness of the schedule.

Attestation on Internal Control and Compliance

Comment: The preamble to the proposed revision requested comments as to whether a requirement should be added for the audits to include a management assertion and auditor attestation for internal control or compliance. The majority of commenters were opposed to this change because it would impose additional requirements on entity management and increase audit cost.

Response: In light of the concerns raised, this proposed revision has not been added to the Circular.

Criteria for Reporting Questioned Costs

Comment: Commenters' views on the proposed $10,000 threshold for reporting known or likely questioned costs varied from describing it as too high, too low, or just right. Commenters expressed concern that the concept of likely questioned costs needed further clarification.

Response: OMB believes that the $10,000 threshold for reporting questioned costs provides the appropriate balance between reporting all questioned costs and only reporting large questioned costs. Also, audit findings which do not result in questioned costs but are material to the types of compliance requirements or an audit objective in the compliance supplements will still be reported as reportable conditions under § _____.510(a)(1) or material noncompliance under § _____.510(a)(2).

Generally accepted auditing standards require the auditor to project the amount of known questioned costs identified in the sample to the items in the major program and to consider the best estimate of total questioned costs (both known and likely) in determining an opinion on compliance. The Circular does not require the auditor to report an exact amount or statistical projection of likely questioned costs, but rather to include an audit finding when the auditor's extrapolation of these likely questioned costs is greater than $10,000.

Since the requirement for the auditor to consider likely questioned costs is not new, and since likely questioned costs which are greater than $10,000 may be significant to a Federal program, OMB believes they should be included in audit findings. In reporting likely questioned costs, it is important that the auditor follows the requirements of § _____.510(b) and provides appropriate information for judging the prevalence and consequences of the audit finding.

Requirement To Follow Up on Prior Audit Findings

Comment: One commenter expressed concern that the requirement for the summary schedule of prior audit findings to include audit findings from before the prior year may result in many old audit findings being reported year after year.

Response: As a practical matter, unless an audit finding is repeated in a subsequent year, there is limited value in continuing to follow up on an audit finding when the Federal agency or pass-through entity chooses to take no action. Therefore, a provision has been added stating that a valid reason for considering an audit finding as not warranting further action is that: (a) two years have passed since the audit report was filed with the central clearinghouse designated by OMB, (b) the Federal agency or pass-through entity is not currently following up on the audit finding, and (c) a management decision was not issued.

Also, for the first year the entity is audited under this Circular, the prior year report may not have included the equivalent of a summary schedule of prior audit findings. In these cases, the auditee may exercise judgment and only include, to the extent practical, audit findings before the prior year.

Corrective Action Plan

Comment: Some college and university commenters expressed concern that the requirement to list the name of the contact person responsible for corrective action precluded a non-profit organization from naming one person responsible for all audit findings.

Response: The proposal has been adopted, with no changes. Some commenters appeared to misunderstand this provision. It is important that a non-profit organization name a contact person or persons to be responsible for corrective action. However, contrary to the commenters' understanding, the non-profit organization has discretion to determine whether one person should be responsible for all or a group of audit findings or whether a separate person should be responsible for each audit finding.

Pass-Through Entity's Responsibility for Subrecipient Audit

Comment: A few commenters expressed concern that, unless the pass-through entity gave the subrecipient $300,000, it would be difficult to determine whether the subrecipient was required to have an audit under the Circular. Specifically, the commenters asked for guidance on how the pass-through entity could determine if the subrecipient received other Federal awards which cumulatively added up to the $300,000 threshold for audit.

Response: This provision has been adopted, with no changes. There was no intention that this provision require the passthrough entity to perform extensive verification procedures to determine the total Federal expenditures of a subrecipient. OMB expects that, in many cases, the pass-through entity will have knowledge of the subrecipient sufficient to estimate the subrecipient's total Federal expenditures. Another technique would be for the pass-through entity to clearly explain the audit requirements to the subrecipient and then ask the subrecipient the amount of its total Federal expenditures.

Audit Cognizance

Comment: Some college and university commenters expressed concern that the cognizant agency determination was not consistent with the proposed revision to OMB Circular A–21, ''Cost Principles for Educational Institutions'' (60 FR 7105; February 6, 1995), and could result in an entity having one cognizant agency for audit purposes and another for indirect cost rate negotiation.

Response: The responsibilities for audit cognizance and indirect cost negotiation are different and, therefore, the same Federal agency does not need to be cognizant for both. The name for the cognizant agency has been changed to the cognizant agency for audit to clearly distinguish it from the cognizant agency for indirect cost rate negotiation.

Provision for Small and Minority Audit Firms

Comment: One commenter expressed concern that the provision for small and minority audit firms was proposed for deletion.

Response: As explained in the preamble to the proposed revision, this provision was proposed to be deleted because the requirements related to small and minority audit firms are more fully covered in § _____.44(b)(4) of OMB Circular A–110, ''Uniform Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'' (58 FR 62992; November 29, 1993). There was no intention to change or diminish the requirements for using small and minority audit firms. To ensure that these requirements continue to receive consideration, a provision has been added to the auditor selection paragraph that, whenever possible in procuring audit services, non-profit organizations shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, as stated in OMB Circular A–110.

Restriction on Auditor Also Preparing Indirect Cost Proposal

Comment: The preamble to the proposed revision requested comments on whether the auditor should also be permitted to prepare the indirect cost proposal (including similar documents, such as the cost allocation plan, or the disclosure statement required by OMB Circular A–21). All Federal agency commenters and most State auditor commenters cited at least an appearance of lack of independence when the same auditor both performed the audit and prepared the indirect cost proposal. One Federal agency commenter stated, ''In preparing the indirect cost proposal, the auditor is an advocate for the client before the Federal Government. We believe it stretches the bounds of standards for the auditor to be considered independent to audit this same indirect cost proposal for the purpose of providing assurances to the Federal Government.'' In contrast, CPAs and non-profit organizations did not see an independence problem and stated there were significant efficiency advantages for the same firm to both perform the audit and prepare the indirect cost proposal.

Response: A provision (§ _____.305(b)) has been added to preclude the same auditor from preparing the indirect cost proposal or cost allocation plan when indirect costs exceeded $1 million in the prior year. This threshold was chosen to limit this restriction to a relatively small number of entities, while still protecting the Federal interest. The prior year was chosen because non-profit organizations often engage the auditor before the end of the year and at this time it may be unknown whether the current year's indirect costs will exceed the $1 million threshold. Based on available data, OMB estimates that entities with indirect costs exceeding $1 million cumulatively receive approximately 90 percent of the total indirect costs charged by non-profit organizations.

This restriction applies to the base year from which financial data is used to compute the rates even though the audit of the base year financial statements is often completed before the indirect cost proposal or cost allocation plan is prepared. The base year was included to enhance the appearance of independence to the Federal agencies which rely upon the auditor's testing of information used in both the calculation and application of indirect cost rates.

The disclosure statements required by OMB Circular A–21 have been excluded from this restriction because the disclosure statement is new, many of the statements will be submitted before the effective date of this Circular A–133 revision, and the disclosure statements are expected to have a long life. Under these circumstances, it does not seem appropriate public policy to restrict auditors who prepared the original disclosure statements from performing the audit for a long period of time. Therefore, the disclosure statements required by OMB Circular A–21 have been excluded from this restriction on auditor selection. OMB will monitor these disclosure statements and may revisit this issue again at a later date.

The implementation date for this provision is delayed two years until audits of fiscal years ending on or after June 30, 1999, to minimize any effect this provision could have on existing contracts for audit services. For example, an auditor that prepared an indirect cost proposal or cost allocation which is used as the basis for charging indirect costs in the fiscal year ending June 30, 1999, is not permitted to perform the 1999 audit.

Report Due Date

Comment: Most State auditor and college and university commenters expressed opposition to shortening the due date for reports from 13 to 9 months. However, most State manager and non-profit organization commenters supported the change. The view appeared to be that those receiving and relying on the reports and those currently completing the audit in 9 months liked the change. By contrast, it appears that those who were not currently completing the audit in 9 months opposed the change.

Response: This proposal has been adopted, with a change. The provision retains the requirement in the Circular that, when the audit is completed earlier than the due date, the reporting package must be submitted within 30 days of audit report issuance.

Certification

Comment: Comments were mixed on the certification form. Most State auditor and CPA commenters opposed the certification form, citing it as an increased burden on them to prepare and duplicative of information in the audit reports. Most college and university commenters supported the use of the certification form as a method of reducing the volume of paper in single audits.

On a related issue, some State auditor and CPA commenters cited a possible logistical problem that the auditor would not be able to complete the audit report until the certification form was prepared (because the auditor must read the certification form and report as an audit finding material inconsistencies with the audit) and the certification form could not be prepared until the audit is completed.

Response: The requirements for the auditor to read the certification form and report as an audit finding any material inconsistencies has not been adopted. As a preventive control to ensure proper distribution of audit reports, a requirement (§ _____.500(f)) has been added for the auditor to identify to the auditee those Federal awarding agencies and pass-through entities which are required to receive a copy of the reporting package. Also, a requirement (§ _____.505(b)) was added for the schedule of findings and questioned costs prepared by the auditor to include a summary of the auditor's results. This summary will facilitate preparation of the certification form by the auditee.

Management Letter

Comment: Most commenters expressed concern that routinely including management letters as part of a public filing of the auditor's reports could reduce the effectiveness of management letters.

Response: OMB agrees that it is not necessary to routinely include auditor's management letters as part of the report submission. Therefore, this provision has not been adopted. However, because management letters may contain information relevant to the needs of Federal agencies and pass-through entities to monitor Federal awards, a provision has been added that Federal agencies and pass-through entities can request a copy of management letters.

Coordinated Audit Approach

Comment: A few commenters expressed concern that the term *coordinated audit approach* was not used in the proposed revision and whether the removal of this term precluded Federal auditors from participating in audits required by this Circular.

Response: The proposed revision does not prohibit the participation of Federal auditors in audits required by the Circular, a concept referred to as the *coordinated audit approach*. This term was not included in the proposed revision because the definition of auditor clearly includes Federal audit organizations and further reference to the term *coordinated audit approach was not considered necessary. A provision (§ _____.305(c))* has been added to clarify that Federal auditors may perform all or part of the work required under the Circular if they fully comply with the requirements of the Circular.

GOCOs and FFRDCs

Comment: A few Federal agency and non-profit organization commenters expressed concern that the proposed revision did not specifically address Federal Government owned, contractor operated facilities (GOCOs) or Federally Funded Research and Development Centers (FFRDCs).

Response: A provision has been added to the definition of the term *Federal award* that contracts to operate GOCOs are excluded from the requirements of this Circular. Also, paragraph § _____.200(e) has been added to allow management of an auditee that owns or operates a FFRDC to elect to treat the FFRDC as a separate entity for purposes of this Circular. If the FFRDC is treated as a separate entity, the determination of cognizant agency for audit would be based upon this separate entity.

Questions and Answers on OMB Circular A–133

Comment: In May 1992, the Standards Subcommittee of the President's Council on Integrity and Efficiency (PCIE) issued PCIE Position Statement No. 6, titled ''Questions and Answers on OMB Circular A–133'' (A–133 Q&A). A commenter inquired whether this document could be used as guidance in performing audits under the revised Circular A–133.

Response: Since this revision makes significant changes in OMB Circular A–133, the May 1992 A–133 Q&A should not be used as a primary source of guidance for audits performed under this revision. However, many items in the A–133 Q&A were incorporated in this revision and the A–133 Q&A may be a useful historical reference of the single audit process. If there are significant questions concerning the revised Circular A–133, OMB will consider issuing a revised A–133 Q&A.

Compliance Supplements

Comment: Some CPA and State auditor commenters expressed concern that Federal agencies should keep the compliance supplements current.

Response: OMB recognizes the need for updated compliance supplements and is working with Federal agencies and the PCIE to complete this task. OMB's current plans are to issue a revised compliance supplement by the end of 1996.

Public Information Collection

The revision includes an information collection requirement for reports from auditors concerning their audit findings to auditees (§ _____.235(b)(4), § _____.505, and § _____.510) and reports from auditees to the Federal Government concerning these report (§ _____.235(c) and § _____.320). OMB requested comments on the proposed information collection described in the Circular in a April 1, 1996 Federal Register notice (61 FR 14338) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 et seq). The proposed information collection requirement will not be effective until another notice is published in the Federal Register. The subsequent notice will provide the effective date and the OMB control number.

Alice M. Rivlin,

Director.

April 22, 1996.

Circular No. A–133, Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of Institutions of Higher Education and Other Non-Profit Institutions

1. *Purpose.* This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-profit organizations expending Federal awards.

2. *Authority.* Circular A–133 is issued under the authority of sections 503 and 1111 of title 31, United States Code, and Executive Orders 8248 and 11541.

3. *Supersession.* This Circular supersedes the prior Circular A–133, issued March 8, 1990. For effective dates, see paragraph 10.

4. *Policy.* Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-profit organizations, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient). Therefore, whereas this Circular does not apply to grants, contracts, or other agreements between the Federal Government and State or local governments (which are covered by Circular A–128, ''Audits of State and Local Governments''), this Circular does apply to awards that State and local governments make to non-profit organizations covered by this Circular. This Circular does not apply to public institutions of higher education and hospitals which are audited under Office of Management and Budget (OMB) Circular A–128.

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. *Definitions.* The definitions of key terms used in this Circular are contained in § _____.105 in the Attachment to this Circular.

6. *Required Action.* The specific requirements and responsibilities of Federal agencies and non-profit organizations are set forth in the Attachment to this Circular. Federal agencies making awards to non-profit organizations, either directly or indirectly, shall adopt the language in the Circular in codified regulations not later than November 30, 1996, unless different provisions are required by Federal statute or are approved by OMB.

7. *OMB Responsibilities.* OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation.

8. *Information Contact.* Further information concerning Circular A–133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

9. *Termination Review Date.* This Circular will have a policy review three years from the date of issuance.

10. *Effective Dates.* The standards set forth in § _____.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years ending on or after June 30, 1997.

The standards set forth in this Circular that Federal agencies are to apply to non-profit organizations shall be adopted by Federal agencies in codified regulations not later than November 30, 1996, so that they will apply to audits of fiscal years ending on or after June 30, 1997, with the exception that § _____.305(b) of the Attachment applies to audits of fiscal years ending on or after June 30, 1999. In the interim period, until the standards in this Circular are adopted and become applicable, the audit provisions of Circular A–133, issued March 8, 1990, shall continue in effect.

Alice M. Rivlin,

Director.

Attachment

PART____—AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NON-PROFIT INSTITUTIONS

Subpart A—General

Sec.

____.100 Purpose.
____.105 Definitions.

Subpart B—Audits

____.200 Audit requirements.
____.205 Basis for determining Federal awards expended.
____.210 Subrecipient and vendor determinations.
____.215 Relation to other audit requirements.
____.220 Frequency of audits.
____.225 Sanctions.
____.230 Audit costs.
____.235 Program-specific audits.

Subpart C—Auditees

____.300 Auditee responsibilities.
____.305 Auditor selection.
____.310 Financial statements.
____.315 Audit findings follow-up.
____.320 Report submission.

Subpart D—Federal Agencies and Pass-Through Entities

____.400 Responsibilities.
____.405 Management decision.

Subpart E—Auditors

____.500 Scope of audit.
____.505 Audit reporting.
____.510 Audit findings.
____.515 Audit working papers.
____.520 Major program determination.
____.525 Criteria for Federal program risk.
____.530 Criteria for a low-risk auditee.

Authority: [Each Federal agency should insert its own rule making authority using appropriate United States Code citations.]

Subpart A—General

§ _____.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-profit organizations expending Federal awards.

§ _____.105 Definitions.

Auditee means any organization that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term *auditor* does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by § _____.510(a) to report in the schedule of findings and questioned costs.

CFDA number means the number assigned to a Federal program in the *Catalog of Federal Domestic Assistance* (CFDA).

Cluster of programs means Federal programs with different CFDA numbers that are defined as a cluster of programs in the compliance supplements because they are closely related programs and share common compliance requirements. A cluster of programs shall be considered as one program for determining major programs, as described in § _____.520, and whether a program-specific audit may be elected under § _____.200(c).

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § _____.400(a).

Compliance supplements refers to the *Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Institutions* and the *Compliance Supplement for Single*

Audits of State and Local Governments or such documents as the Office of Management and Budget (OMB) or its designee may issue to replace them. These documents are available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, telephone (202) 512–1800.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term *agency* in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts. It includes Federal awards made directly by Federal awarding agencies or indirectly by recipients of Federal awards or subrecipients. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance received or administered to carry out a program. Such assistance may be in the form of grants, cooperative agreements, donated surplus property, food commodities, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, and other assistance.

Federal program means:

(1) All Federal awards under the same CFDA number. When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program. State governments may combine funding from different Federal awards in providing assistance to their subrecipients when the awards are closely related programs and share common compliance requirements. In this case, the State government may require the subrecipient to treat the combined Federal awards as a single program.

(2) A category of Federal awards which is a group of awards in the categories of:

(i) Research and development;

(ii) Student financial aid; or

(iii) Cluster of programs.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Internal control has the meaning specified in generally accepted auditing standards issued by the AICPA.

Internal control over Federal programs means a process—effected by an entity's management and other personnel—designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplements; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-profit organization.

Major program means a Federal program determined by the auditor to be a major program in accordance with § _____.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § _____.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-profit organization means: (1) any corporation, trust, association, cooperative, or other organization which:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term *non-profit organization* includes both non-profit institutions of higher education and hospitals, and public institutions of higher education and hospitals that are not audited in accordance with Circular A–128, ''Audits of State and Local Governments'' (Available from Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503; telephone (202) 395–7332).

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § _____.400(b).

Pass-through entity means a non-profit organization or other entity that provides a Federal award to a subrecipient.

Program-specific audit means an audit of one Federal program as provided for in § _____.200(c) and § _____.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-profit organization that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-profit organization. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques

where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § _____.500.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 *et seq.*) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means the entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § _____.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplements. Examples include cash management, Federal financial reporting, allowable costs/cost principles, types of services allowed or unallowed, eligibility, and matching.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § _____.210.

Subpart B—Audits

§ _____.200 Audit requirements.

(a) *Audit required.* Non-profit organizations that expend $300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § _____.205.

(b) *Single audit.* Non-profit organizations that expend $300,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § _____.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § _____.235. A program-specific audit may not be elected for R&D unless all expenditures are for Federal awards received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when expenditures are less than $300,000.* Non-profit organizations that expend less than $300,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § _____.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ _____.205 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-profit organization to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-profit organization to an interest subsidy; and, the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at institutions of higher education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered an award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) *Medicare.* Medicare payments to a non-profit organization for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a non-profit organization for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

§ _____.210 Subrecipient and vendor determinations.

(a) *General.* An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) *Federal award.* Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) *Payment for goods and services.* Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

(d) *Use of judgment in making determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) *Compliance responsibility for vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ _____.215 Relation to other audit requirements.

(a) *Audit under this part in lieu of other audits.* An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) *Federal agency to pay for additional audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits.

(c) *Request for a program to be audited as a major program.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § _____.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ _____.220 Frequency of audits.

Audits required by this part shall be performed annually. However, a Federal agency or pass-through entity may allow an auditee that elects a program-specific audit under § _____.200(c) to perform the audit every two years. Two-year audits must cover both years.

§ _____.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

§ _____.230 Audit costs.

Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of

applicable OMB cost principles circulars, Federal Acquisition Regulation (48 CFR part 31), or other applicable cost principles or regulations.

§ _____.235 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of the Federal program's expenditures and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § _____.315(b), and a corrective action plan consistent with the requirements of § _____.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § _____.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § _____.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § _____.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that is consistent with the requirements of § _____.505(a)(4) and includes a summary of the auditor's results applicable to the audit of the Federal program and in a format consistent with § _____.505(b).

(c) *Report submission for program-specific audits.* (1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. Also, this required reporting shall be submitted within 30 days after the issuance of the auditor's report(s) to the auditee. Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the central clearinghouse designated by OMB one copy of the certification prepared in accordance with § _____.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the certification prepared in accordance with § _____.320(b), as applicable to a program-specific audit, the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. One copy of this reporting package shall be submitted to the central clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the central clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient.

(d) *Other sections of this part may apply.* Program-specific audits are subject to § _____.100 through § _____.215(b), § _____.220 through § _____.230, § _____.300 through § _____.305, § _____.315, § _____.320(f) through § _____.320(j), § _____.400 through § _____.405, § _____.510 through § _____.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C—Auditees

§ _____.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § _____.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § _____.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the central clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § _____.315(b) and § _____.315(c), respectively.

§ _____.305 Auditor selection.

(a) *Auditor procurement.* In arranging for audit services, auditees shall follow the procurement standards prescribed by Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' or the Federal Acquisition Regulation (48 CFR part 42), as applicable. (Circular available from Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503; telephone (202) 395–7332.) Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in OMB Circular A–110 or the Federal Acquisition Regulation (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years ending on or after June 30, 1999.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ _____.310 Financial statements.

(a) *Financial statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part.

(b) *Schedule of expenditures of Federal awards.* The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, it is appropriate for the auditee to provide information requested to make the schedule easier to use by Federal awarding agencies and pass-through entities. For example, when a Federal program has multiple award years, the auditee may list the amount of each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency and major subdivision within a Federal agency. For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(2) Provide total expenditures for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(3) Identify major programs.

(4) Include notes that describe the significant accounting policies used in preparing the schedule and identify in the notes the dollar threshold used to distinguish between Type A and Type B programs, as described in § _____.520(b).

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Type A program and from each Type B program which is audited as a major program.

(6) List individual Federal awards within a category of Federal awards. However, when it is not practical to list each individual Federal award for R&D, total expenditures shall be shown by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(7) Include, in either the schedule or a note to the schedule, the value of non-cash assistance expended, insurance in effect during the year, and loans or loan guarantees outstanding at year end.

§ _____.315 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § _____.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1), or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the central clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ _____.320 Report submission.

(a) *General.* The audit shall be completed and the reporting package described in paragraph (c) of this section submitted within nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. Also, the reporting package shall be submitted within 30 days after issuance of the auditor's report(s) to the auditee. Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) *Certification.* The auditee shall complete a certification form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the central clearinghouse designated by OMB, include data elements similar to those presented in this paragraph, and use a machine-readable format. The auditee's chief executive officer or chief financial officer shall sign a statement that the information on the form is accurate and complete as follows:

Certificate of Audit

This is to certify that, to the best of my knowledge and belief, the [specify name of the auditee] has: (1) engaged an auditor to perform an audit in accordance with the provisions of OMB Circular A–133 for the [specify number] months ended [specify date]; (2) the auditor has completed such audit and presented a signed audit report which states that the audit was conducted in accordance with the provisions of the Circular; and, (3) the information on the attached form accurately and completely reflects the results of this audit, as presented in the auditor's report. I declare that the foregoing is true and correct.

Attachment to Certificate

Information Accompanying Certificate of Audit

1. The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

2. A yes or no statement as to whether the auditor's report on the financial statements indicated that the auditor has substantial doubt about the auditee's ability to continue as a going concern.

3. The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

4. A list of the Federal awarding agencies and pass-through entities which will receive a copy of the reporting package pursuant to § _____.320(d)(2) and § _____.320(e)(2) of OMB Circular A–133. An explanation should be provided if this list is different from the communication the auditor provides to the auditee under § _____.500(f) of OMB Circular A–133.

5. A yes or no statement as to whether the auditee qualified as a low-risk auditee under § _____.530 of OMB Circular A–133.

6. The dollar threshold used to distinguish between Type A and Type B programs as defined in § _____.520(b) of OMB Circular A–133.

7. The *Catalog of Federal Domestic Assistance* (CFDA) number for each Federal program, as applicable.

8. The name of each Federal program and identification of each major program. Individual awards within a category of awards should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

9. The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

10. A yes or no statement as to whether there are audit findings and the amount of any questioned costs related to the following for each Federal program:

a. Types of services allowed or unallowed.
b. Eligibility.
c. Matching, maintenance of level of effort, or earmarking.
d. Federal financial reporting.
e. Program income.
f. Procurement.
g. Subrecipient monitoring.
h. Allowable costs/cost principles.
i. Other.

11. Auditee Name:

_____

Employer Identification Number:

_____

Name and Title of Responsible Official:

_____

Telephone Number:

_____

Signature:

_____

Date:

_____

12. Auditor Name:

_____

Name and Title of Contact Person:

_____

Auditor Address:

_____

Auditor Telephone Number:

_____

(c) *Reporting Package.* The reporting package shall include the:

(1) Certification discussed in paragraph (b) of this section;

(2) Financial statements and schedule of expenditures of Federal awards discussed in § _____.310(a) and § _____.310(b), respectively;

(3) Summary schedule of prior audit findings discussed in § _____.315(b);

(4) Auditor's report(s) discussed in § _____.505; and

(5) Corrective action plan discussed in § _____.315(c).

(d) *Submission to clearinghouse.* All auditees shall submit to the central clearinghouse designated by OMB one copy of the reporting package described in paragraph (c) of this section for:

(1) The central clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) *Additional submission by subrecipients.* In addition to the requirements discussed in paragraph (d) of this section, subrecipients shall submit to each pass-through entity one copy of the:

(1) Certification discussed in paragraph (b) of this section; and

(2) Reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the passthrough entity provided.

(f) *Requests for report copies.* In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) *Report retention requirements.* Auditees shall keep one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the central clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) *Clearinghouse responsibilities.* The central clearinghouse designated by OMB shall distribute the reporting packages received in accordance with

paragraph (d)(2) of this section and § _____.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required certifications and reporting packages.

(i) *Clearinghouse address.* The address of the central clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) *Electronic filing.* Nothing in this part shall preclude electronic submissions to the central clearinghouse in such manner as may be approved by OMB. With OMB approval, the central clearinghouse may pilot test methods of electronic submissions.

Subpart D—Federal Agencies and Pass-Through Entities

§ _____.400 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* Recipients expending more than $25 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment and provides notice in the Federal Register. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1996 through 2000 will be determined based on Federal awards expended in 1995. A Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § _____.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations, when such reporting is not included in the reporting package described in § _____.320(c).

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most costeffective audit.

(b) *Oversight agency for audit responsibilities.* An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § _____.105 (*Oversight agency for audit*). The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Federal awarding agency responsibilities.* The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(3) Provide technical advice and counsel to auditees and auditors as requested.

(4) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(5) Assign a person responsible to inform OMB annually of any updates needed to the compliance supplements.

(d) *Pass-through entity responsibilities.* A non-profit pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that non-profit subrecipients expending $300,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year, and that subrecipients subject to Circular A–128 have met the requirements of Circular A–128.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ _____.405 Management decision.

(a) *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request that the documentation be audited, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) *Federal agency.* As provided in § _____.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § _____.400(c)(4), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) *Pass-through entity.* As provided in § _____.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months and proceed as rapidly as possible.

(e) *Reference numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § _____.510(c).

Subpart E—Auditors

§ _____.500 Scope of audit.

(a) *General.* The audit shall be conducted in accordance with GAGAS.

(b) *Financial statements.* The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) *Internal control.* (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to achieve a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to achieve a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control over major programs as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition or a material weakness in accordance with § _____.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control over the major program.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance for each major program.

(3) The principal compliance requirements of the largest Federal programs are included in the compliance supplements.

(4) For Federal programs contained in the compliance supplements, an audit of the compliance requirements contained in the compliance supplements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplements, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplements, the auditor should use the types of compliance requirements (e.g., cash management, Federal financial reporting, allowable costs/cost principles, types of services allowed or unallowed, eligibility, and matching) contained in the compliance supplements as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements. The auditor should consult with the applicable Federal agency to determine the availability of agency-prepared supplements or audit guides.

(e) *Audit follow-up.* The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § _____.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Communication.* The auditor shall communicate, preferably in writing, to the auditee which Federal awarding agencies and pass-through entities are required to receive a copy of the reporting package pursuant to § _____.320(d)(2) and § _____.320(e)(2), respectively. The auditor shall retain a record of this communication in the auditor's working papers.

§ _____.505 Audit reporting.

(a) *Auditor's reports.* The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(1) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(2) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate

schedule of findings and questioned costs described in paragraph (a)(4) of this section.

(3) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (a)(4) of this section.

(4) A schedule of findings and questioned costs which includes a summary of the auditor's results as described in paragraph (b) of this section and all audit findings as defined in § _____.510(a). Any findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(b) *Summary of the auditor's results.* The summary of the auditor's results shall include:

(1) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(2) Where applicable, a statement that the auditor's report on the financial statements indicated that the auditor has substantial doubt about the auditee's ability to continue as a going concern;

(3) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(4) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses, as described in § _____.510(a)(1);

(5) A statement as to whether the audit disclosed any material noncompliance in major programs, as described in § _____.510(a)(2);

(6) A statement as to whether the audit disclosed any questioned costs, as described in § _____.510(a)(3);

(7) Where applicable, a statement that the schedule of findings and questioned costs contains instances of known fraud, as described in § _____.510(a)(5); and

(8) Where applicable, a statement that the audit follow-up procedures disclosed that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, as described in § _____.510(a)(6).

§ _____.510 Audit findings.

(a) *Audit findings reported.* The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether to report a deficiency in internal control as a reportable condition is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplements. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements which the auditor concludes, based on evidence obtained, has occurred or is likely to have occurred. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplements.

(3) Known questioned costs which are greater than $10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance for each major program, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs.

(5) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs. Fraud is a type of illegal act involving the obtaining of something of value through willful misrepresentation. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(6) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § _____.315(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail.* Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ _____.515 Audit working papers.

(a) *Retention of working papers.* The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) *Access to working papers.* Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ _____.520 Major program determination.

(a) *General.* The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and passthrough entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) *Step 1.* (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal expenditures during the audit period exceeding the larger of:

(i) $300,000 or three percent (.03) of total Federal expenditures in the case of an auditee for which total Federal expenditures equal or exceed $300,000 but are less than or equal to $100 million.

(ii) $3 million or three-tenths of one percent (.003) of total Federal expenditures in the case of an auditee for which total Federal expenditures exceed $100 million but are less than or equal to $10 billion.

(iii) $30 million or 15 hundredths of one percent (.0015) of total Federal expenditures in the case of an auditee for which total Federal expenditures exceed $10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large insurance programs or loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing insurance or loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(c) *Step 2.* (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods, and, in the most recent audit period, it shall have had no audit findings under § _____.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § _____.510(a)(3), fraud under § _____.510(a)(5), and audit follow-up for the summary schedule of prior audit findings under § _____.510(a)(6) do not preclude the Type A program from being lowrisk. The auditor shall consider: the criteria in § _____.525(c), § _____.525(d)(1), § _____.525(d)(2), and § _____.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 120 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) *Step 3.* (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § _____.525. Except for known reportable conditions in internal control or compliance problems as discussed in § _____.525(b)(1), § _____.525(b)(2), and § _____.525(c)(1), a single criteria in § _____.525 would seldom cause a Type B program to be considered high-risk.

(2) An audit under this part is not expected to test relatively small Federal programs. Therefore, except to meet the 50 percent rule discussed in paragraph (f) of this section, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) $100,000 or three-tenths of one percent (.003) of total Federal expenditures when the auditee has less than or equal to $100 million in total Federal expenditures.

(ii) $300,000 or three-hundredths of one percent (.0003) of total Federal expenditures when the auditee has more than $100 million in total Federal expenditures.

(e) *Step 4.* At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section);

(2) At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2; and

(3) Such additional programs as may be necessary to comply with the 50 percent rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) *50 percent rule.* The auditor shall audit as major programs Federal programs with expenditures that, in the aggregate, encompass at least 50 percent of total Federal expenditures. If the auditee meets the criteria in § _____.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with expenditures that, in the aggregate, encompass at least 25 percent of total Federal expenditures.

(g) *Documentation of risk.* The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this part, the auditor's

judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) *Deviation from use of risk criteria.* For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the 50 percent rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ _____.525 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or passthrough entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplements.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger expenditures would be of higher risk than programs with substantially smaller expenditures.

§ _____.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § _____.520(f):

(a) The audits were performed in accordance with the provisions of this part.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that the material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Type A programs, as defined in § _____.520(b), had audit findings from any of the following:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total expenditures for a Type A program during the year.

[FR Doc. 96–10330 Filed 4–29–96; 8:45 am]

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federal register

Tuesday
April 30, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Temporary Establishment of Class D Airspace; Anchorage International Airport, Alaska; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–1]

Temporary Establishment of Class D Airspace; Anchorage International Airport, Alaska (AK)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary Class D airspace area east of the Anchorage International Airport, AK, while Runway 14/32 is closed for construction. During this closure, heavy or large commercial aircraft will be departing to the east from Runway 06L/06R or arriving from the east to land on Runway 24L/24R. The intended effect of this action is to enhance safety by reducing the possibility of small general aviation aircraft encountering wake turbulence from, or conflicting with, heavy or large aircraft departing or arriving Anchorage International Airport.

DATES: Effective date: 0901 UTC, May 1, 1996. Expiration Date: 0901 UTC, July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–530, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Background

Normally, heavy or large aircraft depart on Runway 32 to the north and arrive on Runway 06 from the west at Anchorage International Airport. The Anchorage International Airport Manager has informed the Federal Aviation Administration (FAA) that starting in May 1996, Runway 14/32 will be closed for construction through the middle of July 1996. This closure will necessitate that heavy or large aircraft operating to or from Anchorage International Airport arrive from or depart to the east. Part of this airspace is a transition area used by small general aviation aircraft operating under visual flight rules (VFR) to or from Lake Hood, Merrill Field, and Anchorage International airports. The FAA has received letters from the National Transportation Safety Board, Air Transport Association of America, Federal Express, and Northwest Airlines, expressing concerns, specifically, about heavy jet departures off Runway 06 conflicting with VFR traffic east of Anchorage International Airport.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a Temporary Class D airspace area from the surface to 4,100 feet mean sea level (MSL) east of Anchorage International Airport, AK (see appendix). Pilots operating in this airspace will be required to be in radio contact with Anchorage Radar Approach Control air traffic controllers. These aircraft will be provided safety alerts and wake turbulence advisories. Additionally, controllers will provide separation services between special VFR operations and aircraft executing instrument approach procedures to the Anchorage International Airport. This action is intended to enhance safety by reducing the possibility of small general aviation aircraft encountering wake turbulence from, or conflicting with, heavy or large aircraft departing or arriving Anchorage International Airport.

Because the circumstances described in this final rule warrant immediate action by the FAA to maintain the safety of flight, the FAA concludes that notice and public procedure under 5 U.S.C. section 553(b) are impracticable and good cause, pursuant to 5 U.S.C. section 553(d), exists for making this amendment effective in less than 30 days.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations are published in paragraph 5000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. This Class D airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000—Class D Airspace

* * * * *

AAL AK D Temporary Anchorage, AK [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a line beginning at the intersection of the New Seward Highway and O'Malley Road, at lat. 61°07′23″ N; long. 149°51′23″ W; thence east to the intersection of O'Malley Road and Lake Otis Park Way at lat. 61°07′23″ N; long 149°50′03″ W; thence north to the intersection of Lake Otis Park Way and Abbott Road at lat. 61°08′14″ N; long. 149°50′03″ W; thence east to the intersection of Abbott Road and Abbott Loop Road at lat. 61°08′14″ N; long. 149°48′16″ W; thence due north to Tudor Road at lat. 61′10′51″ N; long. 149°48′16″ W; thence west to the intersection of Tudor Road and New Seward Highway at lat. 61°10′51″ N; long. 149°51′38″ W; thence south along the New Seward Highway to the point of beginning.

* * * * *

Issued in Washington, D.C. April 24, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix—Temporary Establishment of Class D Airspace; Anchorage International Airport, Alaska (AK)

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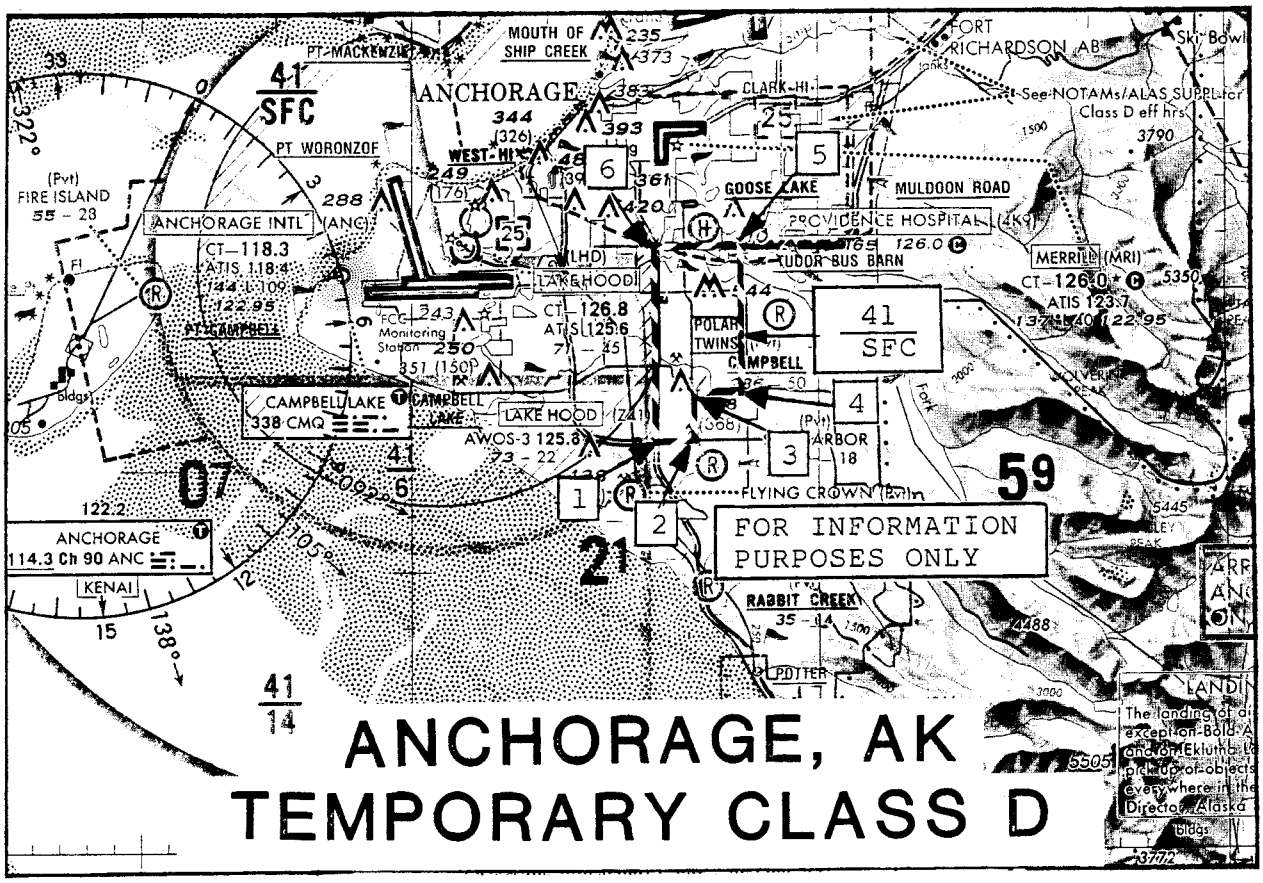

1. New Seward HWY. and O'Malley Rd. Lat 61 07 23N., Long. 149 51 23W.

2. O'Malley Rd. and Lake Otis PKY. Lat. 61 07 23N., Long. 149 50 03W.

3. Lake Otis PKY. and Abbott Rd. Lat. 61 08 14N., Long. 149 50 03W.

4. Abbott Rd. and Abbott Loop Rd. Lat. 61 08 14N., Long. 149 48 16W.

5. Abbott Loop Rd. and Tudor Rd. Lat. 61 10 51N., Long. 149 48 16W.

6. Tudor Rd. and New Seward HWY. Lat. 61 10 51N., Long. 149 51 38W.

[FR Doc. 96–10701 Filed 4–25–96; 4:29 pm]
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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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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3019/P.L. 104–134

Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Apr. 26, 1996; 110 Stat. 1321)

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