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Thursday
May 30, 1996

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Electronic Bulletin Board
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Presidential Documents

Title 3—

The President

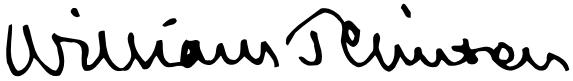
Presidential Determination No. 96–25 of May 16, 1996

Waiver of Statutory Restrictions To Permit Assistance to Turkey

Memorandum for the Secretary of State

Pursuant to subsection (b) of section 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107) (The ''Act''), I hereby determine that it is in the national security interest of the United States to make funds available for assistance in support of Turkey notwithstanding the restriction in subsection (a) of section 562.

You are authorized and directed to transmit this determination and justification to the Congress and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, May 16, 1996.

[FR Doc. 96–13655
Filed 5–29–96; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 61, No. 105
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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA–96–07]

Fluid Milk Promotion Order; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Fluid Milk Promotion Order to modify the term of the chairperson of the National Fluid Milk Processor Promotion Board, effective July 1, 1996. The proposal was submitted by the National Fluid Milk Processor Promotion Board which contends the action is necessary to enable it to operate more effectively.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Eugene E. Krueger, Head, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments on Proposed Amendment to the Order: Issued May 2, 1996; published May 8, 1996 (61 FR 20759).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amendment modifies the term of the chairperson of the National Fluid Milk Processor Promotion Board and will not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling of the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

Statement of Consideration

Section 1160.209(a) of the Fluid Milk Promotion Order currently provides that the National Fluid Milk Processor Promotion Board meet at least once a year and elect from among its members a chairperson to serve a term of one year and not more than two consecutive terms. The proposed amendment would modify, from one year to a fiscal period, the term of the chairperson and provide that such chairperson may serve not more than two consecutive fiscal periods.

Currently, a term of office for the chairperson of the National Fluid Milk Processor Promotion Board is based on an annual period, which expires on July 27, 1996, rather than a fiscal period. The Board contends that the proposed amendment will provide continuity between fiscal periods and the terms of office of the chairperson. The Board indicates that this will allow the Board to operate more effectively.

Interested parties were provided an opportunity to submit comments on the proposed amendment, published in the Federal Register at 61 FR 20759 on May 8, 1996; no comments were received.

Issuance of this final rule is necessary to provide continuity between fiscal periods and the terms of office of the chairperson, and to allow the Board to operate more effectively. Accordingly, the proposed amendment to the order is made final in this action.

List of Subjects in 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1160, is amended as follows:

PART 1160—FLUID MILK PROMOTION ORDER

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. Section 1160.209(a) is revised to read as follows:

§ 1160.209 Duties of the Board.

* * * * *

(a) To meet not less than annually, and to organize and select from among its members a chairperson, who may serve for a term of a fiscal period pursuant to § 1160.113, and not more than two consecutive terms, and to select such other officers as may be necessary;

* * * * *

Dated: May 24, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–13614 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–5]

Amendment of Class E Airspace; Ely, NV

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Ely, NV. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 has made this action necessary. The intended effect of this action is to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at Ely Airport (Yelland Field), Ely, NV.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Ely, NV (61 FR 9656). On April 8, 1996, the FAA issued a supplemental notice to amend this proposal to establish a Class E airspace area at Ely, NV (61 FR 15432).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposals were received. Class E airspace designations 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 will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Ely, NV. The development of a GPS SIAP to RWY 18 has made this action necessary. The intended effect of this action is to provide additional controlled airspace for IFR operations at Ely Airport (Yelland Field), Ely, NV.

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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 14 CFR 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 Designation and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Ely, CA [Revised]

Ely VOR/DME
(Lat. 39°17′53″ N, long. 114°50′54″ W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Ely VOR and within 4.3-miles northeast and 8.3 miles southwest of the Ely VOR 303° radial, extending from the Ely VOR to 16.1 miles northwest and within 3 miles each side of the Ely VOR 014° radial, extending from the Ely VOR to 12.6 miles northeast and within 3 miles each side of the Ely VOR 167° radial, extending from the Ely VOR to 7.7 miles south of the Ely VOR. That airspace extending upward from 1,200 feet above the surface within 19.1-mile radius of Ely VOR and within 6.1 miles northeast and 8.7 miles southwest of the Ely VOR 335° radial, extending from the 19.1-mile radius to 33 miles northwest of the Ely VOR and within 4.3 miles east and 6.5 miles west of the Ely VOR 014° radial, extending from the 19.1-mile radius to 21.3 miles north of the Ely VOR and within 14 miles east and 12.5 west of the Ely VOR 169° radial, extending from the 19.1-mile radius to 53 miles south of the Ely VOR.

* * * * *

Issued in Los Angeles, California, on May 17, 1996.

Thomas S. Kamman,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–13555 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 173, 175, 176, 177, 178, 180, 181, and 189

Change of Names and Addresses; Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Technical amendment; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a technical amendment that appeared in the Federal Register of April 2, 1996 (61 FR 14481). The document amended the regulations in 21 CFR parts 172, 173, 175, 176, 177, 178, 180, 181, and 189 to reflect a change in the name and mailing address for the Association of Official Analytical Chemists International. The document was published with some errors. This document corrects those errors.

DATES: Effective April 1, 1996.

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

SUPPLEMENTARY INFORMATION: In FR doc. 96–7919, appearing on p.14481, in the Federal Register of Tuesday, April 2, 1996, the following correction is made:

§§ 172, 173, 175, 176, 177, 178, 180, 181, and 189 [Corrected]

On page 14482, in the 1st column, under the ''Supplementary Information'' caption, beginning in line 12, the name and mailing address for the Association of Official Analytical Chemists International is corrected to read: ''AOAC INTERNATIONAL, 481 North Frederick, suite 500, Gaithersburg, MD 20877–2417''.

Dated: May 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13537 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8666]

RIN 1545–AS74

Payment by Employer of Expenses for Meals and Entertainment, Club Dues, and Spousal Travel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to reimbursement and other expense allowance arrangements for expenses of business meals and entertainment that are disallowed as a deduction under section 274(n), and working condition fringe benefit treatment for expenses for club dues and spousal travel that are disallowed as a deduction under sections 274(a)(3) and 274(m)(3). The final regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993. The persons affected by the final regulations are persons who provide or receive the use of business meals and entertainment, club membership dues, or spousal travel expenses.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning regulations under sections 62 and 132, David N. Pardys, (202) 622–6040; concerning regulations under section 274, John T. Sapienza, Jr., (202) 622–4920 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1994, a notice of proposed rulemaking relating to payment by an employer of expenses for business meals and entertainment, club dues, and spousal travel was published in the Federal Register (59 FR 64909). A public hearing was held on April 14, 1995.

Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The significant comments on the proposed regulations and the principal revisions made in the final regulations are discussed below.

Explanation of Provisions

This Treasury decision contains final regulations to the Income Tax Regulations under sections 62(c), 132(d), and 274 of the Internal Revenue Code (Code) to reflect changes made to section 274 of the Code by sections 13209, 13210, and 13272 of OBRA (107 Stat. 469, 542). The OBRA provisions amended section 274 of the Code by (1) limiting the deductible portion of meal and entertainment expenses to 50 percent; (2) eliminating the deduction for club dues; and (3) restricting the deduction for spousal travel. The amendments to the regulations under sections 62 and 132 of the Code concern the income tax consequences to employees when their employer's (or third party payor's) deduction is disallowed by the amendments to section 274 of the Code.

Comments to the proposed regulations concerned whether payment of expenses for club dues and spousal travel by an employer exempt from taxation under subtitle A of the Internal Revenue Code were eligible for the working condition fringe exclusion. The final regulations provide that any reference in the regulations to an employer's deduction disallowed by sections 274(a)(3) or 274(m)(3) of the Code will be treated as a reference to the amount which would be disallowed as a deduction to the employer if the employer were not exempt from taxation.

Other comments suggested that the final regulation extend the section 274(e)(2) option of an employer to avoid the section 274 disallowance for payment of spousal travel to persons who pay expenses described in section 274(e)(9). To achieve consistent results for payments to independent contractors and employees with respect to spousal travel, the final regulations adopted this suggestion.

A number of comments requested clarification of the term *other individual* in section 274(m)(3). In particular, the comments asked that the term be clarified so as not to preclude the deduction for travel expenses of a business associate accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel. The regulation was amended to reflect these comments.

One comment concerned the person to whom a fringe benefit is taxable. The rules concerning to whom a fringe benefit is taxable are set forth in § 1.61–21(a)(4). For rules concerning volunteers, see § 1.132–5(r).

Several comments involved the amount of the employer's disallowed deduction when the expenses of a spouse, dependent, or other individual accompanying an employee on a noncommercial flight qualify as a working condition fringe benefit. This issue is under further consideration. In addition, other comments requested clarification of what constitutes a deductible expenditure for spousal travel under the general rule of section 162(a). The rules for deducting travel expenses of a spouse are in § 1.162–2(c).

Special Analyses

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

Drafting Information. The principal authors of these regulations are David N. Pardys, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and John T. Sapienza, Jr., Office of the Assistant Chief Counsel (Income Tax and Accounting), IRS. Personnel from other offices of the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. In § 1.62–2, paragraph (h)(1) is amended by adding a second sentence at the end of the paragraph to read as follows:

§ 1.62–2 Reimbursements and other expense allowance arrangements.

* * * * *

(h) * * * (1) * * * If an arrangement provides advances, allowances, or reimbursements for meal and entertainment expenses and a portion of the payment is treated as paid under a nonaccountable plan under paragraph (d)(2) of this section due solely to section 274(n), then notwithstanding paragraph (h)(2)(ii) of this section, these nondeductible amounts are neither treated as gross income nor subject to withholding and payment of employment taxes.

* * * * *

Par. 3. In § 1.132–5, paragraphs (s) and (t) are added to read as follows:

§ 1.132–5 Working condition fringes.

* * * * *

(s) *Application of section 274(a)(3)*—(1) *In general.* If an employer's deduction under section 162(a) for dues paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose is disallowed by section 274(a)(3), the amount, if any, of an employee's working condition fringe benefit relating to an employer-provided membership in the club is determined without regard to the application of section 274(a) to the employee. To be excludible as a working condition fringe benefit, however, the amount must otherwise qualify for deduction by the employee under section 162(a). If an employer treats the amount paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose as compensation under section 274(e)(2), then the expense is deductible by the employer as compensation and no amount may be excluded from the employee's gross income as a working condition fringe benefit. See § 1.274–2(f)(2)(iii)(A).

(2) *Treatment of tax-exempt employers.* In the case of an employer exempt from taxation under subtitle A of the Internal Revenue Code, any reference in this paragraph (s) to a deduction disallowed by section 274(a)(3) shall be treated as a reference to the amount which would be disallowed as a deduction by section 274(a)(3) to the employer if the employer were not exempt from taxation under subtitle A of the Internal Revenue Code.

(3) *Examples.* The following examples illustrate this paragraph (s):

Example 1. Assume that Company *X* provides Employee *B* with a country club membership for which it paid $20,000. B substantiates, within the meaning of paragraph (c) of this section, that the club was used 40 percent for business purposes. The business use of the club (40 percent) may be considered a working condition fringe benefit, notwithstanding that the employer's deduction for the dues allocable to the business use is disallowed by section 274(a)(3), if *X* does not treat the club membership as compensation under section 274(e)(2). Thus, *B* may exclude from gross income $8,000 (40 percent of the club dues, which reflects *B*'s business use). *X* must report $12,000 as wages subject to withholding and payment of employment taxes (60 percent of the value of the club dues, which reflects *B*'s personal use). *B* must include $12,000 in gross income. *X* may deduct as compensation the amount it paid for the club dues which reflects *B*'s personal use provided the amount satisfies the other requirements for a salary or compensation deduction under section 162.

Example 2. Assume the same facts as *Example 1* except that Company *X* treats the $20,000 as compensation to *B* under section 274(e)(2). No portion of the $20,000 will be considered a working condition fringe benefit because the section 274(a)(3) disallowance will apply to *B.* Therefore, *B* must include $20,000 in gross income.

(t) *Application of section 274(m)(3)*—(1) *In general.* If an employer's deduction under section 162(a) for amounts paid or incurred for the travel expenses of a spouse, dependent, or other individual accompanying an employee is disallowed by section 274(m)(3), the amount, if any, of the employee's working condition fringe benefit relating to the employer-provided travel is determined without regard to the application of section 274(m)(3). To be excludible as a working condition fringe benefit, however, the amount must otherwise qualify for deduction by the employee under section 162(a). The amount will qualify for deduction and for exclusion as a working condition fringe benefit if it can be adequately shown that the spouse's, dependent's, or other accompanying individual's presence on the employee's business trip has a bona fide business purpose and if the employee substantiates the travel within the meaning of paragraph (c) of this section. If the travel does not qualify as a working condition fringe benefit, the employee must include in gross income as a fringe benefit the value of the employer's payment of travel expenses with respect to a spouse, dependent, or other individual accompanying the employee on business travel. See §§ 1.61–21(a)(4) and 1.162–2(c). If an employer treats as compensation under section 274(e)(2) the amount paid or incurred for the travel expenses of a spouse, dependent, or other individual accompanying an employee, then the expense is deductible by the employer as compensation and no amount may be excluded from the employee's gross income as a working condition fringe benefit. See § 1.274–2(f)(2)(iii)(A).

(2) *Treatment of tax-exempt employers.* In the case of an employer exempt from taxation under subtitle A of the Internal Revenue Code, any reference in this paragraph (t) to a deduction disallowed by section 274(m)(3) shall be treated as a reference to the amount which would be disallowed as a deduction by section 274(m)(3) to the employer if the employer were not exempt from taxation under subtitle A of the Internal Revenue Code.

Par. 4. The last sentence of § 1.274–1 is revised to read as follows:

§ 1.274–1 Disallowance of certain entertainment, gift and travel expenses.

* * * For specific provisions with respect to the deductibility of expenditures: for an activity of a type generally considered to constitute entertainment, amusement, or recreation, and for a facility used in connection with such an activity, as well as certain travel expenses of a spouse, etc., see § 1.274–2; for expenses for gifts, see § 1.274–3; for expenses for foreign travel, see § 1.274–4; for expenditures deductible without regard to business activity, see § 1.274–6; and for treatment of personal portion of entertainment facility, see § 1.274–7.

Par. 5. Section 1.274–2 is amended as follows:

1. The section heading for § 1.274–2 is revised.
2. In paragraph (c)(6), a second sentence is added at the end of the paragraph.
3. The paragraph heading for paragraph (f)(2)(i) is revised.
4. Paragraph (f)(2)(iii) is revised.
5. Paragraph (g) is added.

The revised and added provisions read as follows:

§ 1.274–2 Disallowance of deductions for certain expenses for entertainment, amusement, recreation, or travel.

* * * * *

(c) * * *

(6) * * * This paragraph (c)(6) applies to club dues paid or incurred before January 1, 1987.

* * * * *

(f) * * *

(2) * * *

(i) Business meals and similar expenditures paid or incurred before January 1, 1987—* * *

* * * * *

(iii) *Certain entertainment and travel expenses treated as compensation*—(A) *In general.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith) or for travel described in section 274(m)(3), if an employee is the recipient of the

entertainment or travel, is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent that the expenditure is treated by the taxpayer—

(*1*) On the taxpayer's income tax return as originally filed, as compensation paid to the employee; and

(*2*) As wages to the employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages).

(B) *Expenses includible in income of persons who are not employees.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith), or for travel described in section 274(m)(3), is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent the expenditure is includible in gross income as compensation for services rendered, or as a prize or award under section 74, by a recipient of the expenditure who is not an employee of the taxpayer. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less that $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included. See section 274(e)(9).

(C) *Example.* The following example illustrates the provisions this paragraph (f):

Example. If an employer rewards the employee (and the employee's spouse) with an expense paid vacation trip, the expense is deductible by the employer (if otherwise allowable under section 162 and the regulations thereunder) to the extent the employer treats the expenses as compensation and as wages. On the other hand, if a taxpayer owns a yacht which the taxpayer uses for the entertainment of business customers, the portion of salary paid to employee members of the crew which is allocable to use of the yacht for entertainment purposes (even though treated on the taxpayer's tax return as compensation and treated as wages for withholding tax purposes) would not come within this exception since the members of the crew were not recipients of the entertainment. If an expenditure of a type described in this subdivision properly constitutes a dividend paid to a shareholder or if it constitutes unreasonable compensation paid to an employee, nothing in this exception prevents disallowance of the expenditure to the taxpayer under other provisions of the Internal Revenue Code.

* * * * *

(g) *Additional provisions of section 274—travel of spouse, dependent or others.* Section 274(m)(3) provides that no deduction shall be allowed under this chapter (except section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless certain conditions are met. As provided in section 274(m)(3), the term *other individual* does not include a business associate (as defined in paragraph (b)(2)(iii) of this section) who otherwise meets the requirements of sections 274(m)(3)(B) and (C).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 26, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–13298 Filed 5–29–96; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Parts 31 and 602

[TD 8672]

RIN 1545–AT86

Reporting of Nonpayroll Withheld Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The final regulations require a person to file Form 945, Annual Return of Withheld Federal Income Tax, only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

EFFECTIVE DATE: These regulations are effective May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202–622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1413. Responses to this collection of information are required by the IRS to monitor compliance with the Federal tax rules related to the reporting and deposit of nonpayroll withheld income taxes.

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

Estimates of the reporting burden in these final regulations are reflected in the burden of Form 945.

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

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

Background

On October 16, 1995, final and temporary regulations (TD 8624) relating to the reporting of nonpayroll withheld income taxes under section 6011 were published in the Federal Register (60 FR 53509). A notice of proposed rulemaking (IA–30–95) cross-referencing the temporary regulations was published in the Federal Register for the same day (60 FR 53561).

The IRS received no written comments responding to the notice. Accordingly, the regulations proposed by IA–30–95 are adopted as proposed with a minor editorial change.

Explanation of Provisions

These final regulations remove the requirement that, once a person files a Form 945 for a calendar year, the person must file a Form 945 every subsequent year until the person files a final return. Under these final regulations, a person must file a Form 945 only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue

Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the citation for ''Section 31.6011(a)–4T'' as follows:

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

Par 2. Section 31.6011(a)–4 is amended by revising paragraph (b) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

* * * * *

(b) *Withheld from nonpayroll payments.* Every person required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for calendar year 1994 and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)–6. Every person not required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for the first calendar year after 1994 in which the person is required to withhold such tax and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)–6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Nonpayroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

* * * * *

§ 31.6011(a)–4T [Removed]

Par. 3. Section 31.6011(a)–4T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101, paragraph (c) is amended in the table by removing the entry ''31.6011(a)–4T....1545–1413''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: April 5, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–13398 Filed 5–29–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC05

Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources within Glacier Bay National Park and Preserve. The regulations authorize a modest increase in cruise ship, charter boat and private boat use, to be offset by specific mitigation measures. The regulations do not authorize an increase in the maximum number of motor vessels permitted to use the bay on any given day.

Subject to the existing maximum daily limit of two cruise ships per day, the regulations authorize an immediate 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (*i.e.*, a total increase of 72% from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. NPS has also revised current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15 percent increase in private boat traffic beginning with the 1996 summer season.

The regulations also extend and codify park compendium vessel regulations for the protection of park resource values. Several additional measures, such as the requirement for air, water and underwater noise pollution minimization plans from cruise ships, mitigate the potential resource impacts associated with the increase in vessel traffic. Finally, to protect park resource values and maintain opportunities for the safe use of kayaks, the regulations close six specified areas to motor vessels for varying periods.

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

FOR FURTHER INFORMATION CONTACT: Russ Wilson, Alaska Desk Officer, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Telephone 202–208–4874.

SUPPLEMENTARY INFORMATION:

Public Participation on the Proposed Rule

The National Park Service published proposed rules as well as a Notice of Availability of the Vessel Management Plan/Environmental Assessment (VMP/EA) on June 5, 1995 (60 FR 29523). The 60 day period for public comment closed on August 4, 1995, but was subsequently reopened from August 10, 1995 (60 FR 40798), until August 25, 1995, to accommodate several commenters who had requested an

extension. NPS received 427 timely comments. NPS held six open houses/public hearings on the VMP/EA and proposed regulations in Anchorage, Juneau, Gustavus, Hoonah, Pelican, and Elfin Cove. All meetings were taped and transcriptions of the tapes and written comments accepted at the hearings have been placed in the park file. The National Park Service has carefully considered each of these comments and has adopted several suggestions made by the commenters. Below is a summary of the comments and NPS's responses.

Summary of Comments and Decision

The NPS requested comments on the six alternatives considered in the VMP/EA. The alternatives included an array of vessel management options and provided varying levels of protection for sensitive resources.

Alternative 1 (no action) would not change existing vessel management. Vessel management would continue in accordance with existing regulations and the park compendium.

Alternative 2 would maintain existing levels of vessel entries for cruise ships, tour boats, and charter and private boats into Glacier Bay, while maximizing wilderness recreation opportunities through the seasonal closure of five designated wilderness waters to motor vessels.

Alternative 3 would increase seasonal vessel entry quotas for cruise ships by 30 percent, for charter boats by 8 percent and use days for private boats by 34 percent. Tour boat quotas would not change. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 4 would optimize resource protection and wilderness recreation in Glacier Bay. Seasonal vessel entries would be reduced for cruise ships (−14%), tour boats (−22%), charter boats (−17%), and private boats (−17%). The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 5 (original proposed action) would optimize visitor-use opportunities in Glacier Bay by raising seasonal cruise ship entry quotas by 72 percent; the daily limit of two ships per day would continue. Daily limits of three tour boats, six charter boats and 25 private boats would continue. Seasonal entries and use-days for tour boats, charter boats, and private boats would not change from existing levels. In the preamble to the proposed regulations, however, the NPS also solicited comments on including an 8 percent increase in seasonal entries and use-days for charter vessels and a 15 percent increase in seasonal entries and use-days for private vessels. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 6 would provide additional opportunities for motorized recreation. Seasonal vessel entries would be increased for cruise ships (72%), charter boats (8%) and private boats (15%). Tour boat seasonal use-days would not change. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

The majority of commenters (about 85%) were opposed to Alternative 5, which included a 72-percent increase in cruise ship entries. Commenters were concerned that air quality, water quality, biological resources and visitor experience would be compromised by cruise ship increases. The majority of commenters (about 85%) favored Alternative 4, which proposed increased resource protection, additional wilderness recreation and decreased vessel entries. The majority of commenters (about 90%) wrote to support the proposed vessel closures or other proposed mitigation measures.

Based on public comment received on the VMP/EA and the accompanying regulations, the NPS has modified Alternative 5's (the proposed action) vessel quotas, vessel operating requirements and special-use area closures and restrictions. The modified action responds to the public's concern for the Glacier Bay environment and a more appropriate balance of vessel use by reducing the proposed cruise ship quota increase, while accommodating additional opportunities for visitor use of the park. The modified alternative includes modest increases for private and charter vessels, providing additional opportunities for visitor use of the park and the different types of visitor experiences that these vessels provide. Because most charter vessels are locally based, the increase in charter vessel use will also provide direct economic benefits to local communities.

Under the modified alternative, in 1996, seasonal entry quotas for cruise ships will increase by 30 percent; however, the daily limit of two ships per day will continue. On or before October 1, 1997, the superintendent of Glacier Bay National Park and Preserve is required to determine, with the approval of the NPS director, whether studies have been completed and sufficient scientific and other information have been developed to support an increase in cruise ship entries for the 1998 summer season (June 1 through August 31). This determination requires a finding that any seasonal increase in cruise ship entries would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve. Any increase would remain subject to the maximum daily limit of two vessels. NPS would publish a determination to increase cruise ship entries in the Federal Register, with an opportunity for public comment. By October 1 of 1998, and of each year thereafter, the superintendent must determine, with the approval of the director, the appropriate number of cruise ship entries for the following summer season (June 1 through August 31), based on available scientific and other information and applicable authorities and subject to the maximum daily limit of two vessels. NPS would publish any determination to revise cruise ship entries (either to increase or decrease) in the Federal Register, with an opportunity for public comment.

The daily limit of three tour boats per day will not change. Daily limits of six charter boats and 25 private boats will continue. The NPS is modifying current restrictions on seasonal entries and use-days for charter and private boats to provide an 8-percent increase in seasonal entries and use-days for charter boats and a 15-percent increase in seasonal entries and use-days for private vessels. However, NPS recognizes that, because of the maneuverability of these smaller vessels and the challenge of achieving compliance with protective regulations, the increase in traffic from these vessels could result in impacts to park resources. Consequently, the private and charter vessel increases are authorized contingent upon the continued success of mitigation measures such as an educational orientation program for small vessel operators, favorable results from the compliance monitoring program, continued research on potential impacts to park resources, and—fundamental to all these measures—adequate resources for implementation. NPS intends to evaluate the small vessel programs annually.

Vessel operating requirements and the special-use area closures and restrictions included with this alternative will provide additional protection for sensitive resource values and increase the range and quality of visitor experience opportunities. The modified proposed action includes mitigating measures to further reduce the magnitude of effects of vessel and visitor use. These include an orientation/educational program; air, water, and underwater noise pollution control strategies; and an expanded park research, inventory and monitoring program. This combination of measures will facilitate monitoring and mitigate potential environmental effects resulting from increased vessel quotas.

Analysis of Comments

Research

All comments received that pertain to research stressed the need for additional research and monitoring of vessel traffic impacts to Glacier Bay. Several of these comments suggested that the study area include adjacent Icy Strait waters.

The NPS is formulating a comprehensive research, inventory and monitoring plan to assess the effects of vessel traffic on the values and purposes of Glacier Bay National Park and Preserve. The park's research, inventory and monitoring program will focus on obtaining baseline information on the coastal resources and physical characteristics of Glacier Bay; identifying and understanding the effects of vessel traffic on air quality, marine mammals, birds, visitor-use enjoyment and the economy of the region; and determining whether management strategies and mitigation measures are effectively protecting park purposes and values.

Beginning in 1996, NPS will expand research emphases. In addition to ongoing humpback whale and harbor seal monitoring, NPS studies will focus on behavioral changes of marine mammals in relation to vessels, and the relationship between critical prey species and marine mammal and bird populations and distribution. NPS will also develop protocols for monitoring vessel traffic distribution. These studies may encompass areas beyond the boundaries of the park, including Icy Strait waters, in cooperation with state and federal agencies. NPS management policy directs that parks having migratory species will ensure the preservation of their populations and their habitats inside the park and will cooperate whenever possible with others to ensure the preservation of their habitats outside the park. Management actions may include monitoring of those species outside the park to develop data for other agencies, such as the U.S. Fish and Wildlife Service and National Marine Fisheries Service. *See,* Management Policies, U.S. Department of the Interior, National Park Service, Chapter 4:7, Management of Migratory Animals (1988).

Research will also emphasize the use of new technologies to monitor underwater noise and air pollution emissions in partnership with other agencies, non-profit environmental organizations, universities and possibly the military. This type of research direction has cruise ship and tour boat operator support.

In addition to expanding studies in 1996, NPS will develop a research, inventory and monitoring program for the park within one year. It will stipulate research and protection actions NPS will undertake to ensure that environmental effects do not exceed acceptable levels. This program will enhance the scientific basis for future adjustments in vessel quotas. NPS will make an annual report, detailing efforts, funding levels and personnel allocated to VMP actions available to the public.

One commenter noted that, in implementing the VMP requirement that cruise ships assess the short and long-term impacts of their activities on Glacier Bay resources through a research and monitoring program, it would be inappropriate for each cruise ship to assess the impact of only its activities, as a single cruise ship may be able to conclude that the impacts of its specific operation were negligible even though cumulative impacts may not be. Additionally, if each cruise ship performs its own assessment, NPS could well receive inconsistent studies based on different methodologies and assumptions. The final rule clarifies that, as the commenter suggested, these assessments will be performed pursuant to a comprehensive NPS research, inventory and monitoring plan. Several commenters expressed concern that motor vessel closures would disrupt or hamper research. However, NPS can allow approved research activities pursuant to the administrative exception contained in the regulations.

Humpback Whales and Whale Waters

Numerous commenters suggested that all five areas proposed as whale waters in Alternative 3 should receive that designation to provide maximum protection for whales in these key habitats. On the other hand, a few commenters thought NPS should impose whale water restrictions only when whales are present because the restrictions are a hardship on motor vessel users. One commenter objected that the proposed regulations would not retain the requirement that NPS consult with other federal and state agencies and the public before designating whale waters in Glacier Bay.

The final regulations designate four of the five areas considered for designation as seasonal whale waters on a permanent basis. The final regulations also allow the superintendent to designate any area of Glacier Bay as temporary whale waters if whales concentrate in that area. Whale waters restrictions that limit vessels to one mile from shore or mid-channel will become effective for lower bay waters on May 15, as proposed. This is two weeks earlier than currently imposed. Implementing a mid-channel course earlier in the spring leaves near-shore habitat unoccupied by boats so that whales may move into the park through the narrow mouth of the bay with less disturbance. However, the NPS believes that imposing a speed limit automatically in mid-May, a measure which was more objectionable to boater/commenters than was the mid-channel (one mile from shore) requirement, could result in a loss of credibility and, therefore, reduced compliance if boaters do not see whales in the area. The NPS believes that the public will be better served if these speed restrictions can be imposed promptly when they are needed, and lifted when they are not. This approach requires that the superintendent have the flexibility to act quickly, as this rulemaking provides.

One commenter expressed concern that expanding whale waters, along with the mid-channel and one-mile-from-shore restriction for vessels, would preclude people from seeing wildlife along the shorelines. The NPS acknowledges that, while in whale waters, the regulations would prohibit a vessel within a mile from shore from motoring parallel to the shore. However, motor vessels may travel perpendicularly (by the most direct line) to shore through whale waters to view or photograph wildlife (other than whales) or land on an otherwise unrestricted shore to camp or participate in any other park activity.

Seals

One comment suggested closing Johns Hopkins Inlet during seal pupping from an imaginary line from Jaw Point to Topeka Glacier and south. The NPS has adopted a line running due west from Jaw Point that closes virtually the same area and still provides a view of Johns Hopkins Glacier. Additionally, Johns Hopkins Inlet (south of the line running due west of Jaw Point) will remain closed to cruise ships from July 1 through August 31, to protect significant concentrations of molting harbor seals from disturbance by the increase in cruise ship traffic.

Sea Birds

In response to comments, including one from the U.S. Fish and Wildlife Service (FWS) that direct observations by FWS biologists at Glacier Bay and elsewhere indicate that a 100-foot closed area around seabird nesting colonies is inadequate to prevent disturbance to birds at nesting colonies, NPS has instead adopted a 100-yard closure, except at the southern one-half of South Marble Island where a 50-yard closure will apply.

Many visitors on tour boats in Glacier Bay National Park consider viewing birds at the South Marble Island a highlight of their trip. This bird viewing has caused no apparent changes in the bird population on this island. The excitement people feel on seeing a puffin, kittiwake, or pigeon guillemot can, however, change the way they feel about birds and the places where they can be found. This change can translate into conservation and resource protection for parks where similar wildlife exists. Prior to 1991, there was no restriction on approaching the South Marble Island birds; subsequently, NPS established a 100-foot distance. There have been no apparent changes to the bird population on this island. With this rulemaking, NPS is establishing a 50-yard distance for South Marble Island to provide the birds additional protection but still accommodate the visitor's ability to view the birds.

Air Quality

Most of the comments received concerning air quality expressed concern that the NPS was not doing enough to ensure good air quality at Glacier Bay. In order to protect the air quality of Glacier Bay National Park and Preserve, the NPS has taken four significant steps: (1) the NPS has adopted marine vessel visible emission standards; (2) the NPS will require every cruise ship to prepare and abide by an NPS-approved pollution minimization plan to assure that, to the fullest extent possible, cruise ship companies permitted to travel within the park apply the industry's best approaches toward pollution minimization; (3) the NPS will consider a cruise ship company's demonstrated ability to minimize pollution as a strongly weighted preference for entry permits subject to competitive allocation; and (4) the NPS has dropped a competitive preference that favored a cruise ship company whose route of travel included both the Tarr Inlet and Johns Hopkins Inlet. With regard to this last step, only a Tarr Inlet stop will receive preference, thereby ensuring that park visitors aboard the ship have an opportunity to see superlative sights in Glacier Bay without the ship's slowing down and turning an additional time, a maneuver that tends to increase stack emissions and concentrate them in one area. The NPS will increase its efforts to monitor and study air quality as part of its comprehensive research program and will amend the standards if amendments are required to protect the values and purposes of Glacier Bay National Park and Preserve.

One commenter pointed out that just prior to the publication of the proposed regulations, the State of Alaska revised its air quality regulations by relaxing the opacity standards for vessels in ports. Since neither the state nor the NPS considers Glacier Bay a ''port,'' the regulations which the NPS adopts today are substantially the same as current state regulations applicable to Glacier Bay. If the State of Alaska adopts more restrictive (i.e., protective of park environmental values) laws and regulations concerning visible emissions, NPS will incorporate such provisions in these regulations.

Water Pollution Control Strategies

In response to comments, NPS will implement pollution control strategies to mitigate the increase in vessel traffic with the additional resource protection requirement that cruise ships develop oil spill vessel response plans (VRP). Cruise ship operators must submit VRP for review and approval prior to conducting operations in Glacier Bay National Park. The VRP must meet planning and response standards similar to those identified in U.S. Coast Guard regulations for tank ships (33 CFR Part 155). The VRP will in part develop alternate response strategies for most probable and worst case spill scenarios, and will identify personnel, equipment and other spill response resources that can be timely deployed in response to a spill event. Recent cruise ship groundings in Alaska that resulted in oil spills have highlighted the need for advance planning and preparation, particularly since there is no pollution response contractor in Southeast Alaska that can provide a reasonably timely response to a spill event. The NPS will work with the cruise ship industry to develop VRPs that protect park resources while providing flexibility to the industry to meet established planning and response standards and criteria.

Underwater Noise Reduction

To mitigate the effects of underwater noise in Glacier Bay, the NPS will require every cruise ship to prepare and abide by an NPS-approved underwater noise pollution minimization plan. The NPS will also consider a cruise ship company's demonstrated ability to minimize underwater noise pollution as a strongly weighted preference for entry permits subject to competitive allocation. Several cruise ship industry commenters were critical of the NPS proposal that competitively allocates entry permits, granting a preference to vessels that can demonstrate minimization of air and underwater noise pollution. These commenters questioned whether a sufficient scientific link exists, for example, between underwater noise and humpback whales or other marine mammals. They also questioned the ability of the industry to respond where there are no established standards. However, another commenter suggested that NPS should use competitive allocation of entry permits to challenge companies to devise effective strategies to minimize their impacts.

Ensuring air and water quality in national parks is fundamental to the congressionally mandated mission of the NPS to conserve scenery, natural objects and wildlife ''unimpaired.'' Air quality studies of cruise ships in Glacier Bay demonstrate an obvious air pollution impact. *See,* Vequist, Frequency of Cruise Ship Stack Emissions in Glacier Bay (NPS VMP/EA p. 3–22). The NPS also believes that studies have established a sufficient scientific connection concerning vessel noise and changes in whale behavior to warrant a preference for quiet-running ships. *See,* NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 10–12). For the most part, NPS has established a goal and left industry the flexibility and incentive to figure out the best and most economic way to achieve it.

Cruise Ship, Tour Vessel and Charter Vessel Definitions

The regulations amend the existing definition, which is based solely on the United States System of classification (100 gross tons, U.S. System), by adopting an additional definition of vessel categories which references the International Convention System. United States (U.S.)-flagged vessels are classified under the U.S. System, foreign-flagged vessels under the International Convention System. Since all of the cruise ships and some of the tour boats operating in Glacier Bay National Park are foreign-flagged vessels, the regulations will now reference both tonnage systems in the definitions. Although the different systems are not directly comparable, NPS intends the two measures in the definition to be roughly equivalent and to maintain the status quo.

One cruise ship company asked that the 2,000 gross tons (GT) threshold tonnage (International Convention System) demarcating the line between tour vessels and cruise ships be raised to 20,000 GT. This recommendation, however, would substantially change the current demarcation between cruise ships and tour vessels and consequently allow substantial increases in the size of

tour vessels. The potential environmental consequences of this change have not been studied. More information on certain environmental impacts may become available in the future, as a result of recently initiated vessel acoustics studies with Cornell University and similar research which the park hopes to undertake with the U.S. Navy. Until then, the NPS believes that the 2,000 GT limit (International Convention System) should not be increased until there are specific findings, based on research, monitoring and other relevant information, that adverse consequences would not result.

In response to a comment, NPS has modified the definition of ''charter vessel'' slightly to allow use of a charter vessel to provide scheduled kayak and camper drop-off and pick-up service. Due in part to size, and in part to keeping continuity in tour presentations, tour vessels can only provide ferry service to a limited number of locations. By allowing charter vessels to augment this service, the NPS hopes to better disperse kayak and shore-based recreational impacts.

In response to another comment, NPS has modified the definition of ''tour vessel'' in the proposed regulation to remain similar to the existing regulations, with respect to including smaller vessels operating on a regularly scheduled route. Omission of this portion of the existing regulations from the proposed regulation was an error. Continued omission would have the unintended effect of excluding tour vessels operating under current NPS concession permits. The NPS will continue to determine that a proposed visitor service is both necessary and appropriate prior to permitting any smaller vessel as a tour boat.

Cruise Ship Entries

Public comment was overwhelmingly (approximately 90 percent) opposed to an immediate 72-percent increase in cruise ship traffic. As one commenter noted, a modest increase in cruise ship traffic is more consistent with the 1993 NMFS Biological Opinion, which urges the NPS to take a conservative approach in vessel increases. This rulemaking adopts such an approach. The several mitigation measures—including air, water and underwater noise pollution mitigation plans; closures of areas to motorized use; increased efforts to educate the visiting public and increased enforcement actions; plus the commitment to a focused research plan for the bay—should help protect against potential impacts of the vessel increases. The NPS is additionally mindful of its obligation to reduce entries should the additional traffic affect humpback whales, Steller sea lions, other wildlife, or any other values or purposes of Glacier Bay National Park and Preserve. NPS management policies concerning public use state that, although restrictions on recreational use should be limited to the minimum necessary to protect visitor safety and enjoyment, such restrictions may be required—

> when, in the judgment of the superintendent [a use or activity's] occurrence, continuation, or expansion would result in the derogation of the values or purposes for which the park was established, interfere significantly with the enjoyment of park resources and values by other visitors or be inconsistent with the park's enabling legislation or proclamation.

Management Policies, U.S. Department of the Interior, National Park Service, Chapter 8:2, Management of Recreational Use (1988).

This rulemaking requires vessels increases to be considered and implemented incrementally, as suggested by several commenters. With respect to the modest increases in vessel traffic authorized by this final rule for the 1996 and 1997 summer seasons, the NPS believes that the rule provides sufficient mitigation and other protective measures to assure protection of Glacier Bay resources and values. However, with respect to any future increases beginning in 1998, the NPS will examine research, inventory and monitoring results from the planned new studies in addition to existing scientific knowledge, and determine in the context of applicable authorities (*e.g.*, 16 U.S.C. 1, *et seq.*) whether further increases are appropriate. In this regard, NPS Management Policies direct that to the extent practicable, NPS should base its public use limits on the results of scientific research and other available support data. When, as here, that use has the potential to impact park purposes and values, including a threatened species and an endangered species—and virtually all conceivable mitigation measures have been implemented—a finding to expand a public use would require specific findings of no adverse impact to those resources based on research, inventory, monitoring, and other relevant information. If circumstances arise where scientific and other information is lacking, ambiguous, or inconclusive, the superintendent must err on the side of protecting resources. This rulemaking ensures that the NPS has the discretion to adjust cruise ship entries should an adjustment be advisable or required to protect the park's resources and values.

Several commenters noted that additional entries into Glacier Bay may lead to cruise ship companies dropping other Alaska ports from their schedule to the detriment of the economy in those communities. The NPS acknowledges that there may be some schedule changes; however, by adopting a more modest increase in entries at the present time and allowing for potential incremental increases later, disruption should be minimal as the industry and ports adjust.

A number of commenters also noted critically that cruise ships are generally foreign-built, foreign-owned, foreign-flagged vessels, and employ mostly foreign crew. Although this observation is true, the NPS has focused this rule on its statutory mission, *i.e.*, assuring protection of park resources and values and providing for their enjoyment so as to ''leave them unimpaired for the enjoyment of future generations.'' 16 U.S.C. 1.

Other comments suggested that the cruise ship evaluation process should include not only environmental criteria, but criteria concerning whether people are traveling on a ship for reasons that relate to the park (as opposed to other unrelated activities). In the process of competitively awarding cruise ship entries, the NPS has and will continue to consider the extent to which a company's cruise itinerary and on-board passenger activities focus on park purposes.

One commenter wrote to suggest that the park should recover more substantial fees from cruise ship companies. Under present law, the franchise fees collected from concessionaires at national parks generally go to the U.S. Treasury. The NPS supports legislative proposals pending before Congress that would direct increased concessionaire and admission fee revenues directly to the parks for investment in their long-term care.

Tour, Charter and Private Vessel Entries

Commenters' suggestions ranged from calls for no additional entries in these categories to calls for increases. Over the last three summer seasons, Glacier Bay park staff have had to turn away an increasing number of private boaters, with the trend expected to continue. The final rule establishes a 15-percent increase in private vessel seasonal entries and use-days which will accommodate more visitor-use opportunities in early June and late August, periods when the daily-use limit of 25 private vessels has not been filled in the past. The final rule also establishes a modest increase in charter vessel seasonal entries and use-days (8-percent). This action improves visitor

opportunities for this type of park experience, and at the same time tends to benefit the economies of local communities. As with other vessel categories the final rule does not increase the daily limit of charter vessels permitted in Glacier Bay (*i.e.*, six per day). The regulations that NPS published as part of the proposed rule included the respective 8- and 15-percent increases in seasonal entries and use-days. Therefore, this final rule retains the seasonal entry and use-day increases in charter and private vessels, as published in the proposed rule.

Tour boat companies, in particular, suggested that tour boats should receive more entries. Several suggested that some of the entries that NPS proposed for cruise ships should instead go to tour boats. NPS believes that increased opportunities for people to visit the bay can best be provided by modest increases in entries and use-days within the existing vessel-per-day limits. Generally, the increased traffic will occur on the shoulder seasons, not in mid-summer. Tour boats are currently operating at the maximum allowed number of three vessels per day during the summer season.

Commercial Fishing Vessels

Commenters were divided on the issue of how and whether commercial fishing vessels should be managed in Glacier Bay. NPS published proposed regulations concerning commercial fishing in Glacier Bay National Park on August 5, 1991 (50 FR 37202). NPS is reviewing the larger issue of the future of commercial fishing within Glacier Bay National Park in a separate effort that may result in additional regulations. The seasonal motor vessel closures included within today's rulemaking will apply to commercial fishing vessels, as well as all other types of motorized vessels and seaplanes. However, this rule continues the exemption that commercial fishing vessels actually engaged in commercial fishing have from the seasonal entry and daily use limits that apply to other vessel types.

Kayaks

Comments ranged from increasing kayak use to limiting it. Some commenters felt that NPS needs more data on kayak use, so that resource impacts from associated uses such as on-shore camping could receive more detailed consideration in the VMP/EA. NPS is establishing a backcountry monitoring program to establish levels of use and assess impacts. NPS will also continue to restrict camping in certain shoreline areas as necessary to limit camper impacts on bears and other resources. One commenter suggested that safety concerns based on the potential impacts of vessel wakes on kayaks had been exaggerated. For several reasons, however, NPS believes that the safety concerns are real, particularly in the cold and remote waters of Glacier Bay. One commenter suggested that NPS should require kayakers visiting Glacier Bay to attend an educational program on the use of the bay. NPS currently provides a kayaker/camper orientation program, which NPS plans to continue, improve, and perhaps make mandatory at some future date if such a requirement can reduce resource impacts and improve visitor safety.

Concession Boats

One commenter suggested that NPS should not allocate entry permits to charter vessels based in Bartlett Cove that operate sport fishing charters in Icy Strait waters outside the park; rather this commenter thought that such vessels should be encouraged to operate out of Gustavus. NPS believes that this comment has merit. To ensure that Bartlett Cove serves as a base for in-park activities (and not as a base for out-of-park sport fishing), NPS will assess vessels that exit the bay an additional entry upon return. Additionally, NPS will require Bartlett Cove-based charters to submit a park-based operations plan. As the commenter notes, out-of-park activities can better be served from Gustavus. This serves both the park (by reducing traffic through much of the lower bay whale waters) and the park visitor (by providing incentive for use of limited charter entries within the park). Local community economies may also benefit from visitors seeking charter sport fishing opportunities out of the park.

Bareboat Charters

As commonly used, ''bareboat charter'' means chartering a vessel without master (captain) or crew. Comments ranged from one that suggested prohibition of bareboat charters, except by companies registered by park management and familiar with park management principles, to one of support for bareboat rentals. One commenter suggested that the bareboat charters should not take permits from the pool of permits available to private citizens wishing to enter the park with their own boats. The NPS has reconsidered its position on bareboat charters. Basing another commercial service in Bartlett Cove would increase congestion at the already over-taxed facility. If the demand exists for a bareboat operation, commercial services could be more appropriately based out of Gustavus. NPS would require bareboat charters wanting access to the park to acquire an entry permit (and attend the orientation program), as would any other private boater.

NPS Boats

Several commenters wrote to suggest that NPS consider its own vessel use when proposing to restrict private motorized vessel access. One commenter stated that the VMP/EA did not analyze the potential increase in government vessel operations resulting from additional monitoring, research, resource protection and incident responses associated with this rulemaking. NPS examined its own vessel activities as part of the VMP/EA (*see*, p. 4.7–1). The NPS anticipates only a slight increase in its own vessel traffic as a result of the modest increase in other traffic authorized by this rulemaking. That increase will consist primarily of naturalist transfers to and from the additional cruise ships as the ships enter and exit the bay, and increased research activities. Other commenters were concerned that closures to motorized vessels, including research vessels during the summer season, would severely handicap on-going scientific studies in Glacier Bay. NPS may approve research activities for closed areas pursuant to the administrative exception contained in these regulations.

Wildlife Protection/Wilderness Waters

Generally, support for and opposition to wilderness water closures was equally divided. Commenters sometimes supported particular closures but not others. Specific comments concerning Dundas Bay opposed the proposed closure. Dundas Bay will remain open to motor vessels, in part to allow Elfin Cove residents motorized access to sheltered park waters. In response to commenters, NPS would like to assure the public that it has drawn virtually all of the closure boundaries to allow access to anchorages at the mouths of the various areas. Wildlife protection/wilderness water closures will take effect annually on May 1 (as in the proposed rule).

East Arm Waters

Generally, support for and opposition to east arm water closures to motorized vessels was equally divided. However, some commenters from both ''camps'' preferred a closure higher up the east arm. NPS has adopted this modification, which allows more motor vessel access to the east arm and its anchorages. It

provides kayakers with solitude, wilderness recreation and access to tidewater glaciers without motorized vessel disturbance without having to undertake a multi-day trip. The closure also mitigates a safety concern associated with kayaker susceptibility to being overturned by vessel wakes. Another comment that the NPS has adopted suggested splitting the summer season and alternating closures in some areas. This suggestion readily lent itself to the upper east arm: June 1 through July 15, the park will close Muir Inlet waters north of the McBride Glacier to motor vessels and seaplane landings, and July 16 through August 31, the park will close Wachusett Inlet (except the first anchorage) to motor vessels and seaplane landings. The alternating motor vessel closures in the east arm will allow, both visitors using motors and visitors seeking quiet, summertime access to an east arm tidewater glacier and the natural resources of Muir or Wachusett Inlets on a time sharing basis. Furthermore, alternating the closures allows the east arm to continue to serve as a motor vessel destination, thereby dispersing vessel use generally and reducing vessel crowding in the west arm.

Bartlett Cove Access

Two commenters suggested alternative entry demarcation lines to the current line at the mouth of Glacier Bay (Point Carolus-to- Point Gustavus). The suggestions would leave access to Bartlett Cove unrestricted. The adoption of these suggestions would result in an unpredictable increase in vessel traffic throughout the area of the park that attracts the highest concentration of whales, *i.e.*, lower bay whale waters. Therefore, NPS cannot adopt either of these suggestions. Until additional monitoring and studies have been completed and information has been developed on the interaction of vessels and whales that supports specific findings of no adverse impact, NPS cannot authorize increased access to Bartlett Cove.

Orientation Program

One commenter suggested that NPS waive the orientation program on repeat visits. The proposed and final regulations give the superintendent discretion to waive the program.

Other Restrictions

In response to comments, NPS has modified the superintendent's discretionary closure authority. NPS previously determined and still recognizes the need to provide temporary and intermittent administrative remedies to protect whales through imposition of public-use limits, whale-water designations, and other operating restrictions. *See*, 50 FR 19880, 19881–82 (May 10, 1985). The environmentally safe implementation and maintenance of the increased public-use levels authorized in this rulemaking require that the superintendent have the necessary authority to modify public use levels and establish vessel restrictions in response to changing conditions in order to protect all the park's resources. The final rule authorizes the superintendent to impose such conditions separately or as permit requirements to ensure the least possible impact to park resources, as whale and other wildlife feeding, breeding, and molting sites shift to new areas in the dynamic sea and landscape of the rebounding bay.

Section-by-Section Analysis

Section 13.65(b)(1) of the regulations defines various types of vessels and other terms used in this section. The rule retains most of the definitions without significant revision from the existing regulations. However, there are exceptions:

The rule revises the terms ''cruise ship,'' ''charter vessel'' and ''tour vessel.'' In addition to some technical revisions, the proposed definitions include a measurement standard based on the rules of the International Convention on Tonnage Measurements of Ships, 1969. Congress has provided for recognition of these rules that are generally used to measure and certify foreign hull vessels. *See*, Omnibus Budget Reconciliation Act of 1986, Title V—Maritime Programs, Part J—Measurement of Vessels, P.L. 99–509, 100 Stat. 1919 (codified as amended in scattered sections of 46 U.S.C.). The NPS has adopted a definition of cruise ship that includes a vessel with an International Tonnage Certificate at or exceeding 2,000 tons gross (that carries passengers for hire). The rule defines a vessel with an International Tonnage Certificate less than 2,000 tons gross (that carries passengers for hire) as a tour vessel or a charter vessel. The rule also retains the existing standards, based on the U.S. method for measuring vessels. The rule modifies the term ''charter vessel'' to allow scheduled camper or kayak drop-off and pick-up service. The rule expands the terms ''operate'' and ''operating'' to include the actual or constructive possession of a vessel. NPS has done this to enable enforcement action against vessels violating permit or closed-water restrictions when the vessel is not underway at the time of the violation. The rule adopts definitions for two new terms as a means to retain, clarify, and codify both restricted and permitted activities that were authorized and implemented under the existing 13.65(b)(2)(iii) whale-waters regulations. The first, ''speed through the water,'' is analogous in aeronautical terms to ''airspeed,'' as opposed to ''ground speed.'' NPS has measured and enforced whale-water speed limits in this manner to prevent collisions between vessels moving rapidly ''up-current'' and whales or other marine mammals that are drifting ''down'' in the tidal current. These speed limits also lower the level of underwater noise by limiting high engine revolutions that can disrupt whale feeding activities. The rule defines the term ''transit'' to allow vessels to approach perpendicularly and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife (except whales), camp or participate in any other park activity. The rule deletes the term ''whale season'' and includes the dates on which closures or restrictions begin and end as part of the regulation.

Section 13.65(b)(2) of the regulations authorizes a 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, this increase in traffic will be absorbed by distributing the additional entries throughout the summer season. Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. In determining whether to authorize future increases in cruise ship entries, NPS must err on the side of protecting park resources and values, particularly where the scientific information is lacking, ambiguous, or inconclusive. NPS will publish any future adjustment to cruise ship traffic within the scope of these regulations in the ''Notice'' section of the Federal Register, with opportunity for comment.

The rule revises current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15-percent increase in private boat traffic beginning with the 1996 summer season.

This section also provides for reinitiation of consultation with NMFS to ensure that the potential vessel traffic contemplated by these regulations does not affect endangered or threatened species, particularly in Glacier Bay National Park and Preserve. The section also requires the director of the NPS to reduce vessel entry and use levels if necessary to protect the values and purposes of Glacier Bay National Park and Preserve.

Section 13.65(b)(2)(A) requires cruise ships to prepare, and abide by, an NPS-approved air, water and underwater noise pollution minimization plan to be permitted to enter Glacier Bay. Section 13.65(b)(2)(B) clarifies that each cruise ship company's assessment of the impacts of its activities on Glacier Bay resources must correspond to the NPS research, inventory and monitoring plan. Section 13.65(b)(2) also incorporates the permit requirements of section 13.65(b)(3) of the existing regulations, with minor modifications. Paragraph (b)(2)(i)(B) generally requires private motor vessels entering the bay through the mouth to stop at the Bartlett Cove Ranger Station for orientation before proceeding up bay. Vessels that have previously visited the bay may receive a waiver. Paragraph (b)(2)(ii)(E) requires concessioner vessels to notify the Bartlett Cove Ranger Station within the 48 hours prior to, or immediately upon, entry to the bay. Paragraph (b)(2)(iii(C) allows private vessels to launch a motorized skiff or tender after anchoring. Paragraph (b)(2)(iv) prohibits permit and operating violations and clarifies the superintendent's authority to revoke or deny a permit based on a violation.

Section 13.65(b)(3) of the regulations retains the existing prohibitions on operating a vessel within one-quarter nautical mile of a whale, and on pursuing or attempting to pursue a whale. It also retains the superintendent's authority to designate temporary whale waters and establish vessel use and speed restrictions. The regulations identify, and designate as whale waters, areas in which seasonal restrictions have applied on a recurring basis. The regulations codify the restrictions that were implemented pursuant to section 13.65(b)(2) of the existing regulations, i.e., mid-channel transit through these waters, and in the case of lower bay waters, speeds not to exceed 20 knots.

As whales have been known to arrive at the mouth of Glacier Bay in May, the 20-knot speed limit and the requirement that vessels in transit stay one nautical mile off-shore become effective in the designated lower bay whale waters each year on May 15. This earlier date ensures that whales arriving at the mouth of Glacier Bay in late spring are able to pass with minimal disturbance through the narrow entrance to Glacier Bay to access feeding areas. When whales are present, the superintendent will impose a 10-knot speed limit ((b)(3)(v)(A)*(2)*). The rule also establishes a speed restriction to mitigate mortality and stress of breeding and molting harbor seals resulting from large vessel wakes in the narrow confines of the Johns Hopkins Inlet (paragraph (B)).

Seasonal closures and operating restrictions concerning the Spider Island group and Johns Hopkins Inlet that appear in paragraphs (b)(3)(vi) (C)–(F) will also protect the park's large concentration of breeding harbor seals. Except for the continuing Johns Hopkins Inlet cruise ship closure, the park has previously enforced these restrictions as park compendium regulations. Paragraphs (b)(3)(vi) (A)–(B) afford year-round protection to Steller sea lions and their haul-outs, and nesting sea bird colonies are protected seasonally and through year-round vessel landing and foot traffic closure of colonial nesting islands. Park compendium regulations previously protected these small islands seasonally. Continuing these restrictions year-round will reduce impacts to vegetation that is important to nesting birds and will otherwise protect this sensitive nesting habitat from trampling. These closures are consistent with NMFS and FWS recommendations. Paragraph (b)(3)(vi)(G) advises park visitors that the distances established by this rulemaking to be maintained between visitors and wildlife are minimum distances; 36 CFR 2.2 (wildlife protection) requires that greater distances be maintained from wildlife if it is likely that wildlife may be disturbed or frightened.

Seasonal water (area) closures for motor vessels protect nesting sea birds as well as molting and feeding waterfowl (paragraphs (b)(3)(vii)(A) *(1)–(4)*). These closures also protect harbor seal haul-outs associated with pupping and molting activities (paragraph *(4)*). NPS previously proposed similar closures for these areas (48 FR 14978, April 6, 1983). That rulemaking also recognized the importance of sheltering the unique concentrations of marine mammals and birds in these areas from motorized disruption during the critical months of feeding, breeding, nesting and rearing of young. With the exception of Rendu Inlet, these areas contain, or are approached through, shallow areas that are hazardous to navigate in motor vessels.

Paragraphs (b)(3)(vii) (B)–(C) adopt alternating motor vessel closures for the waters of the Muir Inlet north of McBride Glacier (June 1 through July 15) and the Wachusett Inlet (July 16 through August 31). NPS adopts these closures to prevent detriment to park resource values, including the opportunity for kayaking, camping, and engaging in other backcountry use away from the noise and intrusion of motor vessel traffic. Motor vessels can use these areas on a time-sharing basis. As discussed above, the NPS believes that the closures adopted in paragraphs (b)(3)(vi) and (b)(3)(vii)(A) are necessary to protect the natural resource values of Glacier Bay; and the closures adopted in paragraphs (b)(3)(vii) (B)–(C) are necessary to protect the visitor experience and recreational resource values of Glacier Bay. All closures are promulgated in accordance with ANILCA Section 1110(a) to prevent detriment to the resource values of Glacier Bay National Park and Preserve, including its wildlife and other natural resources as well as its opportunities for quiet and solitude.

To provide quiet at popular anchorages, section 13.65(b)(3)(viii) restricts generator and other non-propulsive motor use during the evening hours of summer.

Section 13.65(b)(3)(ix) clarifies the duties, responsibilities, and authority of the superintendent to regulate public use in response to changing conditions.

Section 13.65(b)(4) of the regulations adopts restrictions on marine vessel air pollution (stack) emissions.

NPS is addressing section 13.65(b)(5)–(6) of the existing regulations, *Restricted Commercial Fishing Harvest,* separately (*see,* proposed rules at 56 FR 37262 (August 5, 1991)); commercial fishing is not considered as part of this rulemaking. However, the seasonal closure of water areas to vessels ((b)(3)(vi) and (b)(3)(vii)) also applies to commercial fishing boats.

Drafting Information

The primary authors of this rulemaking are Russel J. Wilson, Alaska Field Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. Glen Yankus, NPS Alaska System Support Office, and

Randy King, Kevin Apgar and Mary Beth Moss, Glacier Bay National Park and Preserve also made significant contributions.

Administrative Procedures Act

In accordance with the Administrative Procedures Act (5 U.S.C. 553(d)(3)), the NPS has determined that publishing this rule 30 days prior to the rule becoming effective would delay effective implementation of this plan for the rapidly approaching summer season. This would be contrary to the public interest and the protection of park resources. Approximately 45 days were lost during the preparation of this plan due to the government shutdown. Wildlife protection provisions contained in the regulations are intended to take effect on May 1, and vessel traffic permit provisions apply as of June 1. NPS requires some lead time in order to inform the public and handle permit scheduling. Since NPS believes that all elements of this rule are inextricably linked—*e.g.*, the increases in vessel traffic must be balanced by the environmental protections—NPS has decided to invoke the ''good cause'' exception and make the entire rule effective upon publication. Therefore, under the ''good cause'' exception of the Administrative Procedures Act (5 U.S.C. 553(d)(3)), and as discussed above, it has been determined that this rulemaking is excepted from the 30 day delay in effective date, and shall become effective on the date published in the Federal Register.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this final rule at § 13.65(b)(2), have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue motor vessel permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so.

Additionally, cruise ships, tour vessels and charter vessels will be issued permits in accordance with NPS concession authorizations. To obtain or renew an entry permit, cruise ship companies will prepare and, after approval, implement a pollution minimization plan to assure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward vessel oil-spill response planning and prevention and minimization of air, water and underwater noise pollution while operating in Glacier Bay. Such plan will be submitted to the superintendent, who may approve or disapprove the plan.

The information will be used to grant administrative benefits and there is an obligation to respond.

Compliance With Other Laws

This final rule has been reviewed under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This regulation was subject to National Environmental Policy Act compliance and an Environmental Assessment (EA) was completed. Based on the information contained in the EA, a Finding of No Significant Impact (FONSI) was determined.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Chapter I as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.;* § 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197.

Subpart C—Special Regulations—Specific Park Areas in Alaska

2. Section 13.65 is amended by revising the heading of paragraph (b) and paragraphs (b)(1) through (b)(4) to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

* * * * *

(b) *Resource protection and vessel management*—(1) *Definitions.* As used in this section:

Charter vessel means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry up to 49 passengers, and is available for hire on an unscheduled basis; except a charter vessel used to provide a scheduled camper or kayak drop off service.

Commercial fishing vessel means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

Cruise ship means any motor vessel at or over 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) carrying passengers for hire.

Entry means each time a motor vessel passes the mouth of Glacier Bay into the bay; each time a private vessel activates or extends a permit; each time a motor vessel based at or launched from Bartlett Cove leaves the dock area on the way into Glacier Bay, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside Glacier Bay; the first time a local private vessel uses a day of the seven use-day permit; or each time a motor vessel is launched from another vessel within Glacier Bay, except a motor vessel singularly launched from a permitted motor vessel and operated only while the permitted vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not under way and in accordance with a concession agreement.

Glacier Bay means all marine waters contiguous with Glacier Bay, lying north of an imaginary line between Point Gustavus and Point Carolus.

Motor vessel means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power, except a skiff or tender under tow or carried on board another vessel.

Operate or *Operating* includes the actual or constructive possession of a vessel or motor vessel.

Private vessel means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing or official government business.

Pursue means to alter the course or speed of a vessel or a seaplane in a manner that results in retaining a vessel, or a seaplane operating on the water, at a distance less than one-half nautical mile from a whale.

Speed through the water means the speed that a vessel moves through the water (which itself may be moving); as distinguished from ''speed over the ground.''

Tour vessel means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry more than 49 passengers, or any smaller vessel that conducts tours or provides transportation at regularly scheduled times along a regularly scheduled route.

Transit means to operate a motor vessel under power and continuously so as to accomplish one-half nautical mile of littoral (*i.e.,* along the shore) travel.

Vessel includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

Vessel use-day means any continuous period of time that a motor vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

Whale means any humpback whale *(Megaptera novaeangliae).*

Whale waters means any portion of Glacier Bay, designated by the superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) *Permits.* The superintendent will issue permits for private motor vessels in accordance with this part and for cruise ships, tour vessels, and charter vessels in accordance with National Park Service concession authorizations and this part.

(i) *Private vessel permits and conditions.* Each private motor vessel must have a permit to enter Glacier Bay June 1 through August 31.

(A) The superintendent may establish conditions regulating how permits can be obtained, whom a vessel operator must contact when entering or leaving Glacier Bay, designated anchorages, the maximum length of stay in Glacier Bay, and other appropriate conditions.

(B) June 1 through August 31, upon entering Glacier Bay through the mouth, the operator of a private motor vessel must report directly to the Bartlett Cove Ranger Station for orientation.

(1) Failing to report as required is prohibited.

(2) The superintendent may waive this requirement before or upon entry.

(ii) *Commercial vessel permits and conditions.* Each commercially operated motor vessel must have the required permit(s) to enter Glacier Bay.

(A) To obtain or renew an entry permit, a cruise ship company must submit and, after approval, implement a pollution minimization plan. The plan must ensure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward vessel oil-spill response planning and prevention and minimization of air and underwater noise pollution while operating in Glacier Bay. The superintendent will approve or disapprove the plan.

(B) Each cruise ship company must assess the impacts of its activities on Glacier Bay resources pursuant to the NPS research, inventory and monitoring plan as specified in the applicable concession permit.

(C) The superintendent at any time may impose operating conditions to prevent or mitigate air pollution, water pollution, underwater noise pollution or other effects of cruise ship operation.

(D) The superintendent will immediately suspend the entry permit(s) of any cruise ship that fails to submit, implement or comply with a pollution minimization plan or additional operating condition.

(E) A commercial vessel, except a commercial fishing vessel, is prohibited from entering Glacier Bay unless the operator notifies the Bartlett Cove Ranger Station of the vessel's entry immediately upon entry or within the 48 hours before entry.

(F) Off-boat activity from a commercial vessel is prohibited, unless the superintendent allows it under conditions that the superintendent establishes.

(iii) *Exceptions from entry permit requirement.* A permit is not required to enter Glacier Bay when:

(A) A motor vessel is engaged in official business of the state or federal government.

(B) A private motor vessel based at Bartlett Cove is transiting between Bartlett Cove and waters outside Glacier Bay, or is operated in Bartlett Cove in waters bounded by the public and administrative docks.

(C) A motor vessel is singularly launched from a permitted motor vessel and operated only while the permitted motor vessel remains at anchor, or a motor vessel is launched and operated in accordance with a concession agreement from a permitted motor vessel while that vessel is not underway.

(D) A commercial fishing vessel otherwise permitted under all applicable authorities is actually engaged in commercial fishing within Glacier Bay.

(E) The superintendent grants a vessel safe harbor at Bartlett Cove.

(iv) *Prohibitions.* (A) Operating a motor vessel in Glacier Bay without a required permit is prohibited.

(B) Violating a term or condition of a permit or an operating condition or restriction issued or imposed pursuant to this chapter is prohibited.

(C) The superintendent may immediately suspend or revoke a permit or deny a future permit request as a result of a violation of a provision of this chapter.

(v) *Restrictions on vessel entry.* The superintendent will allow vessel entry in accordance with the following table:

Type of vessel	Allowable vessel use days per day	Total entries allowed	Total vessel use days allowed	Period covered by limitation
Cruise ship	2	([1])	([1])	Year round.
Tour vessel	3	.....	.....	Year round.
Charter vessel	6	312	552	June 1–Aug. 31.
Private vessel	25	468	1,971	June 1–Aug. 31.

[1] See paragraphs (b)(2)(v) (A) through (C) of this section.

(A) By October 1, 1996, the superintendent will reinitiate consultation with the National Marine Fisheries Service (NMFS) and request a biological opinion under section 7 of the Endangered Species Act. The superintendent will request that NMFS assess and analyze any effects of vessel traffic authorized by this section, on the endangered and threatened species that occur in or use Glacier Bay National Park and Preserve.

(1) Based on this biological opinion, applicable authority, and any other relevant information, the director shall reduce the vessel entry and use levels for any or all categories of vessels in this section effective for the 1998 season or any year thereafter, if required to assure protection of the values and purposes of Glacier Bay National Park and Preserve.

(2) The director will publish a document in the Federal Register on any revision in the number of seasonal entries and use days under this paragraph (b)(2)(v), with an opportunity for public comment.

(B) By October 1, 1997, the superintendent will determine, with the director's approval, whether studies have been completed and sufficient scientific and other information has been developed to support an increase in cruise ship entries for the 1998 summer season (June 1 through August 31) while assuring protection of the values and purposes of Glacier Bay National Park and Preserve. Any increase will be subject to the maximum daily limit of two vessel use-days. If the superintendent recommends an increase, the superintendent will publish a document of the increase in the Federal Register with an opportunity for public comments.

(C) By October 1 of each year (beginning in 1998), the superintendent will determine, with the director's approval, the number of cruise ship entries for the following summer season (June 1 through August 31). This determination will be based upon available scientific and other information and applicable authorities. The number will be subject to the maximum daily limit of two vessel use-days. The superintendent will publish a document of any revision in seasonal entries in the Federal Register with an opportunity for public comment.

(D) Nothing in this paragraph will be construed to prevent the superintendent from taking any action at any time to assure protection of the values and purposes of Glacier Bay National Park and Preserve.

(3) *Operating restrictions.* (i) Operating a vessel within one-quarter nautical mile of a whale is prohibited, except for a commercial fishing vessel actually trolling or setting or pulling long lines or crab pots as otherwise authorized by the superintendent.

(ii) The operator of a vessel accidentally positioned within one-quarter nautical mile of a whale shall immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator shall then direct or maintain the vessel on as steady a course as possible away from the whale until at least one-quarter nautical mile of separation is established. Failure to take such action is prohibited.

(iii) Pursuing or attempting to pursue a whale is prohibited.

(iv) *Whale water restrictions.* (A) May 15 through August 31, the following Glacier Bay waters are designated as whale waters.

(*1*) Lower bay waters, defined as waters north of an imaginary line drawn from Point Carolus to Point Gustavus; and south of an imaginary line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, as described in paragraph (b)(3)(vii)(A)(*4*) of this section, and following that line south and west to the Bartlett Cove shore.

(*2*) [Reserved]

(B) June 1 through August 31, the following Glacier Bay waters are designated as whale waters.

(*1*) Whidbey Passage waters, defined as waters north of an imaginary line drawn from the northernmost point of Lars Island to the northernmost point of Strawberry Island; west of imaginary lines drawn from the northernmost point of Strawberry Island to the southernmost point of Willoughby Island, the northernmost point of Willoughby Island (proper) to the southernmost point of Francis Island, the northernmost point of Francis Island to the southernmost point of Drake Island; and south of the northernmost point of Drake Island to the northernmost point of the Marble Mountain peninsula.

(*2*) East Arm Entrance waters, defined as waters north of an imaginary line drawn from the southernmost point of Sebree Island to the northernmost point of Sturgess Island, and from there to the westernmost point of the unnamed island south of Puffin Island (that comprises the south shore of North Sandy Cove); and south of an imaginary line drawn from Caroline Point across the northernmost point of Garforth Island to shore.

(*3*) Russell Island Passage waters, defined as waters enclosed by imaginary lines drawn from: the easternmost point of Russell Island due east to shore, and from the westernmost point of Russell Island due north to shore.

(C) The superintendent may designate temporary whale waters and impose motor vessel speed restrictions in whale waters. Maps of temporary whale waters and notice of vessel speed restrictions imposed pursuant to this paragraph (b)(3)(iv)(C) shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a ''Notice to Mariners.''

(D) Violation of a whale water restriction is prohibited. The following restrictions apply in designated whale waters:

(*1*) Except on vessels actually fishing as otherwise authorized the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel: *Provided, however,* that unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.,* by the most direct line to shore) through designated whale waters.

(*2*) Motor vessel speed limits established by the superintendent pursuant to paragraph (b)(3)(iv)(C) of this section.

(v) *Speed restrictions.* (A) May 15 through August 31, in the waters of the lower bay as defined in paragraph (b)(3)(iv)(A)(*1*) of this section, the following are prohibited:

(*1*) Operating a motor vessel at more than 20 knots speed through the water; or

(*2*) Operating a motor vessel at more than 10 knots speed through the water, when the superintendent has designated a maximum speed of 10 knots (due to the presence of whales).

(B) July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point) at more than 10 knots speed through the water is prohibited.

(vi) *Closed waters, islands and other areas.* The following are prohibited:

(A) Operating a vessel or otherwise approaching within 100 yards of South Marble Island; or Flapjack Island; or any of the three small unnamed islets approximately one nautical mile southeast of Flapjack Island; or Eider Island; or Boulder Island; or Geikie Rock; or Lone Island; or the northern three-fourths of Leland Island (north of 58°39.1′N. latitude; or any of the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the easternmost point of Russell Island; or Graves Rocks (on the outer coast); or Cormorant Rock, or any adjacent rock, including all of the near-shore rocks located along the outer coast, for a distance of 1½ nautical miles, southeast from the mouth of Lituya Bay; or the surf line along the outer coast, for a distance of 1½ nautical miles northwest of the mouth of the glacial river at Cape Fairweather.

(B) Operating a vessel or otherwise approaching within 100 yards of a Steller (northern) sea lion (*Eumetopias jubatus*) hauled-out on land or a rock or

a nesting seabird colony: *Provided, however,* that vessels may approach within 50 yards of that part of South Marble Island lying south of 58°38.6′N. latitude (approximately the southern one-half of South Marble Island) to view seabirds.

(C) May 1 through August 31, operating a vessel, or otherwise approaching within ¼ nautical mile of, Spider Island or any of the four small islets lying immediately west of Spider Island.

(D) May 1 through August 31, operating a cruise ship on Johns Hopkins Inlet waters south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point).

(E) May 1 through June 30, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point).

(F) July 1 through August 31, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point), within ¼ nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the ¼ nautical mile distance from concentrations of seals.

(G) Restrictions imposed in this paragraph (b)(3)(vi) are minimum distances. Park visitors are advised that protection of park wildlife may require that visitors maintain greater distances from wildlife. *See,* 36 CFR 2.2 (Wildlife protection).

(vii) *Closed waters, motor vessels and seaplanes.* (A) May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(*1*) Adams Inlet, east of 135°59.2′W. longitude (an imaginary line running approximately due north and south through the charted (*5*) obstruction located approximately 2¼ nautical miles east of Pt. George).

(*2*) Rendu Inlet, north of the wilderness boundary at the mouth of the inlet.

(*3*) Hugh Miller complex, including Scidmore Bay and Charpentier Inlet, west of the wilderness boundary at the mouth of the Hugh Miller Inlet.

(*4*) Waters within the Beardslee Island group (except the Beardslee Entrance), that is defined by an imaginary line running due west from shore to the easternmost point of Lester Island, then along the south shore of Lester Island to its western end, then to the southernmost point of Young Island, then north along the west shore and east along the north shore of Young Island to its northernmost point, then at a bearing of 15° true to an imaginary point located one nautical mile due east of the easternmost point of Strawberry Island, then at a bearing of 345° true to the northernmost point of Flapjack Island, then at a bearing of 81° true to the northernmost point of the unnamed island immediately to the east of Flapjack Island, then southeasterly to the northernmost point of the next unnamed island, then southeasterly along the (Beartrack Cove) shore of that island to its easternmost point, then due east to shore.

(B) June 1 through July 15, operating a motor vessel or a seaplane on the waters of Muir Inlet north of 59°02.7′N. latitude (an imaginary line running approximately due west from the point of land on the east shore approximately 1 nautical mile north of the McBride Glacier) is prohibited.

(C) July 16 through August 31, operating a motor vessel or a seaplane on the waters of Wachusett Inlet west of 136°12.0′W longitude (an imaginary line running approximately due north from the point of land on the south shore of Wachusett Inlet approximately 2¼ nautical miles west of Rowlee Point) is prohibited.

(viii) *Noise restrictions.* June 1 through August 31, except on vessels in transit or as otherwise permitted by the superintendent, the use of generators or other non-propulsive motors (except a windless) is prohibited from 10:00 p.m. until 6:00 a.m. in Reid Inlet, Blue Mouse Cove and North Sandy Cove.

(ix) *Other restrictions.* Notwithstanding any other provision of this part, due to the rapidly emerging and changing ecosystems of, and for the protection of wildlife in Glacier Bay National Park and Preserve, including but not limited to whales, seals, sea lions, nesting birds and molting waterfowl:

(A) Pursuant to §§ 1.5 and 1.6 of this chapter, the superintendent may establish, designate, implement and enforce restrictions and public use limits and terminate such restrictions and public use limits.

(B) The public shall be notified of restrictions or public use limits imposed under this paragraph (b)(3)(ix) and the termination or relaxation of such, in accordance with § 1.7 of this chapter, and by submission to the U.S. Coast Guard for publication as a ''Notice to Mariners,'' where appropriate.

(C) The superintendent shall make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The public shall be notified of these rules by the posting of a sign or a copy of the rules at the dock. Failure to obey a sign or posted rule is prohibited.

(x) Closed waters and islands within Glacier Bay as described in paragraphs (b)(3) (iv) through (vii) of this section are described as depicted on NOAA Chart #17318 GLACIER BAY (4th Ed., Mar. 6/93) available to the public at park offices at Bartlett Cove and Juneau, Alaska.

(xi) Paragraphs (b)(3) (i) through (iii) of this section do not apply to a vessel being used in connection with federally permitted whale research or monitoring; other closures and restrictions in this paragraph (b)(3) do not apply to authorized persons conducting emergency or law enforcement operations, research or resource management, park administration/supply, or other necessary patrols.

(4) *Marine vessel visible emission standards.* Visible emissions from a marine vessel, excluding condensed water vapor, may not result in a reduction of visibility through the exhaust effluent of greater than 20 percent for a period or periods aggregating more than:

(i) Three minutes in any one hour while underway, at berth, or at anchor; or

(ii) Six minutes in any one hour during initial startup of diesel-driven vessels; or

(iii) 12 minutes in one hour while anchoring, berthing, getting underway or maneuvering in Bartlett Cove.

* * * * *

Dated: April 22, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–13210 Filed 5–29–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID–1–1–5528a; FRL–5449–2]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State Implementation Plan submitted by the State of Idaho for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal

to a nominal 10 micrometers (PM_{10}) in the Northern Ada County PM_{10} nonattainment area.

DATES: This action is effective on July 29, 1996 unless adverse or critical comments are received by July 1, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720.

Written comments should be addressed to: Montel Livingston, EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue, OAQ–107, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Region 10, Idaho Operations Office, 1435 North Orchard, Boise, Idaho 83706, (208) 334–9555.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1994, EPA issued a proposed rulemaking action on the State Implementation Plan (SIP) for the Northern Ada County PM_{10} nonattainment area. *See* 59 FR 48582, Sept. 22, 1994. The plan was submitted for the purpose of satisfying the moderate area planning requirements for PM_{10} nonattainment areas, as set forth in subparts 1 and 4 of Title I of the Clean Air Act (CAA or Act). In that proposed rulemaking, EPA proposed to grant full approval of the emissions inventory and PM_{10} precursor exclusion elements, limited approval of the control measures submitted by the State for the limited purpose of making them Federally enforceable, and disapproval of the control measures, attainment demonstration and quantitative milestones, and reasonable further progress elements of the SIP. Disapproval of these elements was based on the State's failure to adopt into the SIP and submit to EPA the wood smoke control ordinances for the cities of Garden City, Meridian, and Eagle, and for unincorporated Ada County, which the State had relied on to implement the residential wood burning program identified in the SIP. In addition, the State had failed to adequately address in the SIP the enforceability of its control measures. EPA received no comments on its proposal.

On December 30, 1994, the State of Idaho, Department of Health and Welfare, Division of Environmental Quality (IDEQ or State) submitted to EPA additional information which included the wood smoke control ordinances for these areas; an explanation of the enforcement procedures, responsibilities, and sources of funding for each of the adopted ordinances; and the State's assurance of responsibility for adequate implementation of the local control measures. As described in more detail below, EPA believes the Northern Ada County PM_{10} SIP is now fully approvable and therefore fully approves the State's plan.

II. Analysis of State Submission

A detailed analysis of the SIP is contained in the September 22, 1994, Federal Register document proposing action on the Northern Ada County PM_{10} SIP. (59 FR 48582) That analysis evaluated each of the SIP elements, and concluded that certain elements were approvable and that certain elements had deficiencies requiring resolution. A summary of the analysis, and additional analysis of information contained in the December 30, 1994, submittal follows.

1. Procedural Background

IDEQ conducted public hearings and adopted the SIP consistent with Section 110 of Clean Air Act. The initial public hearing was held on October 11, 1990, and a second public hearing was held on November 14, 1991, on a plan modification. The additional information submitted on December 30, 1994, included four implementing ordinances that had each been adopted by the responsible agency after having gone through the public hearing process required by State and local law. EPA has determined that notice and public hearing, meeting the requirements of 40 CFR 51.102, is not required for the December 30, 1994, submittal because the ordinances and other information submitted by the State do not differ materially from the control measures outlined in the SIP that went through notice and public hearing.

2. Accurate Emissions Inventory

The September 22, 1994 Federal Register document discussed the emissions inventory contained in the November 15, 1991, SIP and concluded it was consistent with the requirements of Sections 172(c)(3) and 110(a)(2)(K) of the Act. The additional information submitted on December 30, 1994, did not change the emissions inventory. Thus, for the reasons set forth in the September 22, 1994 Federal Register document, EPA is fully approving the emission inventory.

3. Control Measures

In the September 22, 1994 Federal Register document, EPA determined that the November 14, 1991, SIP did not provide for the timely implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT). To achieve required emission reductions, the SIP relied upon a residential wood burning program, which consisted of four elements: an episodic wood burning curtailment program, a wood smoke public education/awareness program, a wood stove certification program, and a wood stove change-out program. The principal element of the residential wood burning program was the episodic wood burning curtailment program. The SIP stated that this program would be implemented at the local level through the adoption of local ordinances by Ada County, and by the cities of Boise, Garden City, Eagle, and Meridian. However, as noted in the September 22, 1994, Federal Register document, the State had not adopted and submitted all of these ordinances as part of the SIP submittal and the SIP therefore did not satisfy the RACM/RACT requirement.

The additional information submitted to EPA on December 30, 1994, included the required ordinances for Ada County, and for the cities of Garden City, Eagle, and Meridian. Each ordinance describes the procedures for instituting a wood stove curtailment program, including the monitored level at which an ''alert'' is called (100 $\mu g/m^3$), and provisions for exemptions from the program. The additional information also included a description of the procedures by which each local agency in the nonattainment area which has passed a wood smoke control ordinance will issue wood stove permits, determine exemptions from the curtailment program, enforce the program, and fund implementation.

EPA believes that the State's December 30, 1994, submittal addresses the deficiencies identified in the September 22, 1994, Federal Register document, with one exception which does not bar full approval of the State's control measures as meeting the RACM/RACT requirement. The State's initial SIP submittal stated that all cities in the nonattainment area and the unincorporated areas of Ada County had ordinances prohibiting the sale and installation of uncertified wood stoves. The initial SIP submittal, however, only included the ordinance for the City of Boise, and EPA proposed limited approval of that control measure. As stated above, the additional information

submitted on December 30, 1994, included wood smoke control ordinances for Garden City, Eagle, Meridian, and unincorporated Ada County. Only the Garden City and Ada County ordinances, however, have prohibitions on the sale and installation of non-certified wood stoves. EPA does not believe that the failure of the Cities of Meridian and Eagle to prohibit the sale and installation of uncertified wood stoves poses a bar to full approval of the control measures identified in the SIP as meeting the RACM/RACT requirement. As stated in the September 22, 1994, Federal Register document, the State did not take any emission reduction credit for the wood stove certification program. *See* 59 FR 48585. RACM/RACT does not require the implementation of all available control measures where an area demonstrates timely attainment of the NAAQS and implementation of additional control measures would not expedite attainment. *See* 57 FR 13498, 13540–13544 (April 10, 1992).

The September 22, 1994 document discussed whether, assuming the implementation of control measures on wood smoke as identified in the SIP, RACM/RACT required the imposition of controls on emissions of other sources of PM_{10} in the nonattainment area, such as road dust, prescribed silvicultural and agricultural burning, and stationary sources. *See* 59 FR 48585. EPA preliminarily concluded that additional controls on these sources would not be necessary, assuming implementation of the proposed wood smoke controls, either because emissions from such sources were insignificant or because additional controls on such sources were not necessary for and would not expedite attainment. Now that the State has fully implemented the wood smoke controls discussed in the SIP and demonstrated that such controls result in timely attainment of the PM_{10} standard, EPA concludes that RACM/RACT does not require additional controls on sources other than wood smoke.[1] Accordingly, for the reasons set forth in the September 22, 1994, Federal Register document and the reasons set forth herein, EPA is approving the State's control measures as meeting the RACM/RACT requirement.

[1] As discussed in Section II.6 below, the State has recently identified in the nonattainment area two major sources of NO_X, which is a precursor to particulate formation under certain meteorological conditions. Whether RACM requires the implementation of additional controls on these major sources of NO_X is discussed in Section II.6 below.

4. Attainment Demonstration

As discussed in the September 22, 1994, Federal Register document, IDEQ conducted modeling which demonstrated the nonattainment area will be in attainment of the 24-hour PM_{10} NAAQS during the period of 1993 through 2000. However, because IDEQ had not demonstrated to EPA that it had adopted the wood smoke control measures necessary to achieve the emission reductions identified in the SIP, EPA proposed to disapprove the attainment demonstration. *See* 59 FR 48586. Now that IDEQ has demonstrated that the necessary control measures have been adopted and implemented and EPA is approving those measures as meeting the RACM/RACT requirement, EPA is giving full approval to the State's attainment demonstration.

A review of monitored data in the Northern Ada County NAA indicates that no exceedences of the standard have occurred since January 7, 1991. Over time, the expected exceedence rate for the 24-hour standard has been steadily decreasing, from a high of 4.5 during the three-year period 1986–1988 to 0.0 for the period 1992–1994. Based on the monitored data, it appears the nonattainment area has attained the 24-hour PM_{10} standard.

5. Quantitative Milestones and Reasonable Further Progress

The State's initial SIP submittal also met the requirements for quantitative milestones and Reasonable Further Progress (RFP). In the September 22, 1994, Federal Register document, however, EPA proposed disapproving these requirements because attainment and maintenance of the standard was predicated on control measures that had not been incorporated into the SIP. *See* 59 FR 48586–48587. Now that this deficiency has been corrected by the December 31, 1994, submittal, EPA is fully approving State's plan as meeting the quantitative milestones and RFP requirements.

6. PM_{10} Precursors

The September 22, 1994, Federal Register document proposed to grant the exclusion from controls authorized under Section 189(e) of the Act for major stationary sources of PM_{10} precursors in the nonattainment area. *See* 59 FR 48587. EPA proposed a finding that major stationary sources of PM_{10} precursors did not contribute significantly to PM_{10} levels in excess of the NAAQS in the nonattainment area. IDEQ has subsequently submitted information identifying in the nonattainment area two major stationary sources of NO_x, a PM_{10} precursor under certain meteorological conditions. Northwest Pipeline has a potential to emit 314 tons of NO_x per year and St. Alphonsus Hospital has the potential to emit 116 tons of NO_x per year. The SIP provides an adequate demonstration that implementation of RACT will be sufficient to attain the PM_{10} by the applicable attainment date. In addition, EPA reviewed the ambient air quality data from 1992, 1993, and 1994 and determined that the area attained the NAAQS by December 31, 1994. Thus, although there are two major stationary sources of PM_{10} precursors in the nonattainment area, EPA believes these sources do not contribute significantly to PM_{10} levels in excess of the NAAQS in the nonattainment area. Therefore, Section 189(e) of the Clean Air Act does not require the imposition of control requirements on major stationary sources of PM_{10} precursors in the nonattainment area.

7. Enforceability of Control Measures

In the September 22, 1994, Federal Register document, EPA reserved judgment on the enforceability of the identified control measures because several of the control measures relied on by the State in its SIP submittal had not been submitted to EPA. *See* 59 FR 48587. As discussed in Section II.3 above, IDEQ has now submitted those control measures to EPA, and EPA has determined the control measures meet the RACM/RACT requirement. The December 31, 1994, submittal includes a description of each implementing ordinance, the agency responsible for enforcement, enforcement procedures and penalties, and the steps the State of Idaho would take should an agency fail to implement or enforce its respective ordinance, as required by Section 110(a)(2)(E) of the Clean Air Act. Specifically, IDEQ has committed to impose Tier II operating permits on all owners and operators of wood stoves within the nonattainment area should a local agency fail to implement its ordinance, and IDEQ has demonstrated its authority to do so. In summary, EPA believes that IDEQ has satisfied the enforceability requirements of Title I of the Act, including the requirements of Section 110(a)(2)(E), and is therefore fully approving the State's SIP as meeting these requirement.

8. Contingency Measures

Section 172(c)(9) of the Act requires that contingency measures be included in each moderate area PM_{10} nonattainment plan. These measures must take effect without further action by the State or EPA upon a

determination that the area has failed to make Reasonable Further Progress (RFP) or attain the PM_{10} NAAQS by the applicable statutory deadline, and should result in emission reductions approximately equal to the emissions reductions necessary to demonstrate RFP. *See generally* 57 FR 13510–13512 and 13543–13544. For a moderate PM_{10} nonattainment area, such as Northern Ada County, with a three to four year period between SIP development and the attainment date, this would mean that contingency measures should result in emission reductions equal to at least 25 percent of the emission reductions in the total control strategy. 57 FR 13544. A State may rely on ''over control'' as a contingency measure, that is, rely on control measures that are part of the core control strategy in the SIP, if such control measures result in emission reductions greater than those required to achieve the 24-hour NAAQS standard of 150 $\mu g/m^3$.

On July 13, 1995, IDEQ submitted contingency measures to EPA for approval which were a combination of over control from the wood smoke control measures and new controls on fugitive road dust. Modeling of the core control measures in the SIP for the Northern Ada County nonattainment area indicates a 17 $\mu g/m^3$ reduction in the 24-hour standard (from 164 $\mu g/m^3$ to 147 $\mu g/m^3$). This means that the core control measures in the SIP result in over control of 18 percent (ratio of the difference between 147 $\mu g/m^3$ and 150 $\mu g/m^3$ to 17 $\mu g/m^3$). To obtain the additional 7 percent of emission reductions needed for 25 percent reduction of emissions through contingency measures, the State has adopted a program for the reduction of fugitive road dust. The State's submittal includes a signed agreement between the Idaho Transportation Department, Ada County Highway District, and IDEQ, which details a road sweeping program designed to reduce particulate emissions by prioritizing road sanding such that streets with the highest potential to emit PM_{10}, in the form of re-entrained dust, are swept first, and more frequently. IDEQ retains the authority to review and approve any changes to the plan. The State anticipates that this road dust program will result in an additional 9 percent reduction in PM_{10} emissions. Together with the 18 percent in emission reductions achieved through over control, the State's contingency measures are predicted to result in more than 25 percent of the total reductions necessary for attainment. EPA therefore approves the contingency measures submitted by the State on July 13, 1995.

9. New Source Review

States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified stationary sources of PM_{10} by June 30, 1992. *See* Section 189(a) of the Clean Air Act. This permit program element, known as the New Source Review (NSR) program, was submitted by the State of Idaho on May 17, 1994. EPA notified the State on June 10, 1994, that its NSR program submittal was complete. EPA is currently reviewing Idaho's NSR program submittal to determine if the program meets the requirements of the Act. EPA intends to take action on Idaho's NSR program in another rulemaking after EPA has completed its review.

III. This Action

EPA is granting full approval to the November 14, 1991, Northern Ada County PM_{10} SIP, as supplemented by additional information which IDEQ has submitted since that time. IDEQ has demonstrated that the SIP meets the applicable requirements of the Act.

IV. Administrative Review

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

SIP approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval process 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).

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

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

EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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.

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, EPA Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 29, 1996

unless, by July 1, 1996 adverse or critical comments are received.

If 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 be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 29, 1996.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: March 20, 1996.

Chuck Clarke,

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 N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(31) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(31) On November 14, 1991, and on December 30, 1994, the Idaho Department of Health and Welfare (IDHW) submitted revisions to the Idaho State Implementation Plan (SIP) for the Northern Ada County/Boise Particulate (PM_{10}) Air Quality Improvement Plan.

(i) Incorporation by reference.

(A) November 14, 1991, letter from the IDHW Administrator to the EPA Region 10 Regional Administrator submitting a revision to the Idaho SIP for the Northern Ada County/Boise Particulate Air Quality Improvement Plan; The Northern Ada County Boise Particulate (PM_{10}) Air Quality Improvement Plan adopted on November 14, 1991.

(B) December 30, 1994, letter from the IDHW Administrator to the EPA Region 10 Regional Administrator including a revision to the Idaho SIP for the Northern Ada County/Boise PM_{10} Air Quality Improvement Plan; Appendix C–1, Supplemental Control Strategy Documentation, Northern Ada County/Boise PM_{10} Air Quality Improvement Plan, adopted December 30, 1994, with the following attachments: Garden City Ordinances #514 (May 14, 1987), #533 (January 10, 1989) and #624 (September 13, 1994); Meridian Ordinance #667 (August 16, 1994); Eagle Ordinance #245 (April 26, 1994); Ada County Ordinance #254 (November 3, 1992); and Table Ordinance-1 (December 30, 1994).

[FR Doc. 96–12888 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–84; Notice 02]

RIN 2127–AF70

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule clarifies the test procedures in Standard No. 202, ''Head Restraints,'' by replacing the phrase ''rearmost portion of the head form'' with a reference to the portion of the head form in contact with the head restraint. The proposal on which this rule is based contained two other proposed amendments to the standard; this document terminates rulemaking on those proposals.

DATES: Effective Date: The amendments made in this rule are effective July 15, 1996.

PETITION DATES: Any petitions for reconsideration must be received by NHTSA no later than July 15, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Clarke Harper, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NPS–12, telephone (202) 366–4916, fax (202) 366–4329, electronic mail ''charper@nhtsa.dot.gov''.

For legal issues: Steve Wood, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail ''swood@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1994 directive, ''Regulatory Reinvention Initiative,'' from the President to the heads of departments and agencies, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for amendment or rescission. Some of these provisions were found in Federal Motor Vehicle Safety Standard No. 202, ''Head Restraints.''

On October 24, 1995, NHTSA published a notice of proposed rulemaking (NPRM), proposing to delete one of two alternative performance requirements for head restraints. The NPRM also proposed to clarify the test procedures by replacing the phrase ''rearmost portion of the head form'' with a reference to the portion of the head form in contact with the head restraint. Last, the NPRM proposed to specify that head restraints on bench-type seats are loaded simultaneously during compliance testing.

The agency received eight comments in response to this NPRM. As explained below, after reviewing these comments the agency has decided to amend Standard No. 202 to replace the phrase ''rearmost portion of the head form'' with a reference to the portion of the head form in contact with the head restraint. However, the agency is terminating rulemaking on the other proposed amendments.

Dynamic Test Requirement

Standard No. 202 allows manufacturers a choice of two performance requirements which provide equivalent levels of safety. One alternative, found in S4.3(b) and S5.2, requires the head restraint to have minimum dimensions and to not displace more than 4 inches when a 3,300 inch pound moment is applied to the head restraint. The other alternative, found in S4.3(a) and S5.1, limits rearward angular displacement of the dummy head to less than 45 degrees during a forward acceleration of at least 8g applied to the seat supporting structure. The second alternative involves a testing procedure that is more cumbersome than the first alternative and subsequently has rarely, if ever, been used. Because this alternative has rarely been used, NHTSA proposed to remove this alternative to simplify the regulatory language of the standard.

AAMA and Volkswagen supported this proposal; however, other commenters did not agree. Some commenters stated that Standard No. 202 should be amended by strengthening the dynamic test rather than removing it. Other commenters stated that manufacturers should be allowed this alternate test, and that the dynamic test more closely depicted the real world.

Atwood Mobile Products and the Recreation Vehicle Industry Association stated that removal of the dynamic test could stifle future technological innovation in the area of deployable crash protections systems for head restraints. The Insurance Institute for Highway Safety agreed, stating that development of such systems would be impeded by a standard that only specifies geometric requirements.

Based on these comments, NHTSA has decided to terminate rulemaking on the proposal to rescind the dynamic test alternative in Standard No. 202. NHTSA is concerned that removal of this alternative could stifle technological improvements in this area. In addition, it was not the intention of the proposal to restrict the choice of options available to manufacturers.

''Rearmost Portion of the Head Form''

Paragraph S4.3(b)(3) of Standard No. 202 states that a head restraint installed under option (b) of the standard must limit the rearward displacement of ''the rearmost portion'' of the head form used to apply a test load to the restraint. During agency compliance testing, questions have occasionally arisen regarding what is meant by the phrase ''rearmost portion of the head form'' in S4.3(b)(3). Therefore, the agency proposed to clarify the standard by replacing the reference to the phrase ''rearmost portion of the head form'' with a reference to the portion of the head form in contact with the head restraint.

Three commenters addressed this issue. Two supported the proposal and only one commenter (Liability Research Group (LRG)) objected to it. LRG believed that the proposed change would allow head form contact below the level of the mid-line of the head form and lead to poor head restraint designs. LRG provided no explanation of how the wording change would be detrimental to safety.

The wording change merely clarifies the location on the head form which is subject to the requirement. Therefore, the change will have no effect on safety and will not allow designs not already allowed by the standard. Therefore, NHTSA is adopting the proposed amendment.

Test Consolidation for Bench Seats

To reduce compliance testing costs, the agency proposed to specify that head restraints on bench-type seats would be loaded simultaneously during testing. On front bench seats, this proposal would have required the driver's and right passenger's head restraints to be tested in a single test instead of in two separate tests. Under the current test procedure, a load that will produce a 3,300 inch pound moment is applied to the head restraint. That load is then increased until either a 200 pound load is applied or the seat back fails. NHTSA tentatively concluded that manufacturers could experience minor cost savings as a result of running one test of both head restraints simultaneously, rather than two separate tests.

In the NPRM, the agency recognized that the proposal might theoretically allow manufacturers to install less strong head restraints. If simultaneous loads were to cause the seat back to fail before the 200 pound load were applied, the test would be considered incomplete, rather than a failure. The agency would not have been able to fully evaluate compliance of the vehicle with Standard No. 202. However, NHTSA did not believe that testing head restraints simultaneously would result in a seat back failure. This is because NHTSA has never had a seat back fail during its compliance testing for Standard No. 202, and because the total load would be less than seats are required to withstand under Standard No. 207, *Seating Systems.*

Therefore, the agency did not expect this proposal to result in a lessening of the safety requirements of the standard.

No commenter supported this proposal. Commenters expressed concern that the proposal could allow manufacturers to install weaker seats rather than strong head restraints. The commenters stated that there was no data to support the agency's belief that the proposal would not result in a reduction in safety.

Commenters also stated that the savings to manufacturers would not result. Commenters stated that the test setup would not be noticeably different for a test of two head restraints in comparison to two single tests. Commenters also stated that manufacturers would incur initial costs to upgrade laboratory equipment to conduct simultaneous tests.

Based on these comments, NHTSA is terminating rulemaking on this proposal. The intent of the proposal was to (a) reduce compliance test costs (b) without a reduction in safety. Commenters provided information that the first of these goals was not likely to be met. In addition, commenters raised doubts that the second goal would be met also.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. This rule merely clarifies a phrase in the test procedure, and does not change the regulatory requirements of the standard. Therefore, there should be no economic impact from this rule.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the agency expects no economic impact from this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.202 is amended by revising section S4.3(b)(3) to read as follows:

§ 571.202 Standard No. 202; Head restraints.

* * * * *

S4.3

* * * * *

(b)

* * * * *

(3) When tested in accordance with S5.2, any portion of the head form in contact with the head restraint shall not be displaced to more than 4 inches perpendicularly rearward of the displaced extended torso reference line during the application of the load specified in S5.2(c); and

* * * * *

Issued on May 22, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–13527 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 960111003–6068–03; I.D. 052196B]

Pacific Halibut Fisheries; 1996 Halibut Landing Report No. 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATE: Non-treaty commercial fishing period for Area 2A: 8 a.m. through 6 p.m., Pacific local time, July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995, and amended at 61 FR 11337, March 20, 1996). On behalf of the IPHC, this inseason action is published in the Federal Register to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1996 Halibut Landing Report No. 1

Non-treaty Commercial Fishing Period Limits in Area 2A

The Commission has determined that fishing period limits will be required during the 10-hour, July 10 non-treaty directed commercial fishing period in Area 2A to avoid exceeding the 91,052 pound (41.90 metric tons (mt)) catch limit. The July 10 fishing period will begin at 8:00 a.m. and end at 6:00 p.m. The fishery is restricted to waters that are south of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by National Marine Fisheries Service. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (pounds)	
Length	Letter	Dressed, head-on	Dressed, head-off *
0–25	A	285	250
26–30	B	360	315
31–35	C	575	505
36–40	D	1,580	1,390
41–45	E	1,700	1,495
46–50	F	2,035	1,790
51–55	G	2,265	1,995
56+	H	3,410	3,000

* Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each vessel license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Northwest Treaty Tribes Fishery in Area 2A

Northwest treaty Indian tribes were allocated a total allowable catch of 182,000 pounds (82.55 mt) in subarea 2A–1 (northern Washington coast) in 1996. Of this total, 14,000 pounds (6.35 mt) are reserved for ceremonial and subsistence purposes, leaving 168,000 pounds (76.20 mt) for the commercial fishery.

As of April 1, 1996, the total commercial catch in subarea 2A–1 was 166,000 pounds (75.29 mt). A restricted commercial fishery occurred March 15 to April 1, producing 12,000 pounds (5.44 mt). Two directed commercial fishing periods produced a total of 154,000 pounds (69.85 mt). A decision whether to reopen subarea 2A–1 to catch the 2,000 pounds (0.90 mt) remaining in the catch limit will be made later.

Area 2B Commercial Fishery Update

Halibut landings from Area 2B total 3.0 million pounds (1,360.79 mt) through May 6, leaving 6.52 million pounds (2,957.45 mt) of the catch limit to be caught. The fishery will continue until all Individual Vessel Quotas have been filled, or November 15, whichever is earlier.

Annette Island Reserve Fishery in Area 2C

The Metlakatla Indian community has been authorized by the United States Government to conduct a commercial halibut fishery within the Annette Island Reserve. One 48-hour fishing period occurred between April 27–29, producing a total catch of 3,050 pounds (1.38 mt).

Alaskan Commercial Fishery Update

It is estimated that the following catches and number of landings were made in the Alaskan Individual Fishing Quota (IFQ) fishery through May 1, 1996. No Community Development Quota landings have been made.

Area	Catch limit (000's pounds)	Catch (000's pounds)	No. of landings
2C	9,000	2,354	603
3A	20,000	3,786	493
3B	3,700	215	35
4A	1,950	26	4
4B	2,310	13	1
4C	770	0	0
4D	770	0	0
4E	120	0	0
Total	38,620	6,394	1,136

During the same time period in 1995, March 15 through May 2, 2.5 million pounds (11,339.92 mt) were landed in the Alaskan IFQ fishery.

Dated: May 23, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13474 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 61, No. 105
Thursday, May 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV96–911–3]

Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that referenda be conducted among eligible producers of Florida limes and Florida avocados to determine whether they favor continuance of the marketing orders regulating the handling of limes and avocados grown in the production area.

DATES: The referenda will be conducted from June 1 through June 15, 1996. To vote in these referenda, growers must have been producing Florida limes or Florida avocados during the period April 1, 1995, through March 31, 1996.

ADDRESSES: Copies of the marketing orders may be obtained from the office of the referendum agent at P.O. Box 2276, Winter Haven, Florida, 33883–2276, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456; telephone (202) 720–5053.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, Department of Agriculture, P.O. Box 2276, Winter Haven, Florida, 33883–2276; telephone: (941) 299–4770; or Britthany Beadle, Marketing Order Administration Branch, Fruit & Vegetable Division, Agricultural Marketing Service, Department of Agriculture, Room 2536–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order Nos. 911 [7 CFR Part 911] and 915 [7 CFR Part 915], hereinafter referred to as the ''orders,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the ''Act'', it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by the producers. The referenda shall be conducted during the period June 1, through June 15, 1996, among Florida lime and avocado producers in the production area. Only producers that were engaged in the production of Florida limes or Florida avocados during the period of April 1, 1995, through March 31, 1996, may participate in the continuance referenda.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The Secretary would consider termination of the order(s) if less than two-thirds of the producers voting in the referenda and producers of less than two-thirds of the volume of Florida limes or Florida avocados represented in the referenda favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referenda. The Secretary will also consider other relevant information concerning the operation of the orders; the orders' relative benefits and disadvantages to producers, handlers, and consumers; and whether continued operation of the orders would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 [Pub. L. 104–13], the ballot materials to be used in the referenda herein ordered have been submitted to and approved by OMB and have been assigned OMB Nos. 0581–0091 for Florida limes and 0581–0078 for Florida avocados. It has been estimated that it will take an average of 10 minutes for each of the approximately 114 producers of Florida limes and 138 producers of Florida avocados to cast a ballot.

Participation in the referenda is voluntary. Ballots postmarked after June 15, 1996, will not be included in the vote tabulation.

Doris Jamieson and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referenda agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruit, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' [7 CFR Part 900.400 *et. seq*].

Ballots will be mailed to all producers of record and may also be obtained from the referenda agents and their appointees.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreement, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: May 22, 1996.

D. Michael Holbrook,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 96–13615 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AE87; 3150–AF15

Standard Design Certification for the U.S. Advanced Boiling-Water Reactor and System 80+ Designs; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: extension of the comment period.

SUMMARY: A supplementary notice of proposed rulemaking for certification of the U.S. Advanced Boiling-Water Reactor (ABWR) and System 80+ designs was published in the Federal Register on April 24, 1996 (61 FR 18099). The supplementary comment period expired on May 24, 1996. On May 17, 1996, the U.S. Nuclear Regulatory Commission (NRC) received a request for a 60-day extension of the supplementary comment period from the Nuclear Energy Institute (NEI). NEI requested the extension in order to provide substantive comments on new issues, as well as on longstanding issues that NEI stated have not yet been resolved to its satisfaction. Therefore, the Commission is extending the comment period to July 23, 1996.

The final design certification rules for the ABWR and System 80+ designs, which are under consideration by the Commission, are contained in SECY–96–077, ''Certification of Two Evolutionary Designs,'' which was prepared by the NRC staff. This SECY paper has been placed in the NRC Public Document Room (PDR), and comments on the proposed rules, focusing specifically on staff-recommended changes from the rules originally proposed, are solicited. These changes are discussed in the supplementary information section of the recommended notices of final rulemaking contained in SECY–96–077. In addition, GE Nuclear Energy (GE) submitted draft changes to the ABWR Design Control Document (DCD) to the NRC in a letter dated April 16, 1996 that GE intends to include in its final DCD. Comments are also solicited on GE's letter of April 16, 1996, which is available in the NRC PDR.

DATES: Comments are due by July 23, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission will only assure consideration for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Comments may also be hand delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of SECY–96–077, including the Federal Register notices for both rules, and the comments received will be available for examination at the NRC Public Document Room at 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 23rd day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–13574 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125 Series 1000A and Model Hawker 1000 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 Beech (Raytheon) Model BAe 125 series 1000A and Model Hawker 1000 airplanes. This proposal would require a one-time inspection for correct sleeve lengths, an inspection to detect discrepancies of the elevator pulley assembly, and correction of any discrepancy. This proposal is prompted by reports indicating that some aircraft have been fitted with an elevator pulley that was assembled incorrectly during manufacture. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the elevator control circuit due to failure of one or more outer lugs or malfunction of the elevator pulley assembly as a result of incorrect assembly of the pulley.

DATES: Comments must be received by July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–166–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 Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; 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–166–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–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified

the FAA that an unsafe condition may exist on certain Beech (Raytheon) Model BAe 125 series 1000A and Model Hawker 1000 airplanes. The CAA advises that it has received reports indicating that some aircraft have been fitted with an elevator pulley that was assembled incorrectly during manufacture. Failure of one or more outer lugs or malfunction of the elevator pulley assembly, if not corrected, could result in reduced structural integrity of the elevator control circuit.

Explanation of Relevant Service Information

The manufacturer has issued Hawker Service Bulletin SB 27–161, Revision 1, dated July 29, 1994, which describes procedures for a one-time inspection for correct sleeve lengths, and a one-time visual inspection to detect discrepancies of the elevator pulley assembly. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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, the proposed AD would require a one-time inspection for correct sleeve lengths, a one-time visual inspection to detect discrepancies of the elevator pulley assembly, and correction of any discrepancy. The inspections would be required to be accomplished in accordance with the service bulletin described previously. Correction of discrepancies would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,400, or $60 per airplane.

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

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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Beech Aircraft Company (Formerly DeHavilland; Hawker Siddeley; British Aerospace, PLC; Raytheon Corporate Jets, Inc.): Docket 95–NM–166–AD.

Applicability: Model BAe 125 series 1000A and Model Hawker 1000 airplanes; as listed in Hawker Service Bulletin SB 27–161, Revision 1, dated July 29, 1994; certificated in any category.

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

Note 2: Beech (Raytheon) Model BAe 125 series 1000B airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which Model BAe 125 series 1000B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the elevator control circuit, accomplish the following:

(a) Within 6 months after the effective date of this AD: Perform a one-time inspection for correct sleeve lengths, and a one-time visual inspection to detect discrepancies of the elevator pulley assembly, in accordance with Hawker Service Bulletin SB 27–161, Revision 1, dated July 29, 1994.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

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

Note 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.

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

Issued in Renton, Washington, on May 22, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13497 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 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 Learjet Model 60 airplanes. This proposal would require modification of the aft core cowl nozzle of the engine nacelles. This proposal is prompted by a report that the sealant material in the aft core cowl nozzle of the engine nacelle was found to extend higher than the nozzle's forward flange, which can allow it to interfere with the proper operation of the emergency fuel shutoff actuating mechanism. The actions specified by the proposed AD are intended to prevent physical interference of the emergency fuel shutoff actuating mechanism and resultant engine shutdown.

DATES: Comments must be received by July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–240–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 Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4407.

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–240–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–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during installation of the aft core cowl nozzle of the engine nacelle on a Learjet Model 60 airplane, the sealant material in the aft core cowl nozzle was found to be improperly extended higher than the nozzle's forward flange. The cause has been attributed to the apparent improper installation of the sealant material during production. Sealant material in the aft core cowl nozzle that extends too high, if not corrected, could interfere with proper operation of the lever of the emergency fuel shutoff actuating mechanism. Such interference could result in the failure of the emergency fuel shutoff actuating mechanism and resultant engine shutdown.

The FAA has reviewed and approved Learjet Service Bulletin SB 60–71–2, dated May 12, 1995, which describes procedures for modification of the aft core cowl nozzle of the engine nacelles. Among other actions, the modification involves replacing the sealant on the aft core cowl nozzle with a filler made from 6061 aluminum, and reidentifying the aft core cowl nozzle. The modification will ensure that the sealant does not interfere with the function of the emergency fuel shutoff actuating mechanism.

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 modification of the aft core cowl nozzle of the engine nacelles. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 39 Learjet Model 60 airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 44 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $68,640, or $2,640 per airplane.

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

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket 95–NM–240–AD.

Applicability: Model 60 airplanes, as listed in Learjet Service Bulletin SB 60–71–2, dated May 12, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the sealant material in the aft core cowl nozzle of the engine nacelles from interfering with the lever of the emergency fuel shutoff actuating mechanism, which could result in the failure of the emergency fuel shutoff actuating mechanism and resultant engine shutdown, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the aft core cowl nozzle of the engine nacelles in accordance with Learjet Service Bulletin SB 60–71–2, dated May 12, 1995.

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

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

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

Issued in Renton, Washington, on May 22, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13498 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–U

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Freedom of Information Policy and Procedures

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Arms Control and Disarmament Agency (ACDA) proposes to revise and restate in their entirety its rules that govern the availability and release of information. By clarifying these rules, this proposal will help the public to interact better with ACDA and is part of ACDA's effort to update and streamline its regulations. ACDA invites comments from interested groups and members of the public on the proposed regulations.

DATES: To be considered, comments must be delivered by mail or in person to the address, or faxed to the telephone number, listed below by 5:00 p.m. on Monday, July 8, 1996.

ADDRESSES: Comments should be directed to the Office of the General Counsel, United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451; FAX (202) 647–0024. Comments will be available for inspection between 8:15 a.m. and 5:00 p.m. at the same address.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451, telephone (202) 647–3596.

SUPPLEMENTARY INFORMATION: ACDA proposes to update, clarify, reorganize, and streamline its rules regarding the availability and release of information under the Freedom of Information Act, as amended. ACDA does not intend these rules to materially affect current ACDA standards, policies, or procedures.

Regulatory Flexibility Act Certification

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866 Determination

ACDA has determined that the proposed rule is not a significant regulatory action within the meaning of section 3(f) of that Executive Order.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act because it does not contain any information collection requirements within the meaning of that Act.

Unfunded Mandates Act Determination

ACDA has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

List of Subjects in 22 CFR Part 602

Freedom of Information Act.

The Proposed Regulations

ACDA proposes to revise 22 CFR Part 602 to read as follows:

PART 602—FREEDOM OF INFORMATION POLICY AND PROCEDURES

Subpart A—Basic Policy

Sec.

602.1 Scope of part.
602.2 Definitions.
602.3 General policy.

Subpart B—Procedure for Requesting Records

602.10 Requests for records.
602.11 Requests in person.
602.12 Availability of records at the ACDA Office of Public Affairs.
602.13 Copies of records.
602.14 Records of other agencies, governments and international organizations.
602.15 Overseas requests.
602.16 Responses and time limits on requests.
602.17 Time extensions.
602.18 Inability to comply with requests.
602.19 Predisclosure notification for confidential commercial information.

Subpart C—Fees

602.20 Fees for records search, review, copying, certification, and related services.
602.21 Waiver or reduction of fees.
602.22 [Reserved]
602.23 GPO and free publications.
602.24 Method of payment.

Subpart D—Denials of Records

602.30 Denials.
602.31 Exemptions.

Subpart E—Review of Denials of Records

602.40 Procedure for appealing initial determinations to withhold records.
602.41 Decision on appeal.

Subpart F—Annual Report to the Congress

602.50 Requirements for annual report.

Authority: 5 U.S.C. 552; 22 U.S.C. 2581; and 31 U.S.C. 9701.

Subpart A—Basic Policy

§ 602.1 Scope of part.

This part 602 establishes the policies, responsibilities and procedures for release to members of the public of records which are under the jurisdiction of the U.S. Arms Control and Disarmament Agency.

§ 602.2 Definitions.

As used throughout this part, the following terms have the meanings set forth in this section:

(a) The term *Agency* and the acronym *ACDA* stand for the U.S. Arms Control and Disarmament Agency.

(b) The term *records* includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Agency in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library or museum material made or acquired solely for reference or exhibition purposes is not included within the definition of the term ''records.''

(c) *Deputy Director* means the Deputy Director of the Agency.

(d) The acronym *FOIA* stands for the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 602.3 General policy.

(a) In accordance with section 2 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2551), it is the policy of ACDA to carry out as one of its primary functions the dissemination and coordination of public information concerning arms control, nonproliferation, and disarmament.

(b) In compliance with the FOIA, ACDA will make available upon request by members of the public to the fullest extent practicable all Agency records under its jurisdiction, as described in the FOIA, except to the extent that they may be exempt from disclosure under the FOIA and § 602.31.

Subpart B—Procedure for Requesting Records

§ 602.10 Requests for records.

(a) A written request for records should be addressed to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. To facilitate processing, the letter of request and envelope should be conspicuously marked ''FOIA request.''

(b) The request should identify the desired record or reasonably describe it. The identification should be as specific as possible so that a record can be found readily. Blanket requests or requests for ''the entire file of'' or ''all matters relating to'' a specified subject will not be accepted. The Agency will make any reasonable effort to assist the requester in sharpening the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum.

(c) If a fee is chargeable under subpart C of this part for search or duplication costs incurred in connection with a request for an Agency record, the request should include the anticipated fee or should ask for a determination of such fee. Any chargeable fee must be paid in full prior to issuance of requested materials. The method of payment is described in § 602.24.

§ 602.11 Requests in person.

A member of the public may request an Agency record by making an appointment to apply in person between the hours of 8:30 a.m. and 4:00 p.m. at the ACDA Office of Public Affairs, 320 21st Street, N.W., Washington, DC 20451. Form ACDA–21, Public Information Service Request, is available at the ACDA Office of Public Affairs for the convenience of members of the public in requesting Agency records.

§ 602.12 Availability of records at the ACDA Office of Public Affairs.

(a) A current index identifying all available records is kept on file at the ACDA Office of Public Affairs. Copies of this index may be obtained free upon request.

(b) In addition, the ACDA Office of Public Affairs will maintain or have available, unless authorized to be withheld, certain types of unclassified records, including but not necessarily limited to the following:

(1) A copy of the ACDA Manual and other Agency regulations, including a copy of title 22 of the Code of Federal Regulations (CFR) and any other title of the CFR in which Agency regulations have been published;

(2) Copies of arms control and disarmament treaties or agreements in force;

(3) Research contracts between the Agency and universities or other non-Government organizations; and

(4) Reimbursable agreements with other Government agencies.

(c) Copies of records available to the public may be inspected by a requester in the ACDA Office of Public Affairs during the business hours stated in § 602.11. Copies of records made available for inspection may not be removed by any requester from the ACDA Office of Public Affairs.

§ 602.13 Copies of records.

(a) The Agency will provide copies of requested records of the same type and quality that it would provide to personnel of another U.S. Government agency in the course of official business. It will not accept requests for special types of copying processes or for special standards of quality of reproduction.

(b) Copies of records requested will be reproduced as promptly as possible and mailed to the requester. Chargeable fees will be determined according to the schedule set forth in subpart C of this part. The FOIA Officer is authorized to limit copies of each requested record to ten or fewer when there exists an extraordinary demand for the number of available copies or when requirements place excessive demands on the Agency's copying facilities.

§ 602.14 Records of other agencies, governments and international organizations.

(a) Requests for records that were originated by or are primarily the concern of another U.S. Government department or agency shall be forwarded to the particular department or agency involved, and the requester notified in writing.

(b) Requests for records that have been furnished to the Agency by foreign governments or by international organizations will not normally be released unless the organization or government concerned has indicated that the particular information should or may be made public. Where international organizations or foreign governments concerned have not made such a determination, the requester will be so advised, and if possible, furnished the address to which the request may be sent.

§ 602.15 Overseas requests.

Pursuant to the general policy outlined in § 602.3, ACDA has made arrangements to provide the United States Information Agency (USIA) with material for dissemination abroad, such as information on official U.S. positions on arms control and disarmament policy. Requests originating in an area served by a USIA office which are received at Agency headquarters, will be referred to USIA when appropriate for direct response to the requester.

§ 602.16 Responses and time limits on requests.

(a) The FOIA requires an initial determination on a request for an Agency record to be made within ten working days after receipt of the request.

(b) If it is determined that the requested record (or portions thereof) will be made available, the requested material will be forwarded promptly after the initial determination, provided any applicable fee has been paid in full.

(c) If prior to making an initial determination it is anticipated that the costs chargeable for a request will amount to more than $25.00 or more than the amount of the payment accompanying the request, whichever is larger, the requester shall be promptly notified of the total amount of the anticipated fee or such portion thereof as can readily be estimated. In these instances, an advance deposit in the estimated amount of the search, review, and copying costs may be required. The request for an advance deposit shall extend an offer to the requester to consult with Agency personnel in order to reformulate the request in a manner that will reduce the fee, yet still meet the needs of the requester.

(d) In instances where the Agency has requested an advance deposit, the date of receipt of the deposit will be considered as the request date which begins the period of response by the Agency.

(e) Receipt of a request for Agency records will be determined by the time and date the request is received.

(f) Where an obvious delay in receipt of a request has occurred, such as in cases where the requester has failed to address the request properly, or where a delay has been caused in the mails, the Agency will dispatch to the requester an acknowldgement of the receipt of the request.

§ 602.17 Time extensions.

(a) In unusual circumstances, the time limit for an initial or final determination may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an Agency record.

(b) ''Unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular case:

(1) The need to search for and collect the requested records from other establishments that are physically separate from ACDA headquarters;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 602.18 Inability to comply with requests.

(a) When a request cannot be fulfilled, the requester will be so informed with reasons, and any fees returned after deduction of applicable search costs. Such reasons may include, but are not limited to the following:

(1) Insufficient or vague identifying information which makes identification or location of the record impossible;

(2) No such record in existence;

(3) Record available for purchase from the Government Printing Office or elsewhere; or

(4) Records destroyed pursuant to the Records Disposal Act.

(b) Inability to comply with requests shall be processed the same as denials of records, i.e., notification to the requester shall be in writing, shall set forth the reasons therefor, shall be signed by the name and title of the FOIA Officer, and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.19 Predisclosure notification for confidential commercial information.

(a) *When notification is required.* If a request under the FOIA seeks a record that contains information submitted by a person or entity outside the Federal government that arguably is exempt from disclosure under exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm, the Agency shall notify the submitter that such a request has been made whenever:

(1) The submitter has made a good faith designation of information, less than ten years old, as confidential commercial or financial information, or

(2) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) *Notification to submitter.* The notice to the submitter shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the information. The notice shall afford the submitter a reasonable period of time, based on the amount and/or complexity of the information, within which to object to disclosure.

(c) *Objection by submitter.* Any objection by a submitter to disclosure must be made in writing and sent to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. It should identify the portion(s) of the information to which disclosure is objected, and should include a detailed statement of all claimed grounds for withholding any of the information under the FOIA and, in the case of exemption 4, an explanation of why the information constitutes a trade secret or commercial or financial information that is privileged and confidential, including a specification of any claim of competitive or other business harm that would result from disclosure.

(d) *Notification to requester.* The Agency shall notify the requester in writing when any notification to a submitter is made pursuant to paragraph (a) of this section.

(e) *When notification is not required.* Notification to a submitter is not required if:

(1) The Agency determines that the information requested should not be disclosed;

(2) Disclosure is required by statute (other than FOIA) or by regulation; or

(3) The information has previously been lawfully published or officially made available to the public.

(f) *Notice of intent to disclose.* If the Agency determines that despite the objection of the submitter the requested information should be disclosed, in whole or in part, it shall notify both the requester and the submitter of the decision and shall provide to the submitter in writing:

(1) A brief explanation of why the submitter's objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date that provides a reasonable period of time between receipt of the notice and the disclosure date.

(g) *Notice of lawsuit.* (1) Whenever a requester brings legal action to compel disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the submitter in writing.

(2) Whenever a submitter brings legal action to prevent disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the requester in writing.

Subpart C—Fees

§ 620.20 Fees for records search, review, copying, certification, and related services.

The fees for search, review, and copying services for Agency records under the FOIA or the Privacy Act are as follows:

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs for searching for, reviewing for release, and copying the records sought. A ''commercial use'' request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) Requesters from educational and noncommercial scientific institutions will be assessed only copying costs.

(c) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only copying costs.

(d) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for, reviewing for release, and copying records that are responsive to the request.

(e) Requesters from educational and noncommercial scientific institutions, representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of copying or the first two hours of search time. Commercial use requesters will not be entitled to these free services.

(f) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions.

(g) The fee for paper copy reproduction will be $.20 per page.

(h) The fee for duplication of computer tape or printout reproduction or other reproduction (e.g., microfiche) will be the actual cost, including operator time.

(i) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(j) A fee may be charged for searches that are not productive and for searches for records or parts of records that subsequently are determined to be exempt from disclosure.

(k) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(l) If search charges are likely to exceed $25.00, the requester will be notified of the estimated fees unless the requester's willingness to pay whatever fee is assessed has been provided in advance.

(m) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250.00. Requesters who have previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of billing) may be required to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

§ 602.21 Waiver or reduction of fees.

Documents shall be furnished without any charge or at a charge reduced below the fees set forth in § 602.20 if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(a) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government;''

(b) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(c) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the information will contribute to the ''public understanding;''

(d) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities;

(e) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(f) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

§ 602.22 [Reserved]

§ 602.23 GPO and free publications.

(a) The index of records available in the Agency's Office of Public Affairs will list the sales offices of records published by the Government Printing Office (GPO). The Agency will refer each requester to the appropriate sales office and refund any fee payments accompanying the request. Published records out of print at the GPO may be copied by the Agency for the requester at the requester's expense in accordance with the fee schedule established for copying service. In some instances the Agency may have extra copies of out of print GPO records. These extra copies will be provided to requesters at the printed GPO price.

(b) The Agency makes some publications or records available to the public without charge. These regulations neither change that practice nor require payment of a fee by a requester unless the original stock has been exhausted and copying services are necessary to satisfy a request.

§ 602.24 Method of payment.

(a) Payment may be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury

of the United States and mailed or delivered to the FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. Cash should not be sent by mail.

(b) A receipt for fees paid will be given upon request.

Subpart D—Denials of Records

§ 602.30 Denials.

(a) Requests for inspection or copies of records may be denied where the information or record is exempt from disclosure for reasons stated in § 602.31.

(b) Denials shall be in writing, shall set forth the reasons therefor, shall be signed by the FOIA Officer and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.31 Exemptions.

The requirements of this part to make Agency records available do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the Agency;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the Agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

Subpart E—Review of Denials of Record

§ 602.40 Procedure for appealing initial determinations to withhold records.

(a) A member of the public who has requested an Agency record in accordance with subpart B of this part and who has received an initial determination that does not comply fully with the request, may appeal such a determination.

(b) The appeal shall:

(1) Be in writing;

(2) Be initiated within 30 working days of the initial determination denying the request;

(3) Include a copy of the initial written request, a copy of the letter of denial, and the requester's reasons for appealing the denial; and

(4) Be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451.

(c) The 30-day period for appealing a denial begins on the date of the denial letter. The 30-day limitation may be waived by the Agency for good cause shown. The Agency will consider any request closed if, within 30 working days after a complete or partial denial, the requester fails to appeal the denial.

§ 602.41 Decision on appeal.

(a) Review and final determination on an appeal shall be made by the Deputy Director.

(b) [Reserved]

(c) Review of an appeal shall be made on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(d) The final determination on an appeal from a denial shall be made by the Deputy Director within 20 working days of receipt of the appeal by the Agency.

(e) If the final determination is to release the withheld material, the requester will be notified immediately and the material will be forwarded promptly in accordance with the procedure described in § 602.16 for notifications of initial determinations.

(f) If the final determination is to continue to withhold material in whole or in part, the requester will be notified immediately of the determination, the reasons therefor, and the right to judicial review.

(g) All decisions will be indexed and available for inspection and copying in the same manner as other Agency final orders and opinions, if any, under 5 U.S.C. 552(a)(2).

Subpart F—Annual Report to the Congress

§ 602.50 Requirements for annual report.

(a) On or before March 1 of each calendar year, ACDA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(1) The number of determinations made by ACDA not to comply with requests for records made to the Agency under this part and the reasons for each such determination;

(2) The number of appeals made by persons under subpart E of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary actions was not taken;

(5) A copy of this part 602 and any other rule or regulation made by ACDA regarding 5 U.S.C. 552;

(6) A copy of the fee schedule and the total amount of fees collected by ACDA for making records available under this part; and

(7) Such other information as indicates efforts to administer fully this part.

(b) The FOIA Office will be responsible for preparing the report for review and submission to the Congress.

Dated: May 20, 1996.

Mary Elizabeth Hoinkes,

General Counsel.

[FR Doc. 96–13469 Filed 5–29–96; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–29–95]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the low-income housing credit. The proposed regulations provide rules for determining the treatment of low-income housing units in a building that are occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). The proposed regulations affect owners of those buildings. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for September 17, 1996, must be received by August 28, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–29–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–29–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David Selig, (202) 622–3040; concerning submissions and the hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 42. These amendments are proposed to provide guidance under section 42(g)(2)(D), as amended by section 7108(e)(1) of the Omnibus Budget and Reconciliation Act of 1989, and section 11701(a)(3)(A) and (a)(4) of the Omnibus Budget and Reconciliation Act of 1990. Section 42(g)(2)(D) provides rules for determining the treatment of low-income housing units that are occupied by individuals whose incomes rise above the income limitation applicable under section 42(g)(1).

The general rule in section 42(g)(2)(D)(i) provides that if the income of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). The unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent-skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new resident, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Explanation of Provisions

All Available Units Must Be Rented to Qualified Residents

The heading of section 42(g)(2)(D)(ii) indicates that the next available unit must be rented to a low-income tenant to maintain the low-income status of an over-income unit. Although the heading of section 42(g)(2)(D)(ii) refers to the next available unit, the body of section 42(g)(2)(D)(ii) clarifies that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. Therefore, all available comparable units in the building, not only the next available unit, must be rented to qualified residents to maintain the low-income status of the over-income unit.

A Current Resident May Move Within the Same Low-Income Building

The proposed regulations define a qualified resident under the available unit rule as any person whose income does not exceed the applicable income limitation or any current resident, regardless of the income level of the current resident. Thus, a current resident may move to a different unit in the same low-income building without causing a violation of the available unit rule even if the current resident's income exceeds the applicable income limitation. When a current resident moves to a different unit within the same low-income building, the new unit adopts the status of the vacated unit.

Rule Applies to Each Building Separately

The rules of section 42 generally apply on a building-by-building basis. For example, the amount of credit allowable under section 42(a) is determined for each building in a qualified low-income housing project. The recapture of credit under section 42(j) is determined by examining the qualified basis of each building. In addition, section 42(g)(2)(D)(ii) uses the phrase ''any residential rental unit in the building'' to identify residential rental units that must be rented to qualified residents to preserve the low-income status of an over-income unit. The proposed regulations provide, therefore, that in a project containing more than one low-income building, the available unit rule applies separately to each building.

Effect of Violation of Available Unit Rule

The proposed regulations further provide that all over-income units in the building lose their status as low-income units if an owner violates the available unit rule. A violation of the rule occurs when a building has one or more over-income units and the owner of the building rents an available comparable unit in the building to a nonqualified resident.

Over-Income Unit Counts Toward Minimum Set-Aside Requirement

The proposed regulations also clarify whether an over-income unit counts towards satisfying the applicable minimum set-aside requirement of section 42(g)(1). The available unit rule provides that an over-income unit maintains its status as a low-income unit as long as the owner does not rent an available comparable unit to a nonqualified resident. Section 42(i)(3), which defines a low-income unit, and section 42(g)(2)(D), which contains rules

for increases in the income of existing low-income tenants, work together to treat an over-income unit as a low-income unit when determining whether a project satisfies the applicable minimum set-aside requirement. This treatment helps diminish any incentive a project owner may have to evict from a rent-restricted unit those tenants who originally qualified as low-income tenants. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–97 (1986), 1986–3 (Vol. 4) C.B. 97. Therefore, the proposed regulations provide that an over-income unit may continue to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

Relationship to Tax-Exempt Bond Provisions

Financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. For example, section 142(d)(1) is applied on a project rather than on a building-by-building basis. The rules set forth in these proposed regulations are not intended as an interpretation of the applicable rules under section 142.

The rules contained in the proposed regulations are proposed to be effective on the date final regulations are published in the Federal Register.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 17, 1996, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of topics to be discussed and the time devoted to each topic (signed original and eight (8) copies by August 28, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new citation in numerical order to read as follows:

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

Section 1.42–15 is also issued under 26 U.S.C. 42(n). * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent-skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent-skewed projects described in section 142(d)(4)(B), any low-income unit.

Low-income resident means a person whose income does not exceed the applicable income limitation.

Low-income unit is defined by section 42(i)(3)(A).

New resident means a person who currently is not living in the low-income building.

Nonqualified resident means a new resident whose income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent-skewed projects described in section 142(d)(4)(B).

Qualified resident means a low-income resident or a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted——

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. Thus, to continue treating the over-income unit as a low-income unit, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building.

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit.

(e) *Buildings accounted for separately.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of violation of available unit rule.* If any comparable unit that subsequently becomes available is rented to a nonqualified resident, all over-income units within the same building lose their status as low-income units.

(g) *Examples.* The following examples illustrate this section.

Example 1. This example illustrates a violation of the available unit rule in a low-income building containing three over-income units. On January 1, 1997, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. To avoid recapture of credit, the Project owner must maintain five of the units as low-income units. The project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) (low-income residents). Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. On November 21, 1997, the annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1997, Units 8 and 9 became vacant. On December 1, 1997, the project owner rented Units 8 and 9 to qualified residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1997, the Project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the Project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident, eight of the units would be low-income units. Units 1, 2, and 3, the over-income units, could then be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite the increase in J's income, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit occupied by J becomes an over-income unit under the available unit rule. The over-income units in the building continue to be treated as low-income units.

(h) *Effective date.* This section is effective on the date final regulations are published in the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–13297 Filed 5–29–96; 8:45 am]

BILLING CODE [4830–01-U]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID1–1–5528b; FRL–5449–3]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of bringing about attainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in the Northern Ada County PM_{10} nonattainment area. 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 the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by July 1, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Idaho, Division of Environmental Quality, 1410 North Hilton, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Region 10, Idaho Operations Office, 1435 North Orchard, Boise, Idaho 83706, (206) 334–9555.

SUPPLEMENTARY INFORMATION:

See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: March 20, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–12889 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270 and 271

[FRL–5511–7]

Hazardous Waste Combustors; Revised Standards; Proposed Rule—Notice of Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of extension of comment period.

SUMMARY: Since publication of the proposed rule for hazardous waste combustors (61 FR 17358 (April 19, 1996)), EPA has received several requests to extend the comment period given the complexity of the proposed rulemaking. Accordingly, the Agency is extending the comment period 60 days to August 19, 1996.

DATES: Comment period is extended from June 18, 1996 to August 19, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–96–RCSP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. For other information regarding submitting comments electronically, viewing the comments

received and supporting information, please refer to the proposed rule (61 FR 17358 (April 19, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington, Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For other information on this notice, contact Larry Denyer (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, phone (703) 308–8770.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed revised standards for hazardous waste combustors (i.e., incinerators and cement and lightweight aggregate kilns that burn hazardous waste). See 61 FR 17358. The Agency established a 60-day comment period and indicated that comments on the proposal would be accepted until June 18, 1996.

EPA has received written requests to extend the comment period from Dow Chemical Company, Cadence Environmental Energy, Inc., the Department of Energy, and Congressman Harold Volkmer. In addition, the Agency has received numerous verbal requests for a time extension from stakeholders that are members of the Coalition of Responsible Waste Incineration (CRWI), the Cement Kiln Recycling Coalition (CKRC), and the Chemical Manufacturers Association. The additional time requested ranged from 30 to 120 days.

As justification for a time extension, stakeholders noted: (1) The size of the Notice of Proposed Rulemaking (i.e., 178 Federal Register pages plus nine major technical support documents); (2) the complexity of the proposal introduced by using joint Resource Conservation and Recovery Act (RCRA) and Clean Air Act (CAA) authority to promulgate the rule (e.g., raising issues pertaining to coordination of RCRA and CAA permits and enforcement authorities); (3) the comprehensive, state-of-the-art, and complicated compliance procedures; (4) the significant revisions proposed to existing RCRA rules; and (5) some of the background materials needed for review have been placed in the docket only recently.

The Agency agrees that a 60-day comment period may not be adequate to allow stakeholders time to review the provisions of the rulemaking and to formulate comments and recommendations for the Agency's consideration in developing the final rule. Accordingly, the Agency is extending the comment period 60 days to August 19, 1996 to provide for a 120-day comment period.

Dated: May 20, 1996.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 96–13434 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–52; Notice 1]

RIN 2127–AF86

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice, NHTSA proposes changes to the Federal Motor Vehicle Safety Standard on motor vehicle controls and displays. The agency seeks public comment on five proposals for changes, including rescission of the standard. This proposed action is undertaken as part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative.

DATES: Comments must be received on or before July 15, 1996.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, NPS–21, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Mr. Van Iderstine's telephone number is (202) 366–5280 and his FAX number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive ''Regulatory Reinvention Initiative,'' from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, NHTSA identified regulations that it could propose to eliminate as unnecessary or to amend to improve their comprehensibility, application, or appropriateness. Among these regulations is Federal Motor Vehicle Safety Standard No. 101, *Controls and displays* (49 CFR § 571.101).

Standard No. 101

Standard No. 101 was issued in 1967 (32 FR 2408) as one of the initial Federal Motor Vehicle Safety Standards (FMVSS's). The standard applies to passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses. Its purpose is to assure the accessibility and visibility of motor vehicle controls and displays under daylight and nighttime conditions. The standard is intended to reduce the risk of safety hazards caused by the diversion of the driver's attention from the driving task in order to locate the desired control or display, and by mistakes in selecting controls. The standard also seeks to ensure that a driver restrained by a seat belt can reach certain controls.

Standard No. 101 specifies location requirements (S5.1), identification requirements (S5.2), and illumination requirements (S5.3). It specifies that the controls and displays must be accessible and visible to a driver restrained in accordance with Standard No. 208, *Occupant crash protection* (S6). In addition, Table 1 ''Identification and Illumination of Controls'' and Table 2 ''Identification and Illumination of Displays'' further specify which controls and displays are subject to the identification requirements, and how they are to be identified and illuminated.

NHTSA's Proposals for Change

NHTSA proposes five alternatives for changes to the Standard and seeks public comment on each proposal. The proposals are: (1) rescinding the standard; (2) regulating only those controls and displays related to motor vehicle safety; (3) regulating only those

controls and displays required by other Federal Motor Vehicle Safety Standards; (4) consolidating all control and display requirements into Standard No. 101 and (5) permitting International Standards Organization (ISO) symbols on some or all controls and displays requiring identification. If NHTSA decides not to rescind Standard No. 101, it may decide to adopt one or more of the other proposals. Since some of the proposals, (for example, Proposals Three and Five) address different matters in Standard No. 101, they are not mutually exclusive.

Due to the relative simplicity of the proposals, the agency is not setting forth regulatory language for implementing the proposals.

1. Proposal One—Rescind Standard No. 101

NHTSA's first proposal is to rescind Standard No. 101. NHTSA tentatively concludes that even if Standard No. 101 were rescinded, manufacturers would continue to provide appropriate means of identifying and illuminating controls and displays and place those controls and displays in accessible locations. Even if the standard were rescinded, the agency fully expects manufacturers to provide drivers the means to distinguish among various controls and displays. Further, drivers must be warned of defective functioning of a device in the vehicle in order to be able to avoid potentially hazardous conditions, including the possibility of a crash.

Except for some required controls and displays listed in other standards, there is none specifically required by Standard No. 101. The standard only addresses the visibility, access and illumination of controls and displays *if* they are provided. While the initial premise for the standard was that these aspects need to be regulated for minimizing driver distractions, the controls and displays have in effect become an industry practice that may not require continued Federal regulation. NHTSA believes that market forces will ensure manufacturers continue the currently specified practices.

A good example of how market forces have responded to customers' demands has been the location of the horn button(s). In the absence of more specific location requirements, the horn button was historically located at the center of the steering wheel. With the advent of air bag implementation in that same location, the horn button was often displaced to the spokes of the steering wheel. Apparently this location is contrary to the desires of many drivers, as evidenced by the increased number of letters to the agency about that displacement. This displacement, however, was only temporary, until manufacturers found ways to install horn switches in the cover material over the air bag mechanism. As a consequence, as vehicle steering wheels are updated, the horn control is returning to the center of the wheel.

NHTSA notes that if Standard No. 101 were rescinded, some States might adopt regulations requiring controls and displays or regulating their identification, illumination or accessibility, which would subject manufacturers to multiple, conflicting rules and increase vehicle production costs. Were the States to adopt such regulations, there would not be any express preemption under 49 U.S.C. section 30103(b), which preempts State standards if they conflict with an existing Federal standard. It also does not appear likely that a court would find any implied Federal preemption of State requirements, regardless of whether they are similar or dissimilar to those in the Standard. A State regulation addressing the same subject as a rescinded Federal regulation would be impliedly preempted only if the State regulation conflicted with or otherwise frustrated achieving the purposes of the Federal statute. Even if the agency were to conclude that no regulation, Federal or State, of controls and displays is necessary, it is not readily apparent how State regulations, even ones differing from those of another State, on this subject would conflict with Federal law or have a deleterious effect on motor vehicle safety.

2. Proposal Two—Regulate Only Those Controls and Displays Related to Motor Vehicle Safety

The second proposal is to update Standard No. 101 by removing obsolete provisions and regulating only those controls and displays related to safety. Standard No. 101 includes references to vehicles manufactured before September 1, 1987 and September 1, 1989. NHTSA proposes to remove all references to vehicles manufactured before September 1, 1987 and September 1, 1989.

After references to vehicles manufactured before September 1, 1989 are removed, S3, *Application*, of Standard No. 101 will be shortened to state: ''This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.'' NHTSA further proposes to amend S5.(b), and S5.3.3(d), by removing references to vehicles manufactured before September 1, 1987 and September 1, 1989. Finally, NHTSA proposes to remove Table 1(a) ''Identification and Illumination of Controls'' and Table 2(a) ''Identification and Illumination of Internal Displays,'' since each table applies to vehicles manufactured before September 1, 1987.

Additionally, the standard currently regulates aspects of controls and displays not required to be on vehicles, and that do not have a direct effect on motor vehicle safety. Under Proposal Two, Standard No. 101 would regulate only controls and displays that directly bear on the need for motor vehicle safety, whether they are specified in another Federal Motor Vehicle Safety Standard or not.

NHTSA proposes to remove the following controls from Table 1 ''Identification and Illumination of Controls'': the heating and air conditioning control; the hand throttle; the heating and air conditioning fan control; and the manual choke. It also proposes to remove the coolant temperature display from Table 2 ''Identification and Illumination of Displays.'' Examples of displays that would continue to be regulated include the seat belt and turn signal displays (both specified in other safety standards) and the fuel level display and speedometer (if they are provided), neither of which is specified in a safety standard.

NHTSA also proposes to remove each of the above named controls and displays (proposed for removal from Tables 1 or 2) if listed in the location requirements of S5.1 of Standard No. 101. The agency seeks comments on which controls and displays are believed to be safety-related.

3. Proposal Three—Regulate Only Controls and Displays Required by Other Federal Motor Vehicle Safety Standards

Proposal Three is similar to Proposal Two, but would limit Standard No. 101 to regulating controls and displays specified in another safety standard. Thus, under proposal three, the following controls presently listed in Table 1 ''Identification and Illumination of Controls'' would be removed: horn; heating and/or air conditioning fan; rear window defrosting and defogging system; manual choke; engine start; engine stop; hand throttle; automatic vehicle speed; and heating and air conditioning system.

The following displays specified in Table 2 ''Identification and Illumination of Displays'' would be removed: fuel level telltale and gauge; oil pressure telltale and gauge; coolant temperature telltale and gauge; electrical charge

telltale and gauge; the speedometer, and the odometer.

NHTSA also proposes to remove each of the above named controls and displays if listed in the location requirements of S5.1 of Standard No. 101.

The rationale for this proposal is that it would not affect the placement in vehicles of controls and displays no longer specified in Standard No. 101. Market forces (in the form of customer demand) would be highly likely to ensure that vehicle manufacturers would continue to provide appropriately identified, illuminated, and located controls and displays. Auto consumer media and customers themselves would be likely to react negatively to vehicles that do not adequately identify the vehicle's controls and displays, or if the controls are placed in a location difficult for the driver to reach while driving.

4. Proposal Four—Consolidate in Standard No. 101 Controls and Displays Specified in Other Standards

Under this proposal, NHTSA would include in Standard No. 101 reference to the controls and displays specified in other standards; today only Standard No. 208, *Occupant crash protection*, has such requirements. This reference would be consistent with the agency's practice regarding the identification of controls and displays for other regulated vehicle systems. For example, when the agency published a final rule (60 FR 6411; February 5, 1995) establishing FMVSS No. 135, *Passenger car brake systems*, it also amended Table 2 in Standard No. 101 to include the two brake displays, the ''variable brake proportioning system'' display and the ''parking brake applied'' display specified in Standard No. 135. Similarly, when NHTSA amended the standards on hydraulic and air brakes to specify antilock braking systems, it amended Standard No. 101 to reference the antilock braking system displays (60 FR 13216; March 10, 1995).

At present, Standard No. 101 does not include certain controls or displays specified in Standard No. 208, *Occupant crash protection*. Paragraph S4.5.2, *Readiness indicator*, of Standard No. 208 specifies that an occupant crash protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position.

In this notice of proposed rulemaking, NHTSA proposes to incorporate the readiness indicator specified in Standard No. 208 into Standard No. 101 and to specify the means of identifying the indicator and whether it must be illuminated. To keep Standard No. 101 consistent with requirements in other Federal motor vehicle safety standards, NHTSA proposes to amend Table 2 ''Identification and Illumination of Displays'' by specifying the air bag readiness indicator. NHTSA proposes to amend Column 3 (''Identifying Words or Abbreviation'') to indicate that the air bag readiness indicator must be identified with the words ''AIR BAG'', and to amend Column 4 to indicate that the air bag readiness indicator display must be illuminated. The agency is not proposing to specify a color (Column 2) or an identifying symbol (Column 4) for the air bag readiness indicator.

In a final rule published May 23, 1995 (60 Federal Register 27233), Standard No. 208 was amended to permit manufacturers the option of installing a key-operated air bag manual cutoff device that motorists could use to deactivate the front passenger-side air bag in vehicles that cannot accommodate infant restraints in the rear seat. The deactivation device is needed because when rear-facing infant restraints are used in the front seat of dual air bag vehicles, they extend forward to a point near the dashboard where they can be struck by a deploying air bag.

The air bag manual cutoff device is specified in Standard No. 208 at S4.5.4, *Passenger Air Bag Manual Cutoff Device*. Paragraph S4.5.4.2 describes the device as being separate from the vehicle ignition switch and operable by means of the ignition key for the vehicle. Paragraph S4.5.4.3 specifies that a telltale light on the dashboard shall be clearly visible from all front seating positions and shall be illuminated whenever the passenger air bag is deactivated. Paragraph S4.5.4.3 further requires the air bag manual cut off device's telltale to be yellow, identified with ''AIR BAG OFF,'' and illuminated the entire time that the passenger air bag is deactivated. The air bag manual cutoff device telltale is further not to be combined with the air bag readiness indicator.

NHTSA proposes to transfer the specifications for the air bag manual cutoff device telltale from Standard No. 208 to Standard No. 101. The language describing the eligibility criteria for vehicles permitted to have an air bag manual cutoff device will remain in Standard No. 208.

NHTSA proposes to include the air bag manual cutoff telltale in Table 2 (''Identification and Illumination of Displays'') of Standard No. 101. NHTSA is not proposing to specify a symbol for the device in Table 2. The agency proposes to amend the column on illumination to indicate, by stating ''yes'', that illumination is required. NHTSA would add a footnote indicating the telltale is to be illuminated only when the air bag manual cutoff device is activated.

NHTSA further proposes that the air bag manual cutoff device be described in Table 1 (''Identification and Illumination of Controls'') of Standard No. 101. NHTSA proposes that the device be identified in Column 2 (''Identifying Words or Abbreviation'') with the words ''Air Bag Cutoff.'' NHTSA is not proposing to specify an identifying symbol or to specify illumination for the air bag manual cutoff device.

5. Proposal Five—Permit ISO Symbols to Identify Controls and Displays

Many of the symbols specified in Tables 1 and 2 of Standard No. 101 are based on symbols developed by the International Standards Organization (ISO). In the interests of international harmonization of vehicle safety standards, under Proposal Five, NHTSA would permit any ISO symbol to be used to identify a control or display. NHTSA would require that each ISO symbol used be described in the owner's manual. Identification is necessary to ensure that the driver understands the meaning of the symbol. It has been NHTSA's experience that the meaning of certain ISO symbols may not be intuitively evident to a driver.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a final rule should result from this notice of proposed rulemaking, it would not have more than a minimal effect on the costs associated with controls and displays. If Proposal Four were adopted, vehicle manufacturers would incur minimal additional costs. All manufacturers already provide some type of identification for the air bag readiness indicator and many provide illumination of it. NHTSA estimates that the additional costs resulting from adopting Proposal Four would be so minimal that preparation of a full regulatory evaluation is not warranted.

None of the other proposals would impose new requirements or have any effect on costs which can be estimated at this time. Proposal Two would delete requirements for motor vehicles manufactured before September 1, 1987 and September 1, 1989. If the standard were rescinded pursuant to Proposal One, NHTSA anticipates no changes in costs resulting from manufacturers' actions, because manufacturers are not expected to respond to the rescission by making any significant changes in the location, identification, and illumination of motor vehicle controls and displays. Further, many of the controls and displays specified in Standard No. 101 are also specified in other Federal motor vehicle safety standards.

To the extent that individual States might choose to establish their own requirements for controls and displays, which would be permitted if the agency rescinded the standard, as discussed above, vehicle production costs would increase. However, the agency has no way of foretelling the extent to which States might opt to do this or of estimating the increase in production cost that would result.

If Proposals Two or Three were adopted, NHTSA also anticipates no changes in costs since it does not believe manufacturers will make any significant changes in the location, identification, and illumination of motor vehicle controls and displays.

2. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. For the reasons explained above, I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, there would not be any significant effect on small organizations, jurisdictions or other entities which purchase new motor vehicles. For this reason, an initial regulatory flexibility analysis has not been prepared.

3. 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 environment.

4. 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.

5. 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 comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. 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 inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine 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.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 23, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–13528 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 051396B]

Pacific Offshore Fisheries Take Reduction Plan; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public scoping meeting; request for comments.

SUMMARY: NMFS announces its intention to prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) for anticipated proposed rulemaking under the Take Reduction Plan (TRP) provisions of the Marine Mammal Protection Act (MMPA). A draft TRP will be developed by the Pacific Offshore Cetacean Take Reduction Team (TRT) and will be forwarded to NMFS by August 12, 1996. NMFS then has 60 days to publish a proposed TRP, along with any proposed implementing regulations, as necessary.

DATES: The scoping meeting will be held on June 25, 1996 at 7 p.m. until 10 p.m. Written comments on the scope of the EIS must be submitted on or before August 12, 1996.

ADDRESSES: The scoping meeting will be held at the JAMS/Endispute offices in the Santa Monica Business Park, 3340 Ocean Park Boulevard, Suite 1050, Santa Monica, CA 90405. Scoping comments, requests for additional information, and requests for special

accomodations should be sent to Irma Lagomarsino, National Marine Fisheries Service, Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, (310) 980–4016, fax (310) 980–4047, or Victoria Cornish, (301) 713–2322, fax (301) 713–0376.

SUPPLEMENTARY INFORMATION: Section 118(f) of the MMPA requires NMFS to develop and implement a TRP designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock(s) that interacts with certain fisheries. The immediate goal of a TRP is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of strategic marine mammal stocks incidentally taken in the course of commercial fishing to levels less than the Potential Biological Removal level, or PBR, established for that stock. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

Each TRP shall include a review of the information in the final stock assessment published under section 117(b) and any new information, an estimate of the total number and, if possible, age and gender of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury, and recommended dates for achieving the specific objectives of the plan.

In accordance with section 118(f)(6)(A), NMFS established the Pacific Offshore Cetacean TRT for the California/Oregon thresher shark and swordfish drift gillnet fishery on February 12, 1996 (61 FR 5385). This fishery interacts with several strategic marine mammal stocks including: *Mesoplodont sp*. beaked whales, Baird's beaked whale, Cuvier's beaked whale, the sperm whale, the humpback whale, the pygmy sperm whale, and the short-finned pilot whale. These stocks are considered strategic under the MMPA, because they are either listed as an endangered or threatened species under the Endangered Species Act, or the levels of human-caused mortality are greater than their PBR levels.

The purpose of the scoping meeting is to receive comments in anticipation of an EIS or EA that may be prepared for the final TRP and any regulations that may be necessary to implement TRP provisions. Any EIS or EA prepared would examine the environmental impacts of management alternatives considered in the TRP to reduce the incidental mortality and serious injury of marine mammals in this fishery as well as assessing, based on currently available information, the impacts of the TRP and implementing regulations on the human environment, marine mammals, and other protected species.

The scoping meeting is scheduled to coincide with the first day of the last meeting of the TRT on June 25–27, 1996. All interested parties are encouraged to attend. The scoping meeting will include a short presentation from NMFS staff outlining the TRP process and options that are being considered and will allow a minimum of 2 1/2 hours for public comment. NMFS is also requesting written comments to be submitted by mail or by fax, until August 12, 1996, and background materials are available (see **ADDRESSES**). The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Irma Lagomarsino at (310) 980–4016 by June 20, 1996.

Dated: May 22, 1996.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13452 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 105
Thursday, May 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

Forest Service

Pest Management Program at the R5 Genetic Resource Center, Chico in the Pacific Southwest Region, California, in Butte County

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare a draft and final environmental impact statement (EIS) on a proposed action to develop an integrated pest management (IPM) program at the R5 Genetic Resource Center, Chico which is administered by the Mendocino National Forest. The Forest Service began an analysis for the nursery portion of the site in 1989; however, the project was canceled in the May 1, 1995 Federal Register Notice. The scope of the current proposed action includes the nursery and seed orchard operations, arboretums, and research areas. The administrative site is approximately 209 acres in size, and the analysis area is approximately 121 acres. Areas on the administrative site which are excluded from this analysis are the office buildings and work areas, residential buildings, boundary fence lines, Comanche Creek wildlife and recreation area, intermittent stream area in the northern portion of the site, the diversion channel, and other small wildlife habitat areas. The excluded area is estimated to be approximately 88 acres in size. The Forest Service invites written comments on the scope of the analysis. In addition, the Forest Service gives notice of the environmental analysis and decisionmaking process that will occur on the proposed action so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by July 1, 1996, to ensure timely consideration.

ADDRESS: Send written comments to: Lynné Hartman, Director, USDA Forest Service, R5 Genetic Resource Center, Chico, 2741 Cramer Lane, Chico, CA 95928.

FOR FURTHER INFORMATION CONTACT: Hank Switzer, Horticulturist, R5 Genetic Resource Center, Chico, CA 95928, (916) 895–1176.

SUPPLEMENTARY INFORMATION: The scope of the analysis will consist of a container nursery, approximately one acre in size, which has the capacity to grow 1.2 million seedlings a year, and 120 acres that are in production as seed orchards for restoration of forest ecosystems or arboretums that are active in growing plant material for a variety of biological, chemical and clinical research programs. Other areas on the site such as the administrative buildings, residential buildings, and the recreational and wildlife areas are not within the scope of this analysis.

The Forest Service will conduct an environmental analysis to determine what type of pest management program will be used at the center. The pest management practices that will be analyzed include, but are not limited to, control of unwanted vegetation by mechanical and chemical methods; control of diseases using sanitation, biological control organisms, and fungicides; control of insect pests with biological and chemical insecticides, and use of sanitation; and control of animal pests through mechanical, chemical, and preventative measures.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternative pest management programs including an alternative that will be based on the principles of integrated pest management as required by the Forest Service Manual. The ''no action'' alternative will be described as the continuation of current pest management practices.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7), which includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make-up of the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations interested in or affected by the proposed action.

Public participation will be solicited by personal notification of known interested and affected publics. In addition, news releases will be used to keep the public informed. Input from interested people and organizations will be used in preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1996. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3)

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningfull and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that

could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Following the comment period on the draft environmental impact statement, comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by July 1997.

The responsible official will consider the comments and responses; environmental consequences discussed in the environmental impact statement; and applicable laws, regulations and policies in making a decision regarding this proposal. The decision and reasons for the decision will be documented in the Record of Decision.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

Dated May 22, 1996.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 96–13517 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation for the Barton (KY) and North Dakota (ND) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of J. W. Barton Grain Inspection Service, Inc. (Barton), and North Dakota Grain Inspection Service, Inc. (North Dakota), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: July 1, 1996.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 27, 1995, Federal Register (60 FR 66958), GIPSA asked persons interested in providing official services in the geographic areas assigned to Barton and North Dakota to submit an application for designation. Applications were due by January 30, 1996. Barton and North Dakota, the only applicants, each applied for designation to provide official inspection services in the entire areas currently assigned to them.

Since Barton and North Dakota were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Barton and North Dakota are able to provide official services in the geographic areas for which they applied. Effective July 1, 1996, and ending June 30, 1999, Barton and North Dakota are designated to provide official services in the geographic areas specified in the December 27, 1995, Federal Register.

Interested persons may obtain official services by contacting Barton at 502–683–0616 and North Dakota 701–293–7420.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 10, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–13201 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Aberdeen (SD) Area and the State of Missouri

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Aberdeen Grain Inspection, Inc. (Aberdeen), and the Missouri Department of Agriculture (Missouri) will end November 30, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Aberdeen and Missouri areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 29, 1996.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Aberdeen, main office located in Aberdeen, South Dakota, and Missouri, main office located in Jefferson City, Missouri, to provide official inspection services under the Act on December 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Aberdeen and Missouri end on November 30, 1996.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the States of North Dakota and South Dakota, is assigned to Aberdeen.

Bounded on the North by U.S. Route 12 east to State Route 22; State Route 22 north to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line east to State Route 21; State Route 21 east to State Route 49; State Route 49 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east to U.S. Route 83; U.S. Route 83 north to State Route 13; State Route 13 east and north to McIntosh County; the northern

McIntosh County line east to Dickey County; the northern Dickey County line east to U.S. Route 281; U.S. Route 281 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east;

Bounded on the East by the eastern South Dakota State line (the Big Sioux River) to A54B;

Bounded on the South by A54B west to State Route 11; State Route 11 north to State Route 44 (U.S. 18); State Route 44 west to the Missouri River; the Missouri River south-southeast to the South Dakota State line; the southern South Dakota State line west; and

Bounded on the West by the western South Dakota State line north; the western North Dakota State line north to U.S. Route 12.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, the entire State of Missouri, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

Interested persons, including Aberdeen and Missouri, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1996, and ending November 30, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 10, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–13202 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–EN–F

Natural Resources Conservation Service

White Tank Mountains Watershed, Maricopa County, AZ; Notice of a Finding of No Significant Impact

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the White Tank Mountains Watershed, Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael Somerville, State Conservationist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, AZ 85012, telephone (602) 280–8801.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. Based on evidence presented, Michael Somerville, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposes to rehabilitate an existing flood retarding structure to reduce the threat of loss of life and damage to property.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald Paulus, Water Resources Planning Staff Leader, at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Michael Somerville,

State Conservationist.

[FR Doc. 96–13470 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the Section 502 Direct and the Section 504 Rural Housing Loans and Grants Programs.

DATES: Comments on this notice must be received by July 29, 1996, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Processing Division, RHS, U.S. Department of Agriculture, Ag Box 0783, Washington, DC 20250, Telephone 720–1487.

SUPPLEMENTARY INFORMATION

Title: Applicant Reference Letter.

OMB Number: 0575–0091.

Expiration Date of Approval: October 31, 1996.

Type of Request: Extension of a currently approved information collection:

Abstract: The rural housing loan program under Section 502 of title V of the Housing Act of 1949, as amended, provides eligible persons who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. Also, the Section 504 loan/grant program is to assist eligible very low-income, owner/occupants to repair single family homes in rural areas. In both programs, the Form FmHA 410–8, ''Applicant Reference Letter,'' provides credit information to County Offices serving the area in which the applicant or borrower will live. Applicants are required to furnish information concerning their credit history to RHS when applying for assistance. Form FmHA 410–8, is used by the Agency to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants. In some cases, credit reports cannot be used because the applicant/borrower lives in a remote area; therefore, the form is widely used by the Agency to obtain credit information. Form FmHA 410–8 asks only for specific relevant information to determine applicant's creditworthiness and to provide clarification on the promptness of the applicant's payments on debts which enables RHS to make better creditworthiness decisions.

RHS must, by law, make available to the applicant, upon request, the source of information used to make an adverse decision. Individual references may be solicited with the clear understanding that if the information is used to deny credit, the information will be made available to the applicant upon request.

If this information was not collected, RHS would be unable to evaluate the applicant's credit history.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 26,600.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 26,334 hours.

Copies of this information collection can be obtained from the Director, Regulations and Paperwork Management Division, at (202) 720–9725.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of 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 Director, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, DC 20250. 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: May 17, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–13463 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–07–U

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: June 5, 1996, 9:00–9:30 a.m.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Last Open Meeting
2. Amendment of Board Procedures
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–13674 Filed 5–28–96; 2:18 pm]

BILLING CODE 6118–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 821]

BP Eploration & Oil Inc., (Oil Refinery), Plaquemines Parish, Louisiana; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Harbor Commissioners of the Port of New Orleans, grantee of Foreign-Trade Zone 2, for authority to establish special-purpose subzone status at the oil refinery complex of BP Exploration & Oil Inc., in Plaquemines Parish (New Orleans area), Louisiana, was filed by the Board on August 3, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 40–95, 60 FR 40819, 8–10–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 2I) at the oil refinery of BP Exploration & Oil Inc., in Plaquemines Parish, Louisiana, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—products for export; and,
—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 21st day of May 1996.

Paul L. Joffe,

Acting, Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 96–13585 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 42–96]

Foreign-Trade Zone 43—Battle Creek, Michigan Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting authority to expand its zone to include a site in Lawton, Michigan, adjacent to the Battle Creek Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 20, 1996.

FTZ 43 was approved on October 19, 1978 (Board Order 138, 43 FR 50233; 10/27/78). Since then the zone has been expanded three times (B.O.s 496, 554 & 555). The zone currently consists of three sites in the Battle Creek area: *Site 1:* (1,731 acres)—within the Fort Custer Industrial Park and adjacent Columbia West Industrial Park, Battle Creek; *Site 2:* (23 acres)—warehouse facility owned and operated by TLC Warehousing

Services, Inc. (TLC), at 6677 Beatrice Drive in Texas Township (Kalamazoo County); and *Site 3:* (22 acres)—warehouse facility, also operated by TLC, at 8250 Logistic Drive, Zeeland Township (Ottawa County), some 20 miles southwest of Grand Rapids. An application to include a site in Benton Harbor (Berrien County), Michigan, is currently pending (Doc. 37–96, 61 FR 25190; 5/20/96) with the Board.

The applicant is now requesting authority to expand the general-purpose zone to include a site (14 acres) located at the facilities of Honee Bear Canning, 72100 Highway M–40 South, Lawton (Van Buren County), Michigan, within 40 miles of the Battle Creek Customs Port of Entry. Honee Bear, a division of Packers Canning Inc., uses the facility to provide warehousing and labeling services for customers in the canned food products industry.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is July 29, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 13, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, North Central Region, 4950 W. Dickman Road, Battle Creek, Michigan 49016

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 22, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–13586 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 815]

Establishment of a Foreign-Trade Zone, Kinston Regional Jetport Complex, Lenoir County, North Carolina; Grant of Authority

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the North Carolina Global TransPark Authority (the Grantee) has made application to the Board (FTZ Docket 16–95, 60 FR 22543, 5/8/95), requesting the establishment of a foreign-trade zone at the Kinston Regional Jetport Complex in Lenoir County, North Carolina, as part of the Global TransPark project, adjacent to the Beaufort-Morehead City Customs port of entry; and,

Whereas, notice inviting public comment has been given in the Federal Register, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 214, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of May 1996.

Foreign-Trade Zones Board.

Michael Kantor,

Secretary of Commerce, Chairman and Executive Officer.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 96–13587 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 822]

BP Exploration & Oil Inc. (Oil Refinery), Lucas, Allen and Wood Counties, Ohio; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, for authority to establish special-purpose subzone status at the oil refinery complex of BP Exploration & Oil Inc., located at sites in Lucas, Allen and Wood Counties (Toledo area), Ohio, was filed by the Board on October 5, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 59–95, 60 FR 53583, 10–16–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 8F) at the oil refinery complex of BP Exploration & Oil Inc., at sites in Lucas, Allen and Wood Counties, Ohio, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 21st day of May 1996.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 96–13588 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Termination In-Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of termination in-part of antidumping duty administrative review.

SUMMARY: On February 1, 1996, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The Department is now terminating this review in-part with respect to Shanghai Foreign Trade Corporation (SFTC).

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Laura Merchant or Thomas Futtner, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–0367/3814.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1996 (61 FR 3670), the Department published in the Federal Register a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the PRC. This notice stated that the Department would review merchandise sold in the United States by SFTC during the period December 21, 1994 through November 30, 1995.

The petitioners in this case withdrew their request for review of SFTC on April 29, 1996. Under 19 CFR 353.22(a)(5) (1994), a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation. Because the withdrawal request was made within the time frame specified in 19 CFR 353.22(a)(5), and no other interested party has requested an administrative review for SFTC for this period, the Department is now terminating this review, in-part, with respect to SFTC.

Dated: May 17, 1996.

This notice is published pursuant to 19 CFR 353.22(a)(5).

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13583 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–429–601]

Solid Urea From the Former German Democratic Republic; Initiation of Changed Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Initiation of changed circumstances antidumping duty review.

SUMMARY: The Department of Commerce is initiating a changed circumstances review of the antidumping duty order on solid urea from the former German Democratic Republic (GDR) in order to calculate a new cash deposit rate using a market economy analysis for any shipments of solid urea from the five German states (Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt, and Thuringia (plus any other territory included in the former GDR)) that formerly constituted the GDR (hereinafter ''the Five States'') occurring after May 1, 1995 and before May 31, 1996.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 353.22(f), the Department may review a determination whenever changed circumstances are sufficient to warrant such a review. In the instant case, the current cash deposit rate is based upon the non-market economy analysis provided for in section 773(c) of the Act. However, the Department has determined that as of October 3, 1990, producers located in the five German states that formerly constituted the GDR have been operating in a market-oriented economy. *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Germany,* 58 FR 37315, 37324 (July 9, 1993).

On May 1, 1995, the Department published in the Federal Register (60 FR 21068) the initiation of a changed circumstances review to calculate a new cash deposit rate using a market-economy analysis for any shipments of solid urea from the Five States occurring after October 2, 1990, and before May 1, 1995. On March 14, 1996, the Department published in the Federal Register (61 FR 10563) a termination of that changed circumstances review because it found no evidence of shipments occurring during this period.

The Department now has evidence of shipment(s) of solid urea from the Five States occurring after May 1, 1995. As a result, and in accordance with 19 CFR 353.22(f), we are initiating a changed circumstance review of the antidumping duty order on solid urea from the former GDR. In this review, the Department will calculate a new cash deposit rate using a market economy analysis for any shipments of solid urea from the Five States occurring after May 1, 1995, and before May 31, 1996. *See Antidumping Duty Order and Initiation of a Changed Circumstances Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plates from Poland,* 58 FR 44166 (1993) (change from a non-market to market economy justified a changed circumstances review to calculate a new cash deposit rate).

We intend to issue the final results of this review not later than December 31, 1996.

Dated: May 22, 1996.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13584 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 94–00005.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to William E. Elliott (d/b/a Export Exchange). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate.

This notice summarizes the notification letter sent to William E. Elliott (d/b/a Export Exchange).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') [Pub. L. No. 97–290, 15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III [''the Regulations''] are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on November 10, 1994 to William E. Elliott (d/b/a Export Exchange).

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On October 31, 1995, the Department of Commerce sent to William E. Elliott (d/b/a Export Exchange) a letter containing annual report questions with a reminder that its annual report was due on December 25, 1995. Additional reminders were sent on February 9, 1996 and on March 4, 1996. The Department has received no written response from William E. Elliott (d/b/a Export Exchange) to any of these letters.

On April 18, 1996, and in accordance with Section 325.10 (c) [2] of the Regulations, [15 CFR 325.10 (c) (2)], the Department of Commerce sent a letter by certified mail to notify William E. Elliott (d/b/a Export Exchange) that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing William E. Elliott (d/b/a Export Exchange) thirty days to respond was published in the Federal Register on April 24, 1996 at 61 FR 18121. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of William E. Elliott (d/b/a Export Exchange) to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to William E. Elliott (d/b/a Export Exchange) for its failure to file an annual report. The Department has sent a letter, dated May 24, 1996, to notify William E. Elliott (d/b/a Export Exchange) of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the Federal Register 325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: May 23, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–13473 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

[Docket No. 960520140–6140–01]

RIN 0693–ZA 08

Announcement of Availability of Funding for General Competition—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces the availability of funding for General Competition 96–01 under the Advanced Technology Program (ATP). This General Competition is open to all areas of technology, including those previously included in focused areas. Only a General Competition is planned this fiscal year; there are no plans to run focused program competitions during fiscal year 1996. This notice provides general information for this ATP competition for fiscal year 1996.

DATES: Proposal due date and other specific instructions for the General Competition will be published in the *Commerce Business Daily* (CBD) at the time the competition is announced. Date, time, and location of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, Administration Building (Bldg. 101), Room A430, Gaithersburg, MD 20899–0001.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free ''hotline'' number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atpmicf.nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Pub. L. 102–245. The ATP implementing regulations are published at 15 CFR part 295. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed to assist United States industry/businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding to single companies and to industry-led joint ventures to pursue research and development (R&D) projects with high-payoff potential for the nation. The ATP accelerates enabling technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the

Federal government. The ATP challenges industry to take on projects characterized by high technical risk but commensurately high potential payoff to the nation. Proposers must provide credible arguments as to the project feasibility.

The award funding instrument used to fund successful ATP proposals is a ''cooperative agreement.'' Through the use of the cooperative agreement funding instrument, the ATP fosters a government-industry partnership to accomplish a public purpose of support or stimulation. Under a cooperative agreement, NIST plays a substantial role in providing technical assistance and monitoring the technical work and business progress.

Funding Availability

An estimated $20 million to $25 million to first year funding will be available for Competition 96–01. The ATP reserves the right to utilize for this competition more or less funding than the amounts stated above. The actual number of proposals funded will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR part 295.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single companies can receive up to $2 million of ATP funds over a period not to exceed 3 years. Single companies do not have to provide matching funds, but they are reimbursed for direct costs only. All indirect costs must be paid for by the single companies.

(b) Joint Ventures can be funded up to a maximum of 5 years, with no funding limit. Joint ventures must also share costs, but their cost-share requirement is in the form of matching funds. A joint venture must provide more than 50 percent of the total project costs (direct plus indirect costs).

(c) Subcontractors funded under an ATP cooperative agreement may not contribute towards the matching-fund requirement. However, they may voluntarily reduce their subcontract costs.

Application Forms and Proposal Preparation Kit

The ATP Proposal Preparation Kit dated November 1994 and Supplement dated May 1996 are available upon request from the ATP at the address and phone numbers noted in this notice. The Kit contains proposal cover sheets, other required forms, background material, and instructions for submission of proposals. All proposals must be prepared in accordance with the instructions in the Kit and Supplement.

Note that the ATP is mailing the new Supplement to the Kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request the Supplement to the Kit.

Submission of Revised Proposals

An applicant may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(b) *Past Performance.* Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(c) *Pre-award Activities.* If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of NIST to cover pre-award costs.

(d) *No obligation for Future Funding.* If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) *Name Check Review.* All for-profit and non-profit applicants are subject to a name check review process. Name checks are intended to reveal if 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.

(g) *Primary Applicant Certification.* All primary applicants (including all joint venture participants) must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanation is hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug-Free Workplace,* Grantees (as defined at 15 CFR part 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;

(3) *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitations 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; and,

(4) *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.

(h) *Lower Tier Certification.* Recipients shall require applicants/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 Form SF–LLL, ''Disclosure of Lobbying Activities.'' Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) *False Statements.* A false statement on any application for funding under ATP may be 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.

(j) *Intergovernmental Review.* The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, ''Intergovernmental Review of Federal Programs'' is not applicable to this program.

(k) *American-Made Equipment and Products.* Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) *Paperwork Reduction Act.* This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB Control 0693–0009). Notwithstanding any other provision of the 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: May 24, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–13573 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 052196E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Stock Assessment Panel.

DATES: This meeting will begin at 1:00 p.m. on June 20, 1996 and conclude at 4:00 p.m. on June 26, 1996.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel Stock Assessment Panel will review data and develop a stock assessment for the Gulf of Mexico migratory group of king mackerel including ranges of acceptable biological catch for the 1996–1997 fishing season.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at (see **ADDRESSES**) by June 13, 1996.

Dated: May 22, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13450 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052196F]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee will hold a meeting in Portland, OR.

DATES: The meeting will be held on June 11, 1996, from 1 p.m. until 5 p.m.

ADDRESSES: Location to be determined; call for information.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 206–547–7560.

SUPPLEMENTARY INFORMATION: The agenda includes the following:

1. Presentation by Alaska Dept. of Fish & Game and preliminary discussions on the economic implications of lowering the legal size limit of Bristol Bay red king crab to six inches.
2. Clarifications of 1996 actions of the Alaska Board of Fisheries.
3. Review findings of the North Pacific Fishery Management Council's Crab Rebuilding Committee.

Additional agenda items may be added as needs develop.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Arni Thomson at 206–547–7560, at least 5 working days prior to the meeting date.

Dated: May 22, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13451 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051396G]

Marine Mammals; Permit No. 927 (P79I)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that the Institute of Marine Science, University of California, Santa Cruz, CA 95064 (Principal Investigators: Daniel P. Costa and Michael E. Goebel) has requested a modification to permit no. 927.

DATES: Written comments must be received on or before July 1, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West

Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 927, issued on June 17, 1994 (59 FR 32419) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 927, as amended on July 12, 1995, authorizes the permit holder to take northern fur seals (*Callorhinus ursinus*) in the following manner: Capture, flipper tag, sample, weigh, measure, mark and release up to 440 adult females and pups; an additional 400 male/female pups for body composition and metabolic and energetic use studies; accidentally kill up to 6 annually; and inadvertently harass up to 69,080 during the conduct of these activities.

The permit holder requests authorization to: Subsample an additional 30 pups used in the oxygen consumption and metabolic rate study; expand the capture dates from 1 September to 1 July; obtain 100 muscle samples and 8 pelts from sub-adult animals killed in the subsistence harvest or from other animals that die of nartural causes; subsample an additional 30 pups in the milk intake, metabolism, growth, condition and thermoregulation study of body composition; subsample 30 pups in the total blood volume study; and measure total blood volume in 50 adult females. No additional live animals are requested.

Dated: May 14, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13453 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request; 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 extension of a currently approved 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 by July 29, 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/Accession Policy) ATTN: Randolph Lougee, 4000 Defense Pentagon, 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) 696–0651.

TITLE AND APPLICABLE OMB CONTROL NUMBER: DoD Survey of Recruit Socioeconomic Status (SES), OMB Control Number 0704–0293.

NEEDS AND USES: This survey collects socioeconomic background information from a representative sample of new recruits to the active-duty military. It provides annual data that are descriptive of the military composition as a whole. The data are included in an annual report to Congress on population representation in the U.S. military. The data will be used by members of Congress and DoD policy makers in the debate over the relative merits of voluntary accession and alternative means of recruitment.

Affected Public: Individuals or households.

Annual Burden Hours: 3,340.

Number of Respondents: 20,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Other: during sample days each year.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

In response to Congressional interest in the background of Service members, the Office of the Under Secretary of Defense (Personnel and Readiness) collects data on the socioeconomic background of new recruits. Since 1989, data have been collected on the occupational and educational background of recruits' parents in order to provide an index of socioeconomic status. The socioeconomic status questionnaire is administered routinely at recruit training centers.

Key questions pertaining to socioeconomic status are matched to questions in the Census Bureau's Current Population Survey. Each year, data from new recruits are compared to data on comparable civilians, and findings are incorporated into an annual report to Congress on population representation in the military. Results are used by the Office of the Under Secretary of Defense (Personnel and Readiness) in an annual report to Congress on the sociodemographic representation of new recruits. The report also is used to respond to inquiries from Congress, the media, and members of the public on social representation in the U.S. Armed Services.

Dated: May 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13466 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Education Benefits Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify

Patricia Robertson at (703) 696–7400 by August 1, 1996.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 9, 1996, 10:00 am to 1:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7408.

Dated: May 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13467 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Office of The Secretary

Department of Defense Retirement Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 *et seq.*). The Board shall review DOD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to (1) attend the DOD Retirement Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Patricia Robertson at (703) 696–7400 by August 1, 1996.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 8, 1996, 1:00 pm to 5:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7408.

Dated: May 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13468 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Image-Based Automatic Target Recognition; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on July 10–12, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1996)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1996), and that accordingly this meeting will be closed to the public.

Dated: May 23, 1996.

Patricial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13465 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Gentile Air Force Station (AFS), Ohio

On April 12, 1995, the Air Force signed the ROD for the Disposal of Gentile AFS. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on January 19, 1996.

Gentile AFS will close on December 31, 1996, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BCRA), Public Law 100–526, and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents the Gentile AFS disposal decisions.

The decision conveyed by the ROD is to dispose of Gentile AFS in a manner that enables development of light manufacturing, a business complex and recreational facilities. This allows for the central theme of the proposed future land use plans discussed in the FEIS to be fully implemented. The environmental findings and mitigation measures contained in the initial ROD remain fully applicable.

Consistent with the community reuse plan, the ROD balances business and industrial with a recreational park.

One disposal method, an Economic Development Conveyance (EDC) to the City of Kettering, the Local Redevelopment Authority (LRA), includes all parcels involved in the ROD. The installation, consisting of a total of 164 acres, which includes the 16-acre parcel for Defense Finance and Accounting Services (DFAS) and all Government-owned utilities and roadways, will be conveyed to the LRA according to a mutually agreeable schedule being developed based on environmental condition and remediation, community reuse plans and base closure. In addition, new legislation was incorporated into the ROD to lease-back the parcel for DFAS for a long-term lease at no cost to the Government.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statues and regulations and all reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Ms. Teresa R. Pohlman, Program Manager, Division D. Correspondence should be sent to: AFBCA/DD, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2809.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–13534 Filed 5–29–96; 8:45 am]

BILLING CODE 3910–01–M

Notice of Intent To Prepare a Legislative Environmental Impact Statement for Nellis Air Force Range (NAFR) Renewal, Nevada

The United States Air Force (Air Force) will prepare a legislative environmental impact statement (LEIS) to assess the potential environmental impacts of renewal of the Nellis Air Force Range (NAFR), Nevada. The LEIS

will be prepared in accordance with the National Environmental Policy Act (NEPA).

The current land withdrawal and reservation of the NAFR was established by the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) for the period ending on November 6, 2001. The Act provides that the Air Force may seek renewal of the NAFR withdrawal, in connection with which the Secretary of the Air Force will publish a legislative EIS addressing legislative alternatives and the effects of continued withdrawal.

The purpose of the proposed NAFR renewal is to retain a military training and testing range essential to near- and long-term preparedness of United States air forces. Renewing the land withdrawal will provide for the continued effective implementation of ongoing training and testing missions while maintaining the flexibility to adapt to the training needs of new technologies as they develop. The performance of air operations in combat is directly related to the quality and depth of training. NAFR provides a combination of attributes that serve this training requirement, including the following: favorable location and flying weather; sufficient land and airspace; diverse terrain; and developed training support facilities.

A range of alternatives, including the No Action alternative required by NEPA, will be considered. Three alternatives are described below.

- Proposed Action: Renew Nellis Air Force Range withdrawal and reservation for an indefinite period of time with Congressional review every 15 years. The existing land withdrawal and reservation, consisting of approximately 3.0 million acres, would be reauthorized for an indefinite period of time. The land would be reserved by Congress for use by the Air Force for an armament and high-hazard test area; training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and other defense-related purposes. Every 15 years Congress would review the Air Force's continuing military need for the land, the environmental effects, and the needs of competing uses for the land and could adjust, if warranted, the terms and conditions of the withdrawal. Without limiting the priority use by the Air Force, the land would be managed in part by the Bureau of Land Management and in part by the U.S. Fish and Wildlife Service. Specifically, the Bureau of Land Management would manage approximately 2.2 million acres of the NAFR pursuant to the Federal Land Policy and Management Act of 1976 and other applicable laws. The remaining 826,000 acres of the NAFR are within the Desert National Wildlife Refuge and would be managed by the Fish and Wildlife Service pursuant to the National Wildlife Refuge System Act of 1976.

- Alternative A: Renew the existing NAFR land withdrawal and reservation for 25 years. The existing land withdrawal and reservation, consisting of approximately 3.0 million acres, would be reauthorized for a specified term of 25 years, rather than for an indefinite time with periodic reviews. Otherwise, this alternative is like the Proposed Action.

- No Action Alternative: No renewal of the NAFR land withdrawal and reservation. The land would not be reserved for use by the Air Force. The lands within the existing NAFR boundary would be managed by the Bureau of Land Management and the Fish and Wildlife Service under existing authorities. The No Action alternative would result in the fragmentation or cancellation of training missions accomplished at the NAFR. DOD would prepare appropriate environmental documentation to obtain Federal Aviation Administration approval to reclassify the existing restricted airspace to a Military Operation Area (MOA). This would allow for air-to-air training operations to continue, but would preclude air-to-ground training missions.

To provide a forum for interested parties to provide comments on the scope of the LEIS, a series of scoping meetings will be held in six Nevada communities. In addition, written comments will be accepted throughout the scoping period. Written comments should be forwarded to the address below by August 5, 1996. Scoping meetings will be held at the following times and locations.

1. Indian Springs, NV, June 17, 1996, 6:00 PM to 9:00 PM.

2. Caliente, NV, June 18, 1996, 6:00 PM to 9:00 PM.

3. Las Vegas, NV, June 20, 1996, 6:00 PM to 9:00 PM.

4. Beatty, NV, June 24, 1996, 6:00 PM to 9:00 PM.

5. Tonopah, NV, June 25, 1996, 6:00 PM to 9:00 PM.

6. Reno, NV, June 26, 1996, 6:00 PM to 9:00 PM.

Please direct written comments concerning the NAFR Renewal LEIS to: Colonel Michael F. Fuquy, Nellis Air Force Base, P.O. Box 9919, Las Vegas, NV 89191–0919.

If you have any questions or require additional information, please contact Major Jeff Shea at (702) 652–4354.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–13448 Filed 5–29–96; 8:45 am]

BILLING CODE 3910–01–W

DEFENSE LOGISTICS AGENCY

Membership of the Defense Logistics Agency (DLA) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership of the DLA PRB.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of PRB composition is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Arellano, Workforce Effectiveness and Development Group, Human Resources, Defense Logistics Agency, Department of Defense, Ft. Belvoir, Virginia, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of Defense Logistics Agency personnel appointed to serve as members of the PRBs. Members will serve a 1-year renewable term, effective upon publication of this notice.

1st Level PRB:

Mr. Gary Thurber, Associate Director, Acquisition

Mr. James Grady, Director, Distribution Systems Center

Ms. Marilyn Barnett, Deputy Commander, Defense Supply Center Columbus

2nd Level PRB:

Mr. Alton Ressler, Deputy Director, Corporate Administration

Mr. Jeffrey Jones, Executive Director, Logistics Management

Mr. Bruce Baird, General Counsel, DLA

A.C. Ressler,

Deputy Director, Corporate Administration Defense Logistics Agency.

[FR Doc. 96–13454 Filed 5–29–96; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Proposed Disposal and Reuse of the Fleet and Industrial Supply Center Oakland, CA

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), and Public Law 102-484 Section 2834, as amended by Public Law 104–106 Section 2867, the Department of the Navy, in association with the Port of Oakland, California, announces its intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the proposed disposal and reuse of the Fleet and Industrial Supply Center, Oakland (FISCO) property and structures in Oakland, California. The Navy will be the lead agency for NEPA documentation and the Port of Oakland will be the lead agency for CEQA documentation. The Defense Base Closure and Realignment Act (Public Law 101–510) of 1990, as implemented by the base closure process of 1995, directed the Navy to close FISCO.

FISCO is located approximately two miles west of the Oakland central business district, on the eastern shore of San Francisco Bay. FISCO consists of approximately 528 acres and has about 125 structures that support general supply operations, waterfront operations, and administration.

The EIS/EIR will address potential impacts to the environment that may result from the disposal of FISCO property and subsequent reuses. FISCO is within the planning jurisdiction of the Port of Oakland. The Port of Oakland Vision 2000 Program proposes development of an intermodal system of ship, railroad, and truck freight handling facilities to meet the anticipated demand for transportation services in the San Francisco Bay area and northern California, and an intermodal port for national and international commerce. The Vision 2000 Program also includes development of public waterfront access and marine habitat enhancement.

The development of the Port of Oakland Vision 2000 Program is expected to require additional property outside of the FISCO boundary in order to meet the objectives of the Program. This joint EIS/EIR will provide a program level analysis supporting both the Navy NEPA requirements to describe potential environmental impacts associated with the property disposal at FISCO, and the Port of Oakland CEQA requirement to analyze environmental impacts of implementing the Vision 2000 Program.

The EIS/EIR will evaluate a ''No Action'' alternative and several reuse alternatives. The ''No Action'' alternative would result in the federal government indefinitely retaining ownership of FISCO property. Under the ''no action'' alternative the Navy would continue leasing property to the Port of Oakland under the existing 50 year lease agreement as allowed by Public Law 102–484, and supported by the 1995 base closure decisions. The reuse alternatives are expected to combine the common land use components of a railroad terminal, marine terminals, public waterfront access and marine habitat enhancement. As FISCO is within the Port of Oakland jurisdiction and is designated as a Port Priority use in the April 1996 San Francisco Bay Conservation and Development Commission and the Metropolitan Transportation Commission Seaport Plan Update, alternatives would emphasize port-related activities. Revisions to these alternatives may be developed during the public scoping period. The EIS/EIR will evaluate the potential for environmental impacts to traffic conditions, air quality, biological resources, cultural resources, utilities, and other environmental issues identified through this scoping process.

ADDRESSES: Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and reuse alternatives to be addressed. A public scoping meeting to receive oral and written comments will be held on Thursday, June 13, 1996, at 7:00 p.m., at the McClymonds High School auditorium, located at 2607 Myrtle Street (near 26th Street) in Oakland, California. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. In addition, written comments may be submitted by July 1, 1996, to Mr. Gary J. Munekawa, Environmental Planning Branch, Code 185GM, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3022, fax (415) 244–3737. For further information regarding the Port of Oakland Vision 2000 Program, please contact Ms. Loretta Meyer, Port of Oakland, Environmental Assessment Section, 530 Water Street, Oakland, California 94604, telephone (510) 272–1181, fax (510) 465–3755. If you need special assistance to participate in this meeting, please contact Mr. Munekawa at least 72 hours prior to the meeting.

Dated May 23, 1996

S.L. Haycock,

LCDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 96–13460 Filed 5–29–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 23, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Gun-Free Schools Act Report'.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 456.

Abstract: The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from weapons violations. The GFSA requires the Secretary to report to Congress if any State is not in compliance with the GFSA, and requires the Secretary to collect data on the incidence of children with disabilities and violent behaviors.

[FR Doc. 96–13508 Filed 5–29–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F–085]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Inter-City Products Corporation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–085) granting a Waiver to Inter-City Products Corporation (Inter-City) from the existing Department of Energy (DOE or Department) test procedure for furnaces. The Department is granting Inter-City's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Inter-City has been granted a Waiver for its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on May 23, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: Inter-City Products Corporation.

[Case No. F–085]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Inter-City filed a ''Petition for Waiver,'' dated January 8, 1996, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the Federal Register on March 19, 1996, Inter-City's Petition and solicited comments, data and information respecting the Petition. 61 FR 11199, March 19, 1996. Inter-City also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which DOE granted on March 7, 1996. 61 FR 11199, March 19, 1996.

No comments were received concerning either the ''Petition for Waiver'' or the ''Application for Interim Waiver.'' The Department consulted with The Federal Trade Commission (FTC) concerning the Inter-City Petition. The FTC did not have any objections to the issuance of the waiver to Inter-City.

Assertions and Determinations

Inter-City's Petition seeks a waiver from the DOE test provisions that

require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Inter-City requests the allowance to test using a 30-second blower time delay when testing its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces. Inter-City states that since the 30-second delay is indicative of how these models actually operate, and since such a delay results in an improvement in AFUE of an average 0.4 to 0.6 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Inter-City indicates that it is unable to take advantage of any of these exceptions for its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces.

Since the blower controls incorporated on the Inter-City furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current test procedure provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Inter-City NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces. Accordingly, with regard to testing the NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces, today's Decision and Order exempts Inter-City from the existing test procedure provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered That:

(1) The ''Petition for Waiver'' filed by Inter-City Products Corporation (Case No. F–085) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Inter-City Products Corporation, shall be permitted to test its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(I) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Inter-City Products Corporation shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces manufactured by Inter-City Products Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective May 23, 1996, this Waiver supersedes the Interim Waiver granted Inter-City Products Corporation on March 7, 1996. 61 FR 11199, March 19, 1996 (Case No. F–085).

Issued in Washington, DC, on May 23, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–13542 Filed 5–29–96; 8:45 am]

BILLING CODE 6450–01–P

State Energy Program Special Projects Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: As part of the new consolidated State Energy Program (SEP) being implemented for fiscal year 1996, the Office of Energy Efficiency and Renewable Energy is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy, such as Climate Wise, Clean Cities, Rebuild America, Motor Challenge, Building Codes and Standards, and State Alternative Fuel Transportation efforts. States may apply to undertake any of the projects being offered by these programs. States will carry out their selected projects in conjunction with their efforts under SEP.

The projects must meet the relevant requirements of the programs providing the funding, as well as of SEP, as specified in the program guidance/solicitation. Among the goals of the special project activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

DATES: The program guidance/solicitation will be available June 3, 1996. Applications must be received by June 28, 1996.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: Ernest Chabot at the U. S. Department of Energy Headquarters, 1000 Independence Avenue, S.W., Washington, D. C. 20585, (202) 586–8128, for referral to the appropriate DOE Regional Support Office.

SUPPLEMENTARY INFORMATION: Fiscal year 1996 is the first year special project activities will be funded in conjunction with the new consolidated State Energy Program. Most of these special projects are related to or based on similar efforts that have been funded separately by the

various DOE end-use sector programs that are now providing funding for this new consolidated State-oriented approach.

Availability of Fiscal Year 1996 Funds

With this publication, DOE is announcing the availability of up to $12 million in financial assistance funds for fiscal year 1996. The awards will be made through a competitive process. No State will be awarded financial assistance for special projects in excess of $500,000 for fiscal year 1996. Projects may cover a period of up to 2 years.

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, or any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program is 81.041.

Requirements for cost sharing or matching contributions will be addressed in the program guidance/solicitation for each special project activity, as appropriate. Cost sharing or matching contributions beyond any required percentage is desirable.

Any application must be signed by an authorized State official, in accordance with the program guidance/solicitation.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Support Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the respective participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. A decision as to the applications selected for funding will then be made by the Deputy Assistant Secretary for Building Technology, State and Community Programs, or designee, based on the findings of the technical merit review and any stated program policy factors. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

More detailed information is available from the U. S. Department of Energy Headquarters at (202) 586–8128.

Issued in Washington, D. C., May 23, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–13541 Filed 5–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–841–000]

Blandin Paper Company; Notice of Issuance of Order

May 23, 1996.

On January 16, 1996, as amended March 14, 1996, Blandin Paper Company (Blandin) submitted for filing a rate schedule under which Blandin will engage in wholesale electric power and energy transactions as a marketer. Blandin also requested waiver of various Commission regulations. In particular, Blandin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Blandin.

On May 9, 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 Blandin 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, Blandin 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 Blandin'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 June 10, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13550 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

May 23, 1996.

Take notice that an informal settlement conference in this proceeding will be convened on Friday, May 31, 1996 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13488 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1503–000]

Eagle Gas Marketing Company; Notice of Issuance of Order

May 23, 1996.

On April 4, 1996, Eagle Gas Marketing Company (Eagle) submitted for filing a rate schedule under which Eagle will engage in wholesale electric power and energy transactions as a marketer. Eagle also requested waiver of various Commission regulations. In particular, Eagle requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Eagle.

On May 8, 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 Eagle 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, Eagle is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, 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 Eagle'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 June 7, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13551 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–529–000]

K N Interstate Gas Transmission Company; Notice of Application

May 23, 1996.

Take notice that on May 20, 1996, K N Interstate Gas Transmission Company (KNI), 370 Van Gordon Street, Lakewood, Colorado 80228–8304, filed an application with the Commission in Docket No. CP96–529–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its Haven Line in Reno County, Kansas, which was authorized in Docket No. CP70–239,[1] all as more fully set forth in the application which is open to the public for inspection.

KNI proposes to abandon by sale approximately 9.2 miles of 16-inch diameter pipe (the Haven Line) in Reno County to Mid Continent Market Center, Inc. (Mid Continent), which would operate the Haven Line as part of its intrastate pipeline system. KNI states that it would sell the Haven Line to Mid Continent for a negotiated price of $205,000. KNI also states that the only customers currently being served from the Haven Line are nine end-users who are direct retail customers of K N Energy, Inc. KNI's parent company. KNI further states that Western Resources, Inc., Mid Continent's parent, would take over as the direct retail supplier to these nine end-users; thus, no customer would lose gas service as a result of KNI's proposed abandonment of the Haven Line to Mid Continent.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1996, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the NGA (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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 KNI to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13489 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[1] 44 FPC 149 (1970).

[Docket Nos. CP96–178–000; CP96–249–000]

Maritimes & Northeast Pipeline, L.L.C., Portland Natural Gas Transmission System; Notice of Technical Conference

May 23, 1996.

Take notice that a technical conference will be convened in the above-docketed proceedings on Thursday, June 6, 1996, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The purpose of the technical conference is to allow the project proponents to clarify how the two above-docketed projects will serve either local distribution companies or other natural gas customers in Maine and New Hampshire. Proponents of these projects and all of the interstate pipelines that will provide upstream or downstream transportation for the projects should attend and be prepared to answer questions relating to the required interconnections and operational requirements for each project.

Specifically, all of the parties should be prepared to discuss the following:

- What, if any, impediments exist related to Maritimes & Northeast Pipeline, L.L.C.'s (Maritimes) proposal to interconnect with Granite State Gas Transmission, Inc.'s (Granite State) and Tennessee Gas Pipeline Company's (Tennessee) existing transmission facilities?
- What provisions of Granite State's FERC tariff and Maritimes' *pro forma* FERC tariff apply to Maritimes' and/or its shippers' request to interconnect with Granite State and for service on Granite State? To what extent have the pipelines and/or shippers complied or will comply with such provisions? Also, were the interconnections with Granite State for the Portland Natural Gas Transmission System (PNGTS) project treated consistently with the request by Maritimes for interconnections?
- What were the circumstances relating to any other receipt or delivery points which Granite State has constructed or plans to construct under the terms of its FERC tariff?
- What are the potential capacity release volumes and/or excess capacity on Tennessee and Granite State for these projects?

Any party, as defined in 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), in the above-docketed proceedings are invited to participate in the technical conference.

However, no topics other than those listed above will be considered. For additional information, please contact Amy Heyman (202) 208–0115 or Richard Foley, (202) 208–2245, at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13552 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–64–000]

Northern Natural Gas Company; Notice of Refund Report

May 23, 1996.

Take notice that on May 20, 1996, Northern Natural Gas Company (Northern) submitted worksheets reflecting the distribution of refunds paid to jurisdictional sales customers on May 20, 1996.

Northern states that these refunds are being made pursuant to the Commission's Order in Colorado Interstate Gas Company, Docket Nos. GP83–11–002 and RI83–9–003 issued December 1, 1993.

The Commission ordered that ''any first seller that collected revenues in excess of the applicable maximum lawful price established by the NGPA as a result of the reimbursement of the Kansas ad valorem taxes for sales on or after June 28, 1988, shall refund any such excess revenues to the purchaser'' * * *''. The Interstate pipelines were then required to make lump-sum cash payments of the Kansas ad valorem tax refunds to the customers who were actually overcharged. Included with Northern's payments is interest covering the period from the date Northern received the refund from the producer until May 20, 1996.

Northern states that a copy of this report is being mailed to each of Northern's affected jurisdictional sales customers.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed on or before May 31, 1996. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13509 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1516–000]

SEMCOR, Inc.; Notice of Issuance of Order

May 23, 1996.

On April 8, 1996, SEMCOR, Inc. (SEMCOR) submitted for filing a rate schedule under which SEMCOR will engage in wholesale electric power and energy transactions as a marketer. SEMCOR also requested waiver of various Commission regulations. In particular, SEMCOR requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by SEMCOR.

On May 8, 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 SEMCOR should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SEMCOR 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 SEMCOR'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 June 7, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13553 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–423–005]

Texas Gas Transmission Corporation; Notice of Refund Report

May 23, 1996.

Take notice that on May 1, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the amount of refunds made in accordance with the provisions of Article II, Section 2 of the Stipulation and Agreement approved by Commission letter order issued February 20, 1996 in Docket No. RP94–423–003, et al. The refund covers the period April 1, 1995 through January 31, 1996.

Texas Gas states that this refund report is being submitted in compliance with the provisions of Article XIV of the Stipulation and Agreement and Sections 154.501 and 154.502 of the Commission's regulations. Texas Gas states that the report summarizes refunds totalling $23,247,744.60, including $1,213,906.89 in interest through April 3, 1996.

Texas Gas further states that all affected customers and interested state commissions have been served a copy of this refund report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 31, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13490 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–208–001]

Trunkline Gas Company; Notice of Compliance Filing

May 23, 1996.

Take notice that on May 20, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to be effective May 11, 1996.

Sub 1st Rev Original Sheet No. 56E

Trunkline asserts that the purpose of this filing is to comply with the Commission's order issued May 10, 1996 in Docket No. RP96–208–000, 75 FERC ¶ 61,147 (1996).

Trunkline states that this filing is to clarify Trunkline's tariff to permit intra-day nominations by firm shippers to bump scheduled and flowing quantities of gas related to hourly changes in QNIT nominations.

Trunkline states that a copy of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13491 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–528–000]

Universal Resources Corporation; Notice of Petition

May 23, 1996.

Take notice that on May 17, 1996, Universal Resources Corporation (URC), 79 State Street, Salt Lake City, Utah 84147, filed in Docket No. CP96–528–000 a petition pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for exemption of temporary acts and operations to test the feasibility of converting an existing production field to a storage field, and requests, if permission is needed to perform these acts and operations, pregranted abandonment authorization, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

URC states that it is a natural gas producer and the parent of Questar Energy Trading (QET), a company that markets URC's production, as well as the production of others. It is indicated that URC is a wholly-owned subsidiary of Questar Corporation. URC indicates that it is the operator of the Clear Creek oil and gas field, in Uintah County, Wyoming. URC states that it owns nearly all of the production rights in the field. URC states that the 15 wells drilled in the field have been shut in since 1994 because production of oil and gas is no longer economic. It is indicated that the production in the field was delivered into the facilities of either Questar Pipeline Company or Northwest Pipeline Corporation, and that the interconnecting facilities are still in place. It is stated that available geological data indicate that the field has the potential to operate as an economical storage facility and that some producible gas reserves may remain in as yet undeveloped gas cap.

URC states that it desires to test the Clear Creek Field for two purposes: (1) to determine whether there remains a gas cap with sufficient reserves to justify further drilling and production, and (2) to determine whether the Clear Creek field could be converted to an economically viable storage field. It is stated that, by conducting a 60-to-90 day pressure test, after installation of a rented 1,000 horsepower compressor and associated concrete pad, URC believes that it can answer both questions.

URC states that it currently anticipates that if the tests show that the Clear Creek field should be developed as a storage facility subject to the Natural Gas Act (NGA), URC or its subsidiary, QET, would apply for a certificate under Section 7(c) of the NGA. URC further anticipates that pipeline construction would be undertaken to connect the field to additional pipelines in the area and URC or QET would operate Clear Creek as a private storage field to support QET's natural gas marketing operations.

URC indicates that, inasmuch as testing is needed to perform an obviously non-jurisdictional production purpose—testing for the gas cap—and since the field may never be converted to storage, it is not clear that any Commission authorization is needed for the test. It is stated, because natural gas for the test will be received from Questar, an interstate pipeline, and redelivered to the same interstate pipeline, URC has filed the petition out of an abundance of caution.

URC states that, as part of the test, it will install and operate a compressor and related piping in order to inject gas into the field; monitor pressures in, and flows into and from the reservoir; and receive gas from an interstate pipeline and inject the gas into the reservoir; and redeliver natural gas used in the test in interstate commerce. It is indicated that it will receive the gas from Questar from an existing tap and gathering lines now used to connect the field into Questar's system. It is also indicated that URC and Questar will reverse the historic direction of gas flow to permit gas to be delivered for testing purposes. URC states that it will inject approximately 225,000 Mcf through an existing well for around 30 days at approximately 4,000 psi. URC also states that, following injection URC will monitor pressures and flows of gas out of the injection well for another 30 days. It is indicated that the pressure and flow rates will provide information necessary to determine both the nature of the gas cap and the potential for developing a viable storage field. URC states that it will conduct the tests in compliance with the environmental requirements of the Commission's blanket certificate regulations, as set forth in Section 157.206(d) of the Commission's regulations and any requirements imposed upon it by the Bureau of Land Management.

URC states that it believes that an exemption for temporary acts and operations pursuant to Natural Gas Act Section 7(c)(1)(B) would apply to all necessary authorizations. However, URC requests pregranted abandonment authorization in the event the Commission does not exempt the above-described actions.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 13, 1996, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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 the 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 petition 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 interview 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 URC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13492 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–241–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 23, 1996.

Take notice that on May 21, 1996, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, proposed to be effective June 1, 1996:

Second Revised Sheet Nos. 13–15
Second Revised Sheet Nos. 19–20
Second Revised Sheet Nos. 23–25
Second Revised Sheet Nos. 28–30
Third Revised Sheet Nos. 39
Fourth Revised Sheet Nos. 62
Third Revised Sheet Nos. 63 and 64

Viking states that the purpose of this filing is to modify Viking's existing policies on the construction of laterals, taps and metering facilities to provide new or additional service to its customers. Viking's current policies provide that Viking will provide laterals and customer delivery facilities only if the customer reimburses Viking for one hundred percent of the new facilities costs prior to the commencement of construction.

Viking states that it is proposing to amend this policy to create a menu of payment options that can be used separately or collectively to provide for payment of the new facilities' costs. Under Viking's proposal, customers would have the additional options of reimbursing Viking by: (1) paying a separately stated firm reservation charge that is designed to recover the cost of the new facilities; or (2) subscribing for a new or additional amount of mainline firm capacity sufficient to provide an incremental revenue stream with a present discounted value equal to or greater than the new facilities; costs.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13493 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–527–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

May 23, 1996.

Take notice that on May 20, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP96–527–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to utilize two existing taps under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to utilize two existing taps to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, for ultimate use by additional residential customers in Richland County, Montana and Big Horn County, Wyoming.

Williston Basin estimates that the additional volumes to be delivered to the existing Richland County, Montana and Big Horn County, Wyoming taps to be 150 Mcf per year and 100 Mcf per year, respectively.

Williston Basin states that it plans to provide the proposed deliveries to Montana-Dakota under Rate Schedule FT–1 of its FERC Gas Tariff, Second Revised Volume No. 1, and that the volumes to be delivered are within the contractual entitlements of the customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13494 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1033–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER96–1033–000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL) filed Supplement No. 1 to Contract for Purchases and Sales of Power and Energy between FPL and Eastex Power Marketing, Inc. FPL requests an effective date of February 19, 1996.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. NRG Energy, Inc. and NRG Generating (U.S.) Inc.

[Docket No. EC96–23–000]

Take notice that on May 9, 1996, NRG Energy, Inc. and NRG Generating (U.S.) Inc. filed an application for approval of the appointment of a Director under Section 203 of the Federal Power Act.

Comment date: June 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Energy Marketing, Inc. and Questar Energy Trading Company

[Docket Nos. ER95–976–003 and Docket No. ER96–404–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 29, 1996, Southern Energy Marketing, Inc. filed certain information as required by the Commission's June 27, 1995 order in Docket No. ER95–976–000.

On May 3, 1996, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996 order in Docket No. ER96–404–000.

4. Southern California Edison Company

[Docket No. ER96–1125–001]

Take notice that on May 14, 1996, Southern California Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. PSI Energy, Inc.

[Docket No. ER96–1718–000]

Take notice that on April 30, 1996, PSI Energy, Inc. tendered for filing its informational filing for the calendar year 1995.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Cincinnati Gas & Electric Company

[Docket No. ER96–1719–000]

Take notice that on April 30, 1996, Cincinnati Gas & Electric Company tendered for filing copies of its Second Annual Informational Filing for 1995.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Northwest Generating Cooperative, an Oregon Cooperative

[Docket No. ER96–1748–000]

Take notice that on May 8, 1996, Pacific Northwest Generating Cooperative, an Oregon Cooperative, tendered for filing a Petition for Blanket Authorizations Certain Waivers, and Order Approving Rate Schedule Governing Market-Based Rates Sales Of Energy and Capacity.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Powerline Controls, Inc.

[Docket No. ER96–1754–000]

Take notice that on May 8, 1996, Powerline Controls, Inc. tendered for filing an Application for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule Governing Market-Based Rates Sales Of Energy and Capacity.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER96–1767–000]

Take notice that on May 9, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 6, FERC Rate Schedule No. 29, and FERC Rate Schedule No. 180, and all supplements thereto, except FERC Rate Schedule 6.21, 29, 20, and 180.19 which shall remain in effect.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Tucson Electric Power Company

[Docket No. ER96–1770–000]

Take notice that on May 9, 1996, Tucson Electric Power Company tendered for filing a Notice of Cancellation Rate Schedule FERC No. 99.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Company

[Docket No. ER96–1771–000]

Take notice that on May 9, 1996, Tucson Electric Power Company tendered for filing a Notice of Cancellation Rate Schedule FERC No. 77.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Appalachian Power Company

[Docket No. ER96–1779–000]

Take notice that on May 9, 1996, Appalachian Power Company (APCo) tendered for filing with the Commission an Addendum to the existing Electric Service Agreement (ESA) between APCo and Virginia Polytechnic Institute and State University (VPI), which extends the existing ESA, as revised, through June 30, 2007, and a Facilities Agreement, which provides for the recognition of certain facilities owned by APCo and the construction of new local facilities for VPI.

APCo proposes an effective date of July 10, 1996, and states that a copy of its filing was served on VPI and the Virginia State Corporation Commission.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Energy, Inc.

[Docket No. ER96–1791–000]

Take notice that on May 10, 1996, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission its Energy Cost Adjustment rate schedule. In addition, Midwest submitted on May 14, 1996, supplemental information to the May 10, 1996, filing in this docket.

Midwest states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's February 2, 1996 Order issued in Docket No. ER95–590–000 whereby Midwest was granted a one year extension of time, until July 10, 1996, to conform its rate schedules with the requirements of § 35.14 (Fuel Cost and Purchased Economic Power Adjustment Clauses) of the Commission's Regulations (18 CFR 35.14).

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER96–1792–000]

Take notice that on May 13, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement between UE and Commonwealth Edison Company. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Company Services, Inc.

[Docket No. ER96–1794–000]

Take notice that on May 13, 1996, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and

Savannah Electric and Power Company (collectively referred to as the ''Operating Companies''), submitted for filing Amendment No. 6 to The Southern Company System Intercompany Interchange Contract dated October 31, 1988, as amended. The amendment reflects modifications in the procedure used to determine the monthly capacity charges governing the purchase and sale of temporary surplus and deficit capacity among the Operating Companies. The amendment also modifies procedures used to determine load responsibility, unit unavailability and the rating of hydroelectric capacity. SCSI requests an effective date of May 1, 1996 for this submittal.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1796–000]

Take notice that on May 13, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company (LILCO). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for a decrease in annual revenues under the Rate Schedule of $5,657.50. Con Edison has requested that this increase take effect on July 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1797–000]

Take notice that on May 13, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule of $38,963.90. Con Edison has requested that this increase take effect on July 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Pool

[Docket No. ER96–1799–000]

Take notice that on May 13, 1996, the New England Power Pool Executive Committee filed signature pages to the NEPOOL Agreement dated September 1, 1971, as amended, signed by PSI Energy, Inc. (PSI) and The Cincinnati Gas & Electric Company (CG&E). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit PSI and CG&E to join the over 90 Participants that already participate in the Pool. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make PSI and CG&E Participants in the Pool. NEPOOL requests an effective date on or before May 28, 1996, or as soon as possible thereafter for commencement of participation in the Pool by PSI and CG&E.

COMMENT DATE: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER96–1800–000]

Take notice that on May 13, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by PECO Energy Company (PECO). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit PECO to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make PECO a Participant in the Pool. NEPOOL requests an effective date of July 1, 1996 for commencement of participation in the Pool by PECO.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Power and Light Company

[Docket No. ER96–1801–000]

Take notice that on May 13, 1996, Wisconsin Power and Light Company (WP&L) tendered for filing an Agreement dated May 3, 1996, establishing WPS Energy Services, Inc. as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of May 3, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas and Electric Corporation

[Docket No. ER96–1802–000]

Take notice that on May 13, 1996, Central Hudson Gas and Electric Corporation (CHG&E) tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Federal Energy Sales Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: June 5, 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. 96–13548 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–1803–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

May 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER96–1803–000]

Take notice that on May 13, 1996, Public Service Company of Colorado (Public Service), tendered for filing a Letter Agreement to its Power Purchase Agreement (PPA) with the City of Burlington (City) designated as Public Service Rate Schedule FERC No. 44 and a Letter Agreement to its Power Purchase Agreement (PPA) with the Town of Julesburg (Town) designated as Public Service Rate Schedule FERC No. 46. The Letter Agreements will revise Exhibit A of each PPA to allow the City and the Town to purchase additional Monthly Energy for a one-month period, May 1, 1996 through May 31, 1996 from Western Area Power Administration (Western). Public Service requests an effective date of May 1, 1996.

Copies of the filing were served upon the City of Burlington, the Town of Julesburg, Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company

[Docket No. ER96–1804–000]

Take notice that on May 14, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Louis Dreyfus Electric Power Inc. (LDEP). The Transmission Service Agreement allows LDEP to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, under Docket No. ER95–1474, Rate Schedule STNF.

Wisconsin Electric requests an effective date of May 30, 1996, and waiver of the Commission's notice requirements to allow for economic transactions. Copies of the filing have been served on LDEP, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Company

[Docket No. ER96–1805–000]

Take notice that on May 14, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and QST Energy Trading Inc. (QST). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows QST to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on QST, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER96–1806–000]

Take notice that on May 14, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Southern Energy Marketing Incorporated (Southern). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Southern to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Southern, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas City Power & Light Company

[Docket No. ER96–1807–000]

Take notice that on May 14, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 29, 1996, between KCPL and UtiliCorp United Inc. (UCU). KCPL proposes an effective date of April 29, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and UCU.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER96–1808–000]

Take notice that on May 13, 1996, PECO Energy Company (PECO), filed a Service Agreement dated April 26, 1996, with Commonwealth Edison Company (ComEd) under PECO's FERC Electric Tariff Original Volume No. 3 (Tariff). The Service Agreement adds ComEd as a customer under the Tariff.

PECO requests an effective date of April 26, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ComEd and to the Pennsylvania Public Utility Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER96–1809–000]

Take notice that on May 15, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Service Agreement with Western Area Power Administration (Western) under FERC Electric Tariff, Original Volume No. 4; and an Index of Customers under said Tariff.

A copy of the filing was served upon Western.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER96–1810–000]

Take notice that on May 15, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by AGF, Inc. d/b/a/ AGF Direct Gas Sales (AGF) and KOCH Power Services, Inc. (KOCH). The new England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit AGF and KOCH to join the over 90 Participants that already participate in the Pool. NEPOOL further states that

the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make AGF and KOCH Participants in the Pool. NEPOOL requests an effective date on or before May 28, 1996 for commencement of participation in the Pool by AGF and KOCH.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER96–1811–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Federal Energy Sales (FES) dated May 13, 1995, providing for certain transmission services to FES.

Copies of this filing were served upon FES and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER96–1812–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and PECO Energy Co. (PECO) dated May 13, 1995, providing for certain transmission services to PECO.

Copies of this filing were served upon PECO and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER96–1813–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Cleveland Electric Illuminating Company (CEI) dated May 13, 1995 providing for certain transmission services to CEI.

Copies of this filing were served upon CEI and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER96–1814–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Noram Energy Service Company (Noram) dated May 13, 1995, providing for certain transmission services to Noram.

Copies of this filing were served upon Noram and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Old Dominion Electric Cooperative

[Docket No. ES96–28–000]

Take notice that on May 20, 1996, Old Dominion Electric Cooperative (Old Dominion) filed an application under § 204 of the Federal Power Act (FPA) seeking (1) authorization to enter into a proposed tax advantaged lease and leaseback of its Clover Power Station unit 2 and certain common facilities (Facility) and (2) an exemption from the Commission's competitive bidding and negotiated placement regulations. The transaction would involve a lease and lease-back of Old Dominion's 50 percent undivided ownership interest in the Facility under which an investor would obtain ownership of the undivided interest for income tax purposes and Old Dominion would obtain the effects of certain tax benefits that it would not otherwise be able to obtain. There would be no transfer of legal title to the Facility.

Old Dominion states that the Commission should assert jurisdiction over the proposed transaction based on the obligations to be assumed by it, citing a number of precedent cases decided by the Commission. Alternatively, Old Dominion consents to the Commission's review of the proposed transaction under section 204 of the FPA.

Comment date: June 11, 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. 96–13549 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–178–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Maritimes & Northeast Pipeline Project, Request for Comments on Environmental Issues and Notice of Public Meetings (NOI)

May 23, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the 66.0 miles of pipeline facilities and metering proposed in the Maritimes & Northeast Pipeline Project (Maritimes Project).[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Maritimes & Northeast Pipeline, L.L.C. (M&NP) wants to build a new natural gas transmission system in Massachusetts, New Hampshire, and southern Maine to transport 60,000 million cubic feet per day of natural gas for two shippers. The proposed facilities are Phase I of the Maritimes Project, a new high-pressure natural gas pipeline delivery system for the Sable Offshore Energy Project. The Phase I facilities would be the southernmost segment of a pipeline that would eventually extend from Country Harbor, Nova Scotia, Canada, to the Canadian-U.S. border near Calais, Maine, through Maine and

[1] Maritimes & Northeast Pipeline, L.L.C.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] Appendices 2 through 5 referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A–1, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

New Hampshire and into Massachusetts. M&NP requests Commission authorization, in Docket No. CP96–178–000, to construct and operate the following Phase I facilities:

- 66.0 miles of 24-inch-diameter pipeline from Dracut, Massachusetts to Wells, Maine in Middlesex and Essex Counties, Massachusetts (14.4 miles), Rockingham County, New Hampshire (34.7 miles), and York County, Maine (16.9 miles);
- two meter stations, one in Dracut, Massachusetts and one in Newington, New Hampshire;
- one meter and regulator station in Wells, Maine; and
- associated pipeline facilities, such as mainline block valves and pig launchers and receivers.

The information in this NOI is based on the route maps which were filed with the Commission on May 16, 1996. The general location of the project facilities is shown in appendix 2. The general location of other natural gas projects under Commission review occurring in the same region and within the same time frame (Granite State Gas Transmission, Inc. (Granite State LNG Project, Docket No. CP95–52–000) and Portland Natural Gas Transmission System (PNGTS Project, Docket No. CP96–249–000)) are shown in appendix 3. If you are interested in obtaining detailed maps of a specific portion of the Maritimes Project, contact the EIS Project Manager identified at the end of this notice.

Land Requirements for Construction

Based on information supplied by M&NP, over about 50 percent of the proposed pipeline would parallel existing road, pipeline, or powerline rights-of-way. Construction of the pipeline would require a 75-foot-wide construction right-of-way and would affect about 600 acres of land. Following construction, 50 feet of the construction right-of-way (about 400 acres) would be retained for operation of the pipeline and 1 acre would be retained for operation of each meter station. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent right-of-way, would be allowed to continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicant. These issues are listed below. This preliminary list of issues may be changed based on your comments and our analysis.

- *Geology and Soils*

—About 60 miles of near-surface bedrock may require blasting.
—Effect on exploitable mineral resources.
—Effect on prime farmland soils.
—Erosion control and right-of-way revegetation procedures.

- *Water Resources*

—Effect on groundwater and surface water supplies.
—About 80 crossings of waterbodies, including 2 crossings of waterbodies over 100 feet (Squamscott and Piscataqua Rivers), and crossings of the Spickett, Little, Exeter, and Great Works Rivers.
—Consistency with state Coastal Zone Management Programs.

- *Biological Resources*

—Clearing of upland forest and the permanent conversion of forest to open land.
—Effect on wetland habitat, including tidal salt marshes along the Squamscott and Piscataqua Rivers.
—Effect on warmwater, coldwater, anadromous, and estuarine fisheries habitat.
—Effect on wildlife habitat.
—Effect on Federal threatened and endangered and state special concern species.

- *Cultural Resources*

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.
—Effect on land sacred to the Bahá'í Faith in the vicinity of MP 50.1.

- *Land Use*

—Effect on 107 residences within 100 feet of the proposed pipeline.
—Effect on planned or proposed residential developments.
—Effect on public and recreation land, including conservation land at the Exeter River, the Henderson-Swasey Town Forest, the Newington Town Forest, and the Peace Development Authority property.

- *Socioeconomics*

—Effect on construction workforce on surrounding areas.

- *Air Quality and Noise*

—Effect on local air quality and noise environment as a result of construction.

- *Reliability and Safety*

—Assessment of hazards associated with natural gas pipelines.

- *Cumulative Impact*

—Assessment of the combined effect of the proposed project with other natural gas projects, such as the PNGTS and Granite State Projects, occurring in the same region and within the same time frame.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that

your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426;
- Reference Docket No. CP96–178–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 71–40, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

In addition to sending written comments, you may attend public scoping meetings. We will conduct three public scoping meetings at the following times and locations:

Date	Time	Location
June 18, 1996.	7:00 p.m	Methuen, Massachusetts.
June 19, 1996.	4:00 p.m. and 7:00 p.m.	Wells, Maine.
June 20, 1996.	4:00 p.m. and 7:00 p.m.	Newton, New Hampshire.

The meetings in Newton and Wells will also cover the proposed PNGTS Project in New Hampshire and Maine. We will send a separate NOI for the PNGTS Project to landowners affected by that project. M&NP and/or PNGTS will be invited to present a description of their proposals at the appropriate meetings. The Newton and Wells meetings will have two sessions in order to provide sufficient time to discuss both projects. While all are invited to attend either session, we are requesting that state and local governments plan on attending a 4:00 p.m. session.

The meeting in Methuen, Massachusetts will be held at the Great Hall, 41 Pleasant Street. The meeting in Newton, New Hampshire will be held at the Memorial Grammar School Gymnasium, 31 West Main Street. The meeting in Wells, Maine will be held at the Wells High School Gymnasium, Sanford Road.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings which we have arranged) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC at separate meetings or in writing, and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meetings to allow for non-preregistered speakers to sign up. A transcript will be made of the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceedings or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all potential rights-of-way grantors. As details of the project become established, representatives of M&NP may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commenters will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 5). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Jeff Gerber, EIS Project Manager, at (202) 208–1121.

Lois D. Cashell,

Secretary.

Appendix 1—Cooperating Agencies

The following Federal and state agencies are asked to indicate whether they want to be cooperating agencies for purposes of producing an EIS:

Advisory Council on Historic Preservation
Department of Agriculture
  Natural Resources Conservation Service
Department of the Air Force
Department of the Army
  Army Corps of Engineers
Department of Commerce
  National Marine Fisheries Service
Department of Energy
Department of the Interior
  Bureau of Indian Affairs
  Bureau of Mines
  Fish and Wildlife Service
  Geological Survey
Department of Transportation
  Federal Highway Administration
Environmental Protection Agency
Massachusetts Energy Facility Siting Board
Massachusetts Executive Office of Environmental Affairs
New Hampshire Department of Environmental Services
Maine Department of Environmental Protection

These, or any other Federal, state, or local agencies wanting to participate as a cooperating agency should send a letter describing the extent to which they want to be involved. Follow the instructions below if your agency wishes to participate in the EIS process or comment on the project:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426;
- Reference Docket No. CP96–178–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 71–40, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

Cooperating agencies are encouraged to participate in the scoping process and provide us written comments. Agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EIS. However, we will decide what modifications will be adopted in light of our production constaints.

[FR Doc. 96–13485 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–248–000 and CP96–249–000]

Portland Natural Gas Transmission System; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed PNGTS Project, Request for Comments and Environmental Issues, and Notice of Public Scoping Meeting (NOI)

May 23, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the 246.2 miles of pipeline and metering facilities proposed in the PNGTS Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal and state agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Portland Natural Gas Transmission System (PNGTS) wants to build new natural gas pipeline facilities in Vermont, New Hampshire, Maine, and Massachusetts, with a peak day capacity of 178,000 thousand cubic feet per day (Mcf/d), of natural gas to transport up to 167,000 Mcf/d of natural gas for four shippers. PNGTS requests Commission authorization, in Docket CP96–249–000, to construct and operate the following facilities:

- 241.9 miles of 20-inch-diameter pipeline (mainline) extending from a connection with TransCanada PipeLines Limited (TCPL) at the border of the United States and Canada near North Troy, Vermont to the existing Tennessee Gas Pipeline Company transmission system in Haverhill, Massachusetts. Of the 241.9-mile-long mainline, about 58.8 miles would be in Vermont, 65.9 miles would be in New Hampshire, 117.1 miles would be in Maine, and 0.1 mile would be in Massachusetts;
- 3.3 miles of 12-inch-diameter pipeline lateral connected to the mainline in Westbrook, Maine and ending in Falmouth, Maine;
- 1.0 mile of 12-inch-diameter pipeline lateral connected to the mainline in Newington, New Hampshire and ending near Portsmouth, New Hampshire;
- Four new meter stations, one each in Falmouth and Wells, Maine; Newington, New Hampshire; and Haverhill, Massachusetts;
- Acquisition and modification of an existing meter station in Newington, New Hampshire adjacent to the proposed new meter station; and
- Associated pipeline facilities, such as 15 mainline block valves and 4 pig launchers and/or receivers.

PNGTS has also requested authorization in Docket No. CP96–248–000 to construct, operate, and maintain border facilities to import gas from Canada. The import point border facilities would include about 500 feet of 20-inch-diameter pipeline to connect with the facilities of TCPL near North Troy, Vermont.

PNGTS proposes to have the facilities in service by November 1, 1998. PNGTS also plans to construct but has not yet filed an application for additional pipeline laterals (future laterals) to serve markets near Newport, St. Johnsbury, and Gilman, Vermont; Groveton and Berlin, New Hampshire; and Jay, Maine. PNGTS indicates that it will file a separate application for these facilities in the fall of 1996.

The general locations of the project facilities are shown in appendix 2. The general locations of PNGTS future laterals and other natural gas projects under Commission review occurring in the same region and within the same timeframe (Granite State Gas Transmission, Inc. [Granite State], Granite State LNG Project, Docket No. CP95–52–000 and Maritimes & Northeast Pipeline, L.L.C. [M&NP], Maritimes & Northeast Pipeline [Maritimes Project], Docket No. CP96–178–000) as shown in appendix 3. If you are interested in obtaining detailed maps of a specific portion of the project, contact the EIS Project Manager identified at the end of this notice.

Land Requirements for Construction

Construction of the proposed facilities would affect about 2,506 acres of land. Approximately 93 percent of the proposed pipeline and pipeline laterals would parallel existing pipeline, powerline, or other rights-of-way. The nominal construction rights-of-way for the 20-inch-diameter pipeline and 12-inch-diameter pipeline laterals would be 75 feet wide. Extra temporary work spaces would be used at road, stream, and large wetland crossings, as well as for pipeyards and contractor yards and areas where temporary topsoil or rock storage is required.

Following construction, about 1,473 acres of the land affected by the project would be retained for operation of the pipeline and aboveground facilities. This total includes about 0.5 acre for each of the four new and one existing meter stations and about 1.0 acre for each of the four pig launchers and/or receivers. Permanent 50-foot-wide rights-of-way would be maintained for the 20- and 12-inch-diameter pipelines. The mainline block valves would be within the permanent rights-of-way. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent rights-of-way, would be allowed to continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicant. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Geology and Soils

—Seismology, soil liquefaction, and areas susceptible to landslide.
—39.6 miles of near-surface bedrock that may require blasting.
—Effect on exploitable mineral resources.

[1] Portland Natural Gas Transmission System's applications were filed with the Commission under Sections 3 and 7 of the Natural Gas Act and Parts 153 and 157 of the Commission's regulations.

[2] Appendices 2 through 5 referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

—Effect on farmland.
—Erosion control and right-of-way revegetation procedures.

- Water Resources

—Effect on groundwater and surface water supplies.
—832 crossings of perennial and intermittent waterbodies, including 9 crossings of waterbodies over 100 feet wide (Moos, Connecticut, Peabody, Androscoggin, Presumpscot, Saco, Mousam, Squamscott, and Piscataqua Rivers) and crossings of the Missisquoi, Israel, and Exeter Rivers and Great Brook.
—Consistency with state Coastal Zone Management Programs.

- Biological Resources

—Clearing of upland forest and the permanent conversion of forest to open land.
—Effect on wetland habitat, including tidal salt marshes along the Squamscott and Piscataqua Rivers, resulting from the crossing of 940 wetlands.
—Effect on warmwater, coldwater, anadromous, and estuarine fisheries, habitat.
—Effect on wildlife habitat, including deer wintering areas and waterfowl and wading bird habitat.
—Effect on Federal threatened and endangered species and state special concern species.
—Effect on Kennebunk Plains, an unusual dry grassland community.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

- Land Use

—Effect on 103 residences within 50 feet of construction work areas.
—Effect on planned residential developments.
—Effect on public and recreation lands, including the Willoughby State Forest, Victory State Forest, Victory Bog State Wildlife Management Area, Roaring Brook Park, White Birches Campground, Bean Pond Fish and Wildlife Area, White Mountain National Forest, and the Pease Development Authority property.
—Effect on snowmobile, jeep, and hiking trails, several of which are important to the Appalachian Mountain Club and Randolph Mountain Club, including the Carter-Moriah Trail and Appalachian Trail.
—Effect on scenic waterbodies and byways, including the Connecticut, Exeter, and Piscataqua Rivers; and Routes 3, 116, 16, 2, 107, and 238 in New Hampshire and Route 11 in Maine.
—Effects resulting from crossing over or near known hazardous waste sites.

- Socioeconomics

—Effect of construction workforce on surrounding areas.
—Effect on property values.

- Air Quality and Noise

—Effect on local air quality and noise environment as a result of construction.

- Reliability and Safety

—Assessment of hazards associated with natural gas pipelines.

- Cumulative Impact

—Assessment of the combined effect of the proposed project with other projects occurring in the same general area and within the same time frame, including the Granite State LNG Project and Maritimes Project.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;
- Reference Docket No. CP96–249–000;
- Send a *copy* of your letter to: Mr. Mark Jensen, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–65, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

In addition to sending written comments, you may attend public scoping meetings. We will conduct four public scoping meetings comprising six sessions at the following times and locations:

Date	Time	Location
June 17, 1996.	7:00 p.m	Orleans, VT.
June 18, 1996.	7:00 p.m	Gorham, NH.
June 19, 1996.	4:00 p.m. and 7:00 p.m.	Wells, ME.
June 20, 1996.	4:00 p.m. and 7:00 p.m.	Newton, NH.

The meetings in Newton and Wells will also cover the proposed Maritimes Project in New Hampshire and Maine. We will send a separate NOI for the Maritimes Project to landowners affected by that project. PNGTS and/or M&NP will be invited to present a description of their proposals at the appropriate meetings. The Newton and Wells meetings will have two sessions in order to provide sufficient time to discuss both projects at each session. While all are invited to attend either session, we are requesting that state and local governments plan on attending the 4:00 p.m. session.

The meeting in Orleans, Vermont will be held at the Lake Region Union High School. The meeting in Gorham, New Hampshire will be held at the Town and Country Motor Inn, Route 2. The two meetings in Wells, Maine will be held at the Wells High School Gymnasium, Sanford Road. The two meetings in Newton, New Hampshire will be held at the Memorial Grammar School Gymnasium, 31 West Main Street.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings which we have arranged) on an interagency basis. Federal agencies are expected to transmit their comments directly to the

FERC and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. The more specific your comments, the more useful they will be. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meetings to allow for non-preregistered speakers to sign up. A transcript will be made of the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives to PNGTS may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS's, please return the Information Request (appendix 5). If you do not return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Mark Jensen, EIS Project Manager, at (202) 208–0828.

Lois D. Cashell,

Secretary.

Appendix 1—Cooperating Agencies

The following Federal and state agencies are asked to indicate whether they want to be cooperating agencies for purposes of producing an EIS:

Advisory Council on Historic Preservation
Department of Agriculture
  Natural Resources Conservation Service
Department of the Army
  Army Corps of Engineers
Department of Commerce
National Marine Fisheries Service
Department of Energy
Department of the Interior
  Bureau of Indian Affairs
  Fish and Wildlife Service
  Geological Survey
  National Park Service
Department of Transportation
  Federal Highway Administration
Environmental Protection Agency
Vermont Agency of Natural Resources
New Hampshire Department of Environmental Services
Maine Department of Environmental Protection

These, or any other Federal, state, or local agencies wanting to participate as a cooperating agency should send a letter describing the extent to which they want to be involved. Follow the instructions below if your agency wishes to participate in the EIS process or comment on the project:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;
- Reference Docket No. CP96–249–000;
- Send a *copy* of your letter to: Mr. Mark Jensen, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–65, Washington, DC 20426; and Docket No. CP96–248–000, *et al.*
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

Cooperating agencies are encouraged to participate in the scoping process and provide us written comments. Agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EIS. However, we will decide what modifications will be adopted in light of our production constraints.

[FR Doc. 96–13486 Filed 5–29–96; 8:45 am]

BILLING CODE 0717–01–M

Notice of Addition of a Second Entity as Applicant

May 23, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment to the Pending Application for Major License to Add a Second Entity as Applicant.

b. Project No.: 10756–001.

c. Date filed: March 15, 1996 (the license application was filed on May 28, 1992).

d. Applicant: Blue Diamond South Pumped Storage Power Company, Inc. and Blue Diamond Power Partners Limited Partnership (requesting to add Blue Diamond Power Partners Limited Partnership).

e. Name of Project: Blue Diamond South Pumped Storage.

f. Location: Mostly on U.S. lands administered by the Bureau of Land Management, on two man-made reservoirs—on and near the Blue Diamond Hill, about 5 miles west of Las Vegas in Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. FERC Contact: Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. Deadline Date: Thirty days from the issuance date of this notice. (Please restrict your comments to the addition of a second entity as applicant—the subject of this notice.)

k. Current Processing Status of the Application: The draft environmental impact statement (DEIS) for this application was issued on January 26, 1996. The deadline for filing comments on the DEIS was March 11, 1996.

l. Filing and Service of Responsive Documents—The Commission is requesting comments on the addition of a second entity as applicant.

All filings must: (1) bear in all capital letters the title ''COMMENTS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.205. All comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). These documents must be filed by providing the original and eight copies to: Secretary, Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 5K–01, at the above address. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

m. Available Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

Lois D. Cashell,

Secretary.

[FR Doc. 96–13487 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5512–3; OMB# 2060–0054; EPA# 1131.05]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Glass Manufacturing Plants—NSPS Subpart CC) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1131.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Glass Manufacturing Plants (OMB Control No. 2060–0054; EPA ICR No. 1131.05). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that PM emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of glass manufacturing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2212.4 hours per response. 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 capital costs associated with this rule result from purchasing particulate matter control devices and operation and maintenance of particulate matter control devices. The estimated cost of a particulate matter control device is $400,000. The estimated annual costs for operation and maintenance of pollution control equipment is $175,000. This figure was calculated using estimates provided by a glass manufacturing industry consultant who stated that operation and maintenance of pollution control equipment costs approximately $2.00 per ton of glass manufactured with the average container glass facility manufacturing 250 tons per day for 350 days per year.

Respondents/Affected Entities: 30.

Estimated Number of Respondents: 30.

Frequency of Response: 2.

Estimated Number of Responses: 60.

Estimated Total Annual Hour Burden: 2,588.9 hours.

Estimated Total Annualized Cost Burden: $78,834.

Send comments 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 to the following addresses. Please refer to EPA ICR No. 1131.05 and OMB Control No. 2060–0054 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 22, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–13575 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5512–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for General Administrative Requirements for Assistance Programs described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to ERA ICR No. 0938.06.

SUPPLEMENTARY INFORMATION: .

Title: General Administrative Requirements for Assistance Program (OMB Control No. 2030–0020; EPA ICR No. 0938.06. This is a request for a revision of a currently approved collection.

Abstract: The information is collected from applicants/recipients of EPA assistance and is used to make awards, pay recipients and collect information on how Federal funds are being spent. EPA needs the information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR Part 30, ''Grants and Agreements with Institutions of High Education, Hospitals and Other Non-profit Organizations'' and 40 CFR Part 31, ''Uniform Administrative Requirements for Grants and Cooperative to State and Local Governments.'' 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 of EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 03/22/96 (Vol. 61 No. 57 pg. 11834).

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 32 hours per response. 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 transit or otherwise disclose the information:

Respondents/Affected Entities: Not-for-profit institutions.

Estimated Number of Respondents: 3,743.

Frequency of Response: as required.

Estimated Total Annual Hour Burden: 119,776 hours.

Estimated Total Annualized Cost Burden: $4,030,848,00.

Send comments on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods of minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0938.06 and OMB Control No. 2030–0020 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: May 23, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–13576 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5512–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Selective Enforcement Auditing Reporting and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for Selective Enforcement Auditing Reporting and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks (OMB Control No. 2060–0064, approved through 6/30/96). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0011.08.

SUPPLEMENTARY INFORMATION:

Title: Selective Enforcement Auditing Reporting and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks (OMB Control No. 2060–0064; EPA ICR No. 0011.08) expiring 6/30/96. This ICR request is an extension of a currently approved collection activity.

Abstract: The On-Highway Light-Duty Vehicle (LDV), Light-Duty Truck (LDT), and Heavy-Duty Engine (HDE) Selective Enforcement Auditing (SEA) Programs as well as the Nonroad Large Compression-ignition Engine (CIE) SEA Program use this information collection to enforce compliance with applicable exhaust emission standards. Under section 206(d) of the Clean Air Act (Act), the U.S. Environmental Protection Agency (EPA) is authorized to conduct emission testing of new, on-highway LDV, LDT, and HDE production through SEAs (or Audits). Section 213(d) of the Act as amended (Act) authorizes the Nonroad SEA Program. The Nonroad CIE SEA Program was designed to parallel the on-highway SEA Programs, reference 40 CFR Part 86 Subpart K, and its information collection requirements.

The on-highway LDV and LDT SEA programs are conducted by the Vehicle Programs and Compliance Division (VPCD), Office of Mobile Sources (OMS), Office of Air and Radiation (OAR). The on-highway HDE and nonroad CIE programs are conducted by the Engine Programs and Compliance Division (EPCD), OMS, OAR.

This information collection requires manufacturers of on-highway LDVs, LDTs, and HDEs, and nonroad CIEs to submit to EPA periodic reports and information from SEAs. VPCD and EPCD collect this information and evaluate it to determine if the applicable production vehicles and engines comply with the Act. The information collected specifically includes ''Pre-audit'' planning information and ''Audit'' information. Pre-audit information includes projected annual sales data, production volumes at assembly plants, and voluntary assembly line test data (ALT data) submittals. Audit information includes detailed

production information, records for test equipment, test data, and reports.

The results of SEAs are used by the Office of Mobile Sources to verify compliance of production vehicles and engines with applicable emission standards. The data and test facility information from SEAs may be used by OMS's Certification Programs to help evaluate a manufacturer's future model year Applications for Certification, and LDV and LDT SEA data will also be used by the VPCD's In-use Testing Program to help target potential future in-use nonconformities.

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. The Federal Register notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/12/9; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 260 and 8,988 hours per response. 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 estimated annual cost resulting from this information collection is $453,782, $1,646,612, and $82,440 for the HDE, CIE, and LDV/LDT programs, respectively. The estimated annual cost to the CIE industry segment includes start-up costs and ''learning curve'' costs. The start-up and learning-factor costs apply to the first three years of the nonroad CIE SEA program (which is the duration of this information collection request) and are divided among the 28 CIE manufacturers.

Respondents/Affected Entities: On-highway LDV, LDT, and HDE as well as nonroad Large CIE manufacturers.

Assembly line test reports	HDE	CIE	LDV/LDT
Estimated Number of Respondents	13	15	18
Frequency of Response	4	4	4
Estimated Total Annual Hour Burden	780 hrs.	900 hrs.	1,080 hrs.
Estimated Total Annualized Cost Burden	$43,368	$50,040	$60,048

Assembly plant projected production volumes/sales data	HDE	CIE	LDV/LDT
Estimated Number of Respondents	22	28	20
Frequency of Response	1	1	1
Estimated Total Annual Hour Burden	572 hrs.	728 hrs.	260 hrs.
Estimated Total Annualized Cost Burden	$33,352	$42,448	$15,160

Selective enforcement audits	HDE	CIE	LDV/LDT
Estimated Number of Respondents	7	7	2
Frequency of Response	1.4	1.4	1
Estimated Total Annual Hour Burden	6,291.6 hrs.	12,583.2 hrs.	110 hrs.
Estimated Total Annualized Cost Burden	$377,062	$754,124	$7,232

Send comments 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 to the following addresses. Please refer to EPA ICR No. 0011.08 and OMB Control No. 2060–0064 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: May 23, 1996.

Joseph Retzec,

Director, Regulatory Information Division.

[FR Doc. 96–13577 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission; Comments Requested

May 22, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the

information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0055.

Title: Application for Cable Television Relay Station Authorization.

Form No.: FCC Form 327.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit, individuals, and state, local or tribal governments.

Number of Respondents: The Commission receives approximately 1,400 FCC Form 327 filings annually.

Estimated Time Per Response: 3.166 hours per average response.

Total Annual Burden: 4,432 hours (1,400 x 3.166 hours).

Costs for Respondents: $2,800 (1,400 filings x $2), as each filing will have estimated postage and stationery costs of $2.

Needs and Uses: The FCC Form 327 is filed by cable system owners or operators, cooperative enterprises owned by cable system owners or operators, and MMDS operators (wireless cable system operators) when applying for a cable television relay service (CARS) station license, as well as a modification, reinstatement, amendment, assignment, renewal, and transfer of control of a CARS station license. FCC Form 327 filings are reviewed by Commission staff to determine whether applicants meet basic statutory requirements and are qualified to become or continue as a Commission licensee of a CARS station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13461 Filed 5–29–96; 8:45 am]

BILLING CODE 6712–01–F

[Report No. 2133]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 22, 1996.

A Petition for reconsideration has been filed in the Commission's rulemaking proceedings listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Opposition to this petition must be filed June 14, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of Section 73.202(b), Table of Allotments, TV Broadcast Stations. (Farmington and Gallup New Mexico) (MM Docket No. 92–81, RM–7875.

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13462 Filed 5–29–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 96–N–3]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled ''Advances to Nonmember Mortgagees.''

DATES: Interested persons may submit comments on or before July 29, 1996.

ADDRESSES: Written comments and requests for copies of the information collection should be addressed to Elaine L. Baker, Executive Secretary, (202) 408–2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Financial Analyst, (202) 408–2842, or Janice A. Kaye, Attorney-Advisor, (202) 408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10b(a) of the Federal Home Loan Bank Act (Bank Act) permits the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to qualified nonmember mortgagees. *See* 12 U.S.C. 1430b(a). Section 10b(b) establishes special expanded collateral requirements for advances to qualified nonmember mortgagees that are state housing finance agencies (SHFAs). *Id.* § 1430b(b). The information collection contained in section 935.22 of the Finance Board's regulations, 12 CFR 935.22, is necessary to enable the Finance Board to determine whether a respondent satisfies the statutory and regulatory requirements to qualify initially and maintain its status as a nonmember mortgagee or a SHFA nonmember mortgagee eligible to receive FHLBank advances.

The OMB number for the information collection is 3069–0005. The OMB clearance for the information collection expires on September 30, 1996.

In order to qualify for FHLBank advances, the Finance Board or its designee must certify a respondent as an eligible nonmember mortgagee. 12 CFR 935.22(c)(1). The Finance Board uses the information collection to determine whether a respondent meets the nonmember mortgagee eligibility requirements. The information collection requires each respondent to submit documentation to the FHLBank from which it seeks advances that shows: (1) it is chartered under law and has succession; (2) it is subject, pursuant to statute or regulation, to the inspection and supervision of a federal, state, or local government agency; (3) its principal activity in the mortgage field consists of lending its own funds; (4) it is approved by the Department of Housing and Urban Development as a ''mortgagee'' under Title II of the National Housing Act; (5) advances may be safely made to it, as determined by the FHLBank; and (6) where applicable, it qualifies as a SHFA as defined in 12 CFR 935.1. *See* 12 CFR 935.22(c)(2), (3). The FHLBank then must submit the information collected along with its review of the applicant's financial condition to the Finance Board for review and approval. *Id.* § 935.22(c)(5). The Finance Board reviews the information and notifies the FHLBank of its determination regarding the

applicant's eligibility to receive advances as a nonmember mortgagee. *Id.* § 935.22(c)(6).

Once certified, a nonmember mortgagee has a continuing obligation to promptly notify its FHLBank of any changes in its status as a nonmember mortgagee. *Id.* § 935.22(f)(1). In addition, from time to time a FHLBank may require a nonmember mortgagee to provide evidence that it continues to satisfy all nonmember mortgagee qualifications and requirements. *Id.* § 935.22(g).

B. Burden Estimate

The total annual average number of respondents is estimated at ten, with one response per respondent. The average hours per response is estimated at ten hours. The total annual burden is estimated at 100 hours (10 respondents x 1 response/respondent x approximately 10 hours).

C. Comment Request

Written comments are requested on: (1) whether the collection of information is necessary for the proper performance of the functions of the Finance Board, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated May 22, 1996.

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 96–13504 Filed 5–29–96; 8:45 am]

BILLING CODE 6725–01–U

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 June 12, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. H.A. True, III, Trust, H.A. True, III, Trustee, Diemer D. True, Trust, Diemer D. True, Trustee, David L. True, Trust, and David L. True, Trustee, all of Casper, Wyoming; to acquire an additional 24.6 percent, for a total of 33.3 percent, of the voting shares of Midland Financial Corporation, Casper, Wyoming, and thereby indirectly acquire Hilltop National Bank, Casper, Wyoming.

Board of Governors of the Federal Reserve System, May 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13505 Filed 5-29-96; 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 June 21, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First State Associates, Inc., Hawarden, Iowa; to become a bank holding company by acquiring 33.3 percent of the voting shares of Hawarden Banking Company, Elkhorn, Nebraska, and thereby indirectly acquire First State Bank, Hawarden, Iowa.

In connection with this application Alton Bancorporation, Alton, Iowa, and Old O'Brien Bancshares, Inc., Sutherland, Iowa, also have applied to each acquire 33.3 percent of the voting shares of Hawarden Banking Company, Elkhorn, Nebraska, and thereby indirectly acquire First State Bank, Hawarden, Iowa.

2. Sparta Union Bancshares, Inc., Sparta, Wisconsin; to become a bank holding company by acquiring at least 95 percent of the voting shares of Union National Bank & Trust Company, Sparta, Wisconsin.

Board of Governors of the Federal Reserve System, May 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13506 Filed 5-29-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,*

or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Southern Bancorp, Inc., Stanford, Kentucky; to acquire Lincoln Financial Bancorp, Inc., Stanford, Kentucky, and thereby indirectly acquire Lincoln Federal Savings Bank, Stanford, Kentucky, and thereby engage in acquiring and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Eau Claire Financial Services, Inc., St. Paul, Minnesota; to acquire Lake City Agency, Inc., Lake City, Minnesota, and thereby engage in operating an insurance agency in the town of Lake City, Minnesota, a community with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The proposed activity will be conducted throughout Lake City, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Orchard Valley Financial Corporation, Hotchkiss, Colorado; to engage *de novo* in making consumer finance loans, real estate construction loans and real estate development loans, pursuant to §§ 225.25(b)(1)(i), (iii), and (iv) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Santa Barbara Bancorp, , Santa Barbara, California; to engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y by offering job training to low and moderate income persons in computer software skills.

Board of Governors of the Federal Reserve System, May 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13507 Filed 5-29-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports clearance Officer on (202) 690–6207.

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.

1. HHS Acquisition Regulations—HHSAR Part 342—Contract Administration—Extension no change—0990–0131—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable—Respondents—State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 45: Average burden per response: 20 hours; Total burden: 900 hours.

2. HHS Acquisition Regulation—HHSAR Part 333—Disputes and Appeals—Extension no charge—0990–0133—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—Respondents: State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 100; Average burden per response: 30 minutes; Total burden: 50 hours.

3. HHS Acquisition Regulation—HHSAR Part 332—Contract Financing—Extension no change—0990–0134—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractor. Respondents: State or local governments, small businesses—Burden Information for Cost Sharing Clause—Number of Respondents: 24; Annual Number of Responses per Respondent: 10; Average Burden per Response: one hour; Annual Burden: 240 hours—Burden Information for Letter of Credit Clause—Number of Respondents: 268; Annual Number of Responses: 4; Burden per Response: 1 hour; Estimated Annual Burden: 1072 hours—Total Burden: 1,312 hours.

4. HHS Acquisition Regulation—HHSAR Part 324—Protection of Privacy and Freedom of Information—Extension no change—0990–0136—The confidentiality of Information requirements are needed to prevent improper disclosure of confidential data. Respondents: State or local governments, Business or other for-profit, non-profit institutions, small businesses; Annual Number of Responses: 449; Average Burden per Response: 8 hours; Estimated Burden: 3,592 hours.

5. HHS Acquisition Regulation—HHSAR Part 316—Types of Contracts—Extension no change—0990—0138—The Negotiated Overhead Rate—Fixed

clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). Respondents: non-profit institutions; Annual Number of Responses: 376; Average Burden per Response: 10 hours; Estimated Burden: 3.760 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: May 21, 1996.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 96–13525 Filed 5–29–96; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

[Announcement 647]

National Institute for Occupational Safety and Health; Centers for Agricultural Disease and Injury Research, Education, and Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program with universities or university-affiliated medical centers for the establishment of Centers for Agricultural Disease and Injury Research, Education, and Prevention. 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 area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 (a) and 671(e)(7)).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse 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

Eligible applicants include State and private universities and university-affiliated, not-for-profit medical centers within the United States (U.S.). The restriction of eligible applicants is due to the FY 1990 appropriations language which initiated this program and states that centers for agricultural occupational safety and health will be established at universities. Because of programmatic and regional differences throughout agriculture in the U.S., only one center will be established in any Department of Health and Human Services (DHHS) region. (Those Regions and their States are: Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Region II: New Jersey, New York, Puerto Rico, and the Virgin Islands; Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia; Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Region VII: Iowa, Kansas, Missouri, and Nebraska; Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Region IX: American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territory, Wake Islands, and North Mariana Island; and Region X: Alaska, Idaho, Oregon, and Washington.) Currently, there is a Center in DHHS Region VI, which includes the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Therefore, the regional emphasis for this announcement includes all DHHS Regions, with the exception of Region VI.

Availability of Funds

Approximately $4,300,000 will be available in FY 1996 to fund up to seven additional Agricultural Centers. It is expected that the average award will be approximately $500,000. It is expected that the awards will begin on or about September 30, 1996, and will be made for 12-month budget periods within project periods of 3 to 5 years. 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.

Grant applications should be focused on the research priorities described in the section ''FUNDING PRIORITIES'' that includes new research priorities developed in a process which resulted in defining a National Occupational Research Agenda. Grant proposals in these areas will compete for the available funds as noted in the previous paragraph, as well as for funds announced through Requests for Applications that are anticipated in FY 1996 and FY 1997.

Purpose

This cooperative agreement program will significantly strengthen the occupational and public health infrastructure by building on past Agricultural Center accomplishments aimed at integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. It is designed to address the research, education, and intervention activities that are unique to agriculture in the Region. To achieve this objective, the program will establish Centers for agricultural disease and injury research, education, and prevention. The program objectives are as follows:

1. Develop and conduct research related to the prevention of occupational disease and injury of agricultural workers and their families.

2. Develop and implement model educational, outreach, and intervention programs promoting health and safety for agricultural workers and their families.

3. Develop and evaluate control technologies to prevent illness and injuries among agricultural workers and their families.

4. Develop and implement model programs for the prevention of illness and injury among agricultural workers and their families.

5. Evaluate agricultural injury and disease prevention and educational materials and programs implemented by the Center.

6. Provide consultation and/or training to researchers, health and safety professionals, graduate/professional students, and agricultural extension agents and others in a position to improve the health and safety of agricultural workers.

7. Develop linkages and communication with other governmental and non-governmental bodies involved in agricultural health and safety with special emphasis on communications with other CDC/NIOSH sponsored agricultural health and safety programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities) below, and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities) below:

A. Recipient Activities

1. Develop and conduct research related to the prevention of occupational disease and injury of agricultural workers and their families. An emphasis should be placed on multi-disciplinary research efforts and on the development and evaluation of control technologies. Emphasis should also be given to populations not well represented in the current research such as hired farm laborers, migrant/seasonal workers, women and children.

2. Develop a research protocol(s) for the Center for agricultural disease and injury research, education, and prevention. Consult with regional stakeholders (e.g. agricultural organizations, advisory groups, and workers and other interested parties) as appropriate in the development of a program of research. Obtain peer review of the protocol and revise and finalize it as required for final approval by CDC/NIOSH.

3. Develop and implement model educational, outreach, and intervention programs promoting health and safety for agricultural workers and their families. These should include bilingual materials and multi-media presentations as appropriate to reach the target agricultural populations within the Regions. Emphasis should be given to reaching underserved agricultural populations such as hired farm laborers, migrant/seasonal workers, women and children.

4. Develop and implement model programs for the prevention of illness and injury among agricultural workers and their families. Additional emphasis should be placed on the development of control technology interventions suited to the agricultural workplace.

5. Provide assistance and direction to community-based groups in the region (e.g. Farm youth or adult associations, extension services, schools, local government groups, migrant worker groups, medical clinics or treatment centers, worker associations, etc.) for the development and implementation of community projects including intervention research and prevention demonstration projects for preventing work related injuries and illness among farm workers and their families.

6. Develop linkages and communication with other governmental and nongovernmental bodies involved in agricultural health and safety with special emphasis on communications with other CDC/NIOSH-sponsored agricultural health and safety programs, some of which will be identified by CDC/NIOSH. Where appropriate, collaborate with CDC/NIOSH scientists on complementary research areas.

7. Assist in reporting and disseminating research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health care providers, the scientific community, agricultural workers and their families, management and union or other worker representatives, and other CDC/NIOSH Centers for agricultural disease and injury research, education, and prevention, some of which will be identified by CDC/NIOSH. Emphasis should be placed on the rapid dissemination of significant public health findings and the translation of research findings into prevention efforts.

8. In collaboration with other CDC/NIOSH Agricultural Centers, develop and utilize a uniform evaluation scheme for Agricultural Center research, education/training, and outreach/intervention activities.[1]

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration where needed.

3. Assist in the reporting and dissemination of research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, agricultural workers and their families, management and union representatives, and other CDC/NIOSH Centers for agricultural disease and injury research, education, and prevention. Emphasis should be placed on the rapid dissemination of significant public health findings and the translation of research findings into prevention efforts.

[1] A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report, March 27, 1992/Vol.41/Jn. The MMWR can be accessed through CDC's DocView, World-Wide Web (http://www.cdc.gov/epo/mmwr/mmwr.html).

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement program, including the applicant's understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement program including the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and the proposed method for evaluating the accomplishments. (20%)

3. Strength of the program design in addressing the distinct characteristics, specific populations, and needs in agricultural research and education for the region. (20%)

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. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

4. Training and experience of proposed Program Director, staff, and organization. This includes: (a) a Program Director who is a distinguished scientist and technical expert and staff with training or experience sufficient to accomplish proposed program, and (b) a director, staff, and organization with proven accomplishments in the field of agricultural safety and health and the infrastructure necessary to access the agricultural populations in the regions served by the Agricultural Center. (20%)

5. Strength of the proposed program for agricultural safety and health in the areas of prevention, research, education, and multi-disciplinary approach. (10%)

6. Efficiency of resources and novelty of program. This includes the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of program approach. (5%)

7. The strength of program plans for development and implementation of a uniform evaluation scheme for Agricultural Center research, education/training, and outreach/intervention activities. (5%)

8. Human Subjects (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects. Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group 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 as to make the entire application unacceptable.

9. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should be sent to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

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 Number for this program is 93.262)

Other Requirements

Paperwork Reduction Act

Projects funded through the cooperative agreement mechanism of this program involving the collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate 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.

Women and Minority Inclusion Policy

It is the policy of the Centers of Disease Control and Prevention (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, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority population are appropriately represented 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. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance on this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Funding Priorities

The NIOSH program priorities, listed below, are applicable to all of the above types of grants listed under the section ''MECHANISMS OF SUPPORT''. These priority areas were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health, but the rationale for the significance of the research to the field of occupational safety and health must be presented in the grant application.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

NORA Priority Research Areas

Disease and Injury

Allergic and Irritant Dermatitis
Asthma and Chronic Obstructive Pulmonary Disease
Fertility and Pregnancy Abnormalities
Hearing Loss
Infectious Diseases
Low Back Disorders
Musculoskeletal Disorders of the Upper Extremities

Traumatic Injuries

Work Environment and Workforce

Emerging Technologies
Indoor Environment
Mixed Exposures
Organization of Work
Special Populations at Risk

Research Tools and Approaches

Cancer Research Methods
Control Technology and Personal Protective Equipment
Exposure Assessment Methods
Health Services Research
Intervention Effectiveness Research
Risk Assessment Methods
Social and Economic Consequences of Workplace Illness and Injury
Surveillance Research Methods

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 10, 1996.

1. Deadline: Applications will 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 group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 647. You will receive a complete program description and information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, 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–13, Atlanta, GA 30305, telephone (404) 842–6546, Internet: oxb3@opspgo1.em.cdc.gov, fax (404) 842–6513.

Programmatic technical assistance may be obtained from Greg Kullman, Ph.D., Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Morgantown, WV 26505–2888, telephone (304) 285–5711, Internet: gjkl@niords1.em.cdc.gov, fax (304) 285–5796.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore, CDC suggests the following to get more timely responses to any questions: use Internet/email; follow all instructions in this announcement; and leave messages on the contact person's voice mail.

Please refer to Announcement 647 when requesting information and 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'' Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 22, 1996.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13472 Filed 5–29–96; 8:45 am]

BILLING CODE 4163–19–P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of Family Support Programs.

OMB Number: New collection.

Description: This study, conducted under a contract to Abt Associates, Inc., responds to the requirement of Subpart 2, Section 435 of OBRA 1993, which directs the Secretary of Health and Human Services to evaluate the effectiveness of family support programs. The information collected will provide descriptive information about family support programs, including detailed information about program operations and variation among programs, and will address the question of the effectiveness of such programs in achieving their goals. The data collected will complement a previous review of existing evaluations of family support programs, and will provide prospective information on eight programs, including information about the operation of such programs and outcomes for families and children who participate. Information will be collected beginning in Fall, 1996, through interviews with parents, children, and teachers of children who are participants in family support programs. Domains of interest include adult and child strengths, home environment, child development, children's school success, development of children's social responsibility, family resources, family social support networks, adoption of healthy lifestyles, community environment, community resources, and community networks.

Respondents: Individuals or households, not-for-profit institutions.

ANNUAL BURDEN ESTIMATE

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Family Interview	1,085	3.1	1	3,340
Child Interview	845	3.4	25	715
Student Interview	245	2	.25	125
Teacher Questionnaire	825	2.8	.17	395

Estimated Total Annual Burden Hours: 4,575.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Office over the Internet by sending message to rsargis@acf.dhhs.gov. Internet message must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the function 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 of other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 23, 1996.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 96–13526 Filed 5–29–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0122]

Agency Information Collection Activities: Proposed Collections; Comment Request; Extension/ Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the Federal Register concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing temporary marketing permit applications, State petitions for exemption from preemption, State enforcement notifications, and reference amount petitions.

DATES: Submit written comments on the collections of information by July 29, 1996.

ADDRESSES: Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

1. Temporary Marketing Permit Applications (21 CFR 130.17(c) and (i)) (OMB Control Number 0910–0133—Extension)

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341) directs FDA to issue regulations establishing definitions and standards of identity for food ''whenever * * * such action will promote honesty and fair dealing in the interest of consumers.'' Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) specifies the information that a firm must submit to FDA to obtain a temporary marketing permit. The information required in a temporary marketing permit application under § 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions or standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

FDA estimates the burden of the temporary marketing permit application requirements as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.17	15	1.33	20	11.5	230

There are no capital costs or operating and maintenance costs associated with this collection.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received from October 30, 1991, through September 30, 1994.

2. State Petitions for Exemption From Preemption (21 CFR 100.1(d)) (OMB Control Number 0910–0277—Reinstatement)

Under section 403A(b) of the act (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement comports with the statutory criteria for exemption from Federal preemption.

FDA estimates the burden resulting from the requirements of § 100.1(d) as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.1(d)	5	1	5	40	200

There are no capital costs or operating and maintenance costs associated with this collection.

Since the enactment of section 403A(b) of the act as part of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), FDA has received eight petitions for exemption from preemption. Based upon these submissions, FDA estimates that no more than five petitions will be submitted annually. Because § 100.1(d) implements a statutory information collection requirement, only the additional burden attributable to the regulation has been included in the estimate.

3. State Enforcement Notification (21 CFR 100.2(d)) (OMB Control Number 0910–0275—Reinstatement)

Section 310(b) of the act (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

FDA estimates the burden of complying with the enforcement notification requirement as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	5	1	5	2	10

There are no capital costs or operating and maintenance costs associated with this collection.

Based upon the small number of enforcement notifications received from the States since the enactment of section 310(b) of the act in 1990, FDA estimates that no more than five notifications will be submitted annually. Because 21 CFR 100.21(d) implements a statutory information collection requirement, only the additional burden attributable to the regulation has been included in the estimate.

4. Reference Amount Petitions (21 CFR 101.12(h)) (OMB Control Number 0910–0286—Reinstatement)

Section 403(q)(1)(A) of the act (21 U.S.C. 343(q)(1)(A)) requires that the label or labeling of food provide nutrition information that includes the serving size or, if the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food. In response to section 2(b)(1)(B) of the 1990 amendments, FDA issued regulations defining the serving size (or other unit of measure) for various types of food. Food producers are required to use the reference amount values provided in § 101.12 (21 CFR 101.12) and the rules for establishing serving sizes that are prescribed in § 101.9(b) (21 CFR 101.9(b)) to determine the appropriate serving size for their products; however, a manufacturer or other interested person may submit a petition to establish or amend the reference amount value for a food or to create a new food subcategory with its own reference amount. Section 101.12(h) sets forth the information the

petitioner is required to include in the petition.

FDA estimates the burden resulting from the requirements of § 101.12(h) as follows:

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
101.12(h)	5	1	5	80	400	$400,000

There are no capital costs associated with this collection.

Since the enactment of the 1990 amendments that revised the act by adding section 403(q), FDA has received nine petitions to amend existing reference amounts. Based upon these submissions, FDA estimates that no more than five such petitions will be submitted annually. The estimate for operating and maintenance costs is based on the average cost of conducting a consumer survey to support a reference amount petition.

Dated: May 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13536 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0164]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by July 1, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4504) has been filed by Asahi Denka Kogyo K.K., 2–13 Shirahata 5–Chome, Urawa City, Saitama 336, Japan. The petition proposes to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 1, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 14, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–13464 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0385]

Determination of Regulatory Review Period for Purposes of Patent Extension; PRECOSE™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PRECOSE™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis

for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PRECOSE™ (acarbose). PRECOSE™ is indicated as an adjunct to diet to lower blood glucose in patients with noninsulin-dependent diabetes mellitus who hyperglycemia cannot be managed by diet alone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PRECOSE™ (U.S. Patent No. 4,904,769) from Bayer AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 27, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period that the approval of PRECOSE™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PRECOSE™ is 5,647 days. Of this time, 3,789 days occurred during the testing phase of the regulatory review period, while 1,858 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 23, 1980. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on March 23, 1980.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: August 6, 1990. The applicant claims August 9, 1990, as the date the new drug application (NDA) for PRECOSE™ (NDA 20–086) was initially submitted. However, FDA records indicate that NDA 20–086 for the active ingredient in PRECOSE™ (acarbose) was received by the agency on August 6, 1990. This NDA was withdrawn on August 28, 1991. A subsequent NDA for PRECOSE™ (NDA 20–482) was received on September 6, 1994. Therefore, NDA 20–086 signifies the end of the testing phase and the beginning of the approval phase for PRECOSE™, while NDA 20–482 signifies the end of the approval phase. The NDA initially submitted date is August 6, 1990.

3. *The date the application was approved*: September 6, 1995. FDA verified the applicant's claim that NDA 20–482 was approved on September 6, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 922 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 26, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13535 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–2552–96]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form No.:* HCFA–2552–96; *Use:* This form is required by statute and regulation for participation in the Medicare program. The information is used to determine final payment for Medicare. Hospitals and related complexes are the main users. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 4,599,000.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch,

Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 22, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–13520 Filed 5–29–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Continuing Education and Development Cooperative Agreements

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Extension of application deadline date.

The Maternal and Child Health Services; Federal Set-Aside Program; Continuing Education and Development Cooperative Agreements notice deadline date published on April 26, 1996, beginning on page 18613, is hereby extended to July 8, 1996.

The rest of the notice remains as published.

Dated: May 24, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–13578 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Health Resources and Services Administration;

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 61 FR 24939–40, May 17, 1996). The changes are as follows:

1. Under Part HB, Health Resources and Services Administration Section HB–20–Functions, ''Bureau of Health Resources Development (HBB)'' delete the statement in its entirety and replace by the following

Bureau of Health Resources Development (HBB).

Administers Federal policy and programs pertaining to health care facilities, activities associated with organ donations, procurements, transplantation, and a variety of program activities related to HIV infection and acquired immune deficiency syndrome (AIDS). This includes financial, capital, organizational, and physical matters. Specifically: (1) Provides national leadership in supporting, identifying, and interpreting national trends and issues of significance relative to the health status of persons with AIDS, and with HIV infections, including the provision of facilities and services for AIDS and AIDS-related patients, persons in need and provision of services to persons and families of low income; and administers block and discretionary grants, contracts, and funding arrangements designed to address those issues; (2) administers and coordinates AIDS-related grants programs of national significance; (3) administers grant, loan, loan guarantees and interest subsidy programs relating to the construction, modernization, conversion, and closure of health and health care organizations; (4) develops long and short range program goals and objectives for health facilities, and for specific health promotional, organ transplantation, and AIDS activities; (5) manages contracts to provide Federal oversight for the Organ Procurement and Transplantation Network, the Scientific Registry of Transplant Recipients and the National Marrow Donor Programs and works to increase the availability of donor organs and unrelated bone narrow donors by working with the Organ Procurement Organizations (OPOS) and Donor Centers; (6) serves as advisor to and coordinates activities with other Agency organizational elements, other Federal organizations within and outside the Department, State, and local bodies, professional and scientific organizations; (7) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health care systems, organizations, and facilities; (8) provides technical assistance to OPOs and health care delivery systems and facilities in a wide variety of specific technical and technological systems; (9) administers HRSA's regional facility engineering and construction activities; (10) designs and implements special epidemiological and evaluation studies of the impact of the Bureau health care programs and of the characteristics of the population serviced; (11) evaluates models of health care delivery systems through grants, contracts, direct activities designs, and tests; (12) plans and develops collaborative efforts in the scientific aspects of Bureau programs with other PHS agencies, Federal departments, universities, and other scientific organizations; and (13) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of Bureau missions and objectives; and

2. Delete the Division of Trauma and Emergency Medical System (HBB8) in its entirety.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Bureau of Health Resources Development which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

These changes are effective upon date of signature.

Dated: May 15, 1996.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[Fr. Doc. 96–13539 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–84]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4255, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and Indian Housing Authorities concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the 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 the 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.

This Notice also lists the following information: Title of Proposal: Indian Housing Programs—Establishment of Reporting Requirements and Procedures for Tenant Accounts Receivable.

OMB Control Number:

Description of the need for the information and proposed use: The Office of Native American Programs re-establishes the reporting requirement for Tenant Accounts Receivable (TAR) which was eliminated by the cancellation of the Indian Financial Management Handbook 7470.1 REV–1. The collected TAR data will be used to formulate regional statistics and as a risk assessment tool of Indian Housing Authorities.

Members of affected public: IHAs.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: on an annual basis, 189 respondents, 4.5 responses per respondent, 860 total responses, 3,160 total burden hours.

Status of the proposed information collection: Re-establishes reporting requirements for TARs and provides guidance on the preparation of the TAR report which was eliminated by the cancellation of the Indian Financial Management Handbook 7470.1 REV–1.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 7, 1996.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

BILLING CODE 4210–33–M

Report of Tenants Accounts Receivable (TARs)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

DRAFT

Please refer to the instructions on page 2 when filling out this form.

OMB Approval No. 2577-XXXX (exp. mm/dd/yy)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-xxxx), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600.

Do not send this form to the above address.

This information is collected to obtain data on tenant accounts for each Annual Contributions Contract (ACC) executed. The information will be used by HUD to assess all major areas of tenants accounts and to input the information into the Management Information Retrieval System (MIRS). The information will also be used to formulate statistics and as a risk assessment tool of IHAs. This information is required by the United States Housing Act of 1937, as amended. The information collected does not lend itself to confidentiality. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Name of Housing Authority	Locality

Month Ended	Project Number(s)	Number of Dwelling Units	Number of Tenants in Possession (last day of month)	Total Charges to Tenants (last day of month)	Amount Collected

Accounts Receivables	End of Month (current) No. of Accounts (1)	End of Month (current) Total Amount (2)	Last Report No. of Accounts (3)	Last Report Total Amount (4)
1. Tenants in Possession (a) One Month or Less		$		$
(b) Over One Month		$		$
(c) Sub-Total		$		$
2. Vacated Tenant Accounts		$		$
3. Total Tenant Accounts Receivable		$		$
4. Collections Loss (a) Charged to Loss this Period				$
(b) Charged to Loss this Year to Date				$
5. Percentage Analysis - Accounts Receivable of Tenants in Possession (a) Percent of Accounts Delinquent				%
(b) Percent of Amount Delinquent to Total Current Charge				%

Signature of Person Preparing this Report	Print Name of Preparer	Date
X	Title of Preparer	
Signature of Person Approving this Report	Print Name of Approver	Date
X	Title of Approver	

form **HUD-53020** (05/14/96)
ref. Handbook 7475.1

Instructions for Preparing the Report of Tenant Accounts Receivables (TARS), form HUD-53020

DRAFT

A separate report is to be prepared and submitted quarterly in accordance with the provisions of PIH Notice XX.

The form is self-explanatory, except:

Project No.(s): This refers to the project or projects combined for collection purposes for which the report is prepared. (A separate report must be prepared for Section 23 Leased Housing Projects under the same ACC, Turnkey III Homeownership Projects under the same ACC, and Mutual-Help Indian Housing Projects under the same ACC, even though combined with other projects for collection purposes.)

No. of Dwelling Units: This refers to the total number of dwelling units in the project(s) for which the report is prepared.

No. of Tenants in Possession: This refers to the number of dwelling units occupied on the last day of the quarter for which the report is prepared.

Total Charges to Tenants: This is the amount of rent and other charges to tenants during the last month of the current quarter as shown by rent roll or equivalent record.

Accounts Receivable: Tenants in Possession:

Line 1(a) One Month or Less, Enter in Column (1) the number of accounts of tenants whose total unpaid account balance represented rent and other amounts charged during the last month of the quarter for which the report is prepared. Enter in Column (2) the aggregate amount of unpaid balances of accounts included in Column (1). (Do not record on Line 1(a) any accounts which include any charges for both the last month and previous months. These should be recorded on Line 1(b).

Line 1(b) Over One Month, Enter in Column (1) the number of accounts of tenants whose unpaid account balance includes rent and other amounts charged which are over one month old.

Enter in Column (2) the aggregate amount of unpaid balances of the accounts included in Column (1).

Line 1(c) Enter the total of lines 1(a) and 1(b) in Columns (1) and (2).

Line 2 Vacated Tenants Account, Enter in Columns (1) and (2), respectively, the number of unpaid accounts of former tenants and the aggregate amount of such accounts.

Line 3 Total Tenants Accounts Receivable. Enter the total of lines 1(c) and Line 2 in Columns (1) and (2).

Note: All accounts receivable data shown on this report should include unpaid retroactive rents, utility surcharges, and all other unpaid charges in addition to unpaid contract rent.

Lines 1(a) through 1(c) Lines 2 and 3, Enter in Columns (3) and (4) the number of accounts and aggregate amounts shown on the corresponding lines in Columns (1) and (2) of the previous report.

Line 4(a) Enter the amount written off to Collection Losses during the quarter for which the report is prepared, less any collection of accounts previously written off.

Line 4(b) Enter the amount written off to Collection Losses during the fiscal year to date, less collection of accounts previously written off.

Percentage Analysis: Accounts Receivable of Tenants in Possession:

Line 5(a) Enter the percentage derived by dividing the Number of Accounts (shown on Line 1(c) Column (1)) by the Number of Tenants in Possession shown in the heading. The Number of Tenants in Possession includes all units for which rent was charged on the last day of the quarter involved.

Line 5(b) Enter the percentage derived by dividing the "Aggregate Amount" (shown on Line 1(c) Column (2) by the Amount of "Total Charges to Tenants" shown in the heading.)

[FR Doc. 96–13479 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–33–C

[Docket No. FR–3917–N–85]

Government National Mortgage Association; Notice of Proposed Information Collection for Public Comment

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya K. Suarez, Government National Mortgage Association, Office of Program, Policy, Procedure, and Risk Management, Department of Housing & Urban Development, 451 7th Street, SW, Room 6222, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sona K. Suarez, on (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the 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 the 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.

This Notice also lists the following information:

Title of Proposal: Prospectuses.

OMB Control Number: 2503–0018.

Description of the need for the information and proposed use: These forms are used to provide a standard format for the description of securities for each type of mortgage eligible for inclusion in a mortgage-backed securities pool. Since each type of mortgage has different characteristics, it is necessary to have separate prospectuses for each program.

Agency form numbers: HUD forms 11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–ii, 11772–II.

Members of affected public: Business or other for-profit and the Federal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: HUD form 11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II, 11772–II.

Number of respondents		Frequency of responses		Total annual responses		Hours per response burden		Total hours
650	×	18	=	11,700	×	.25	=	2,925

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 15, 1996.

Thomas R. Weakland,

Acting Executive Vice President, Government National Mortgage Association.

[FR Doc. 96–13481 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–82]

Office of the Assistant Secretary for Policy Development and Research; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research Department of Housing and Urban Development.

ACTION: Notice of proposed information collection for public comment.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due by July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Jacqueline A. Kruszek, Program Analyst, 202–708–4370 ext. 141, Jacqueline__A.__Kruszek@hud.gov.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the 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 the 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.

Title of Proposal: National Survey of Rehabilitation Enforcement Practices

Description of the Need for Information and Proposed Use: With the growing rehabilitation needs of the

existing building stock in the nation's cities, there is a need to examine compliance alternatives to the building rehabilitation process that maintain an equivalent level of safety, but are designed to encourage rehabilitation. Rehabilitation has many financial, environmental, and historical benefits for communities. For example, rehabilitation frequently allows cities to commit fewer financial resources to the development of city infrastructure, rehabilitation minimizes the problems of removal of building materials, and rehabilitation preserves buildings that are a part of the community's history and culture.

In the 1970s and 80s, HUD undertook efforts to facilitate the process of altering the building regulations for housing rehabilitation. One step was the publication of The Rehabilitation Guidelines to begin examining equivalent compliance alternatives to the regulatory process for the nation's three model codes, state and local code agencies. Although the guidelines are not mandatory, they have had some impact on alteration of the regulatory process. However, the extent and the success of these changes are unknown. Some jurisdiction have adopted regulations that are designed to encourage rehabilitation while accepting compliance alternatives that maintain a level of safety equivalent to that specified in the building codes. The enforcement of these compliance alternatives often relies on the discretion of local code enforcement officials, which means that enforcement may vary between and within jurisdictions.

At the May 1996 HUD sponsored symposium of The Status of Building Regulation for Housing Rehabilitation, there was a need expressed by participants to collect information on building code enforcement as it related to rehabilitation practices since this knowledge is not available. Specifically, the information is being collected (1) to identify differences in building code enforcement as it relates to rehabilitation and (2) to determine the success of compliance alternatives in encouraging rehabilitation. This information will provide data to further facilitate the process of altering rehabilitation enforcement practices nationwide.

Agency Form Numbers, if Applicable: None.

Members of Affected Public: A diverse set of individuals and organizations with roles in building rehabilitation may be affected by the information collection. Some examples are state and local agencies involved with housing rehabilitation code enforcement and community members who are responsible for the building rehabilitation plans. The range of affected individuals in code enforcement agencies vary from policy-makers of code regulations to the actual administrators of codes in communities. The community members affected range from building owners and developers to design professionals.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Information will be collected by mail survey with at most 1,000 participants involved in the code enforcement process. The survey's will take approximately 15 minutes to complete. This means a total of 250 hours of response time for the information collection.

Status of the Proposed Information Collection: Pending submission to the Office of Management and Budget (OMB) for review and clearance.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 21, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–13502 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–3917–N–83]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

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

ACTION: Notice.

SUMMARY: The proposed information requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donald Kline, Single Family Insurance Operations Division (SFIOD), telephone number (202) 708–0614 ext. 3511 for form HUD–27050–A or Savannah Williams, SFIOD, telephone number (202) 708–0614 ext. 3407 for form HUD–27050–B (these are not toll-free numbers) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for proper performance of the function 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 the 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.

This notice also lists the following information:

Title of Proposal: Mortgage Insurance Termination—HUD–27050–A, Application for Premium Refund or Distributive Share Payment, HUD–27050–B.

OMB Control Number: 2502–0414.

Description of the Need for the Information and Proposed Use: Mortgage Insurance Termination, form HUD–27050–A, is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This form is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. Under the new streamline III program when the form is submitted on magnetic tape, the form can be used to directly pay eligible homeowners. This condition occurs when the form passes the criteria of certain system edits.

As the result the system generates a disbursement to the eligible homeowners for the refund consisting of the unused portion of the paid premium. The collection information required is used to update HUD's Single Family Insurance System. The billing of

mortgage insurance premiums is discontinued as a result of the transaction. Without this information the premium collection/monitoring function would be severely impeded and program data would be unreliable. Under streamline III when the form is processed and but does not pass the series of edits the system generates in these cases the form HUD–27050–B to the homeowner to be completed and returned to HUD for further processing for the refund. In general a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated.

Estimate of Burden: Public reporting burden for this collection of information for the HUD–27050–A is estimated to average 5 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. The number of respondents is 9,500 and the frequency of response is as required and the volume per respondents is 1 to 40,000 depending on the size of their FHA portfolio.

Public reporting burden for this collection of information for the HUD–27–50–B estimated to average 15 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. The number of respondents is 382,000 and the frequency of response is one time and the volume per respondents is 1.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 23, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–13503 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3852–N–03]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Service Coordinator Program Announcement of Funding Awards for Section 202 Projects—FY 1995

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department on an ''as applied for'' funding basis under a Federal Register notice for the Service Coordinator Program. This announcment contains the names and addresses of the Section 202 projects and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3291 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Service Coordination is authorized by section 808 of the National Affordable Housing Act of 1990, as amended by Section 677 of the Housing and Community Development Act of 1992 (12 U.S.C. 1701q(g)).

Fiscal Year 1995 funds were announced in a Federal Register notice published on February 13, 1995 (60 FR 8280). The notice announced the availability of $22 million for Section 202 projects to pay for the employment of a service coordinator and for related administrative expenses. This assistance is available only to owners/borrowers of Section 202 projects. A service coordinator is a social service staff person hired by the project owner/management company. The coordinator is responsible for assuring that residents of the project, especially those who are frail or disabled, are linked to the supportive services they need to continue living independently in that project.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the Section 202 awardees that received funding from February 13 through September 30, 1995 under this notice, and the amount of funds awarded to each. the total amount awarded during this period was $8,794,142 to 77 projects. This information is provided in Appendix A to this document.

Dated: May 24, 1996.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 1995, Office of Housing

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

McNamara House, 69 Holton Street, Boston (Allston), MA, Owner: Brighton-Allston Edlerly Homes, Inc	023–EH035, MA06–T781–015 MA06–CS95–001	$106,800
NCSC Housing Management Corp., Earl M. Bourden Center, 67 Maple Avenue, Claremont, NH 03743, Owner: Senior Citizens Housing Dev. Corp. of Clairmont.	024EH004 NH36–1440–021	31,575
Maine AFL–CIO Elderly House, Inc., Chateau Cushnec, Maine, Owner: Maine AFL–CIO Elderly Housing, Inc.	024–EH080 ME36T801009	15,593
United Methodist Retirement Center, 40 Irving Avenue, East Providence 02914, Owner: Trustees of United Health and Welfare.	016–SH001 R143–0202–00	75,195
Jamestown Lutheran, 9 Crane Street, Jamestown, NY, Owner: Jamestown Lutheran HDFC, Inc	014–EH017 NY06–T781–012 NY06–CS95–003	232,390
Frances Schervier Housing, 2995 Independence Avenue, Bronx, NY 10463, Owner: Frances Schervier Housing Development Fund Co.	012–EH225 NY36–CS95–003	230,520

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95—Continued

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

NCSC Housing Management Corp., Plaza Apartments, 91 Sip Avenue, Jersey City, NJ 07304, Owner: Plaza Apartments (NCSC/UAW SCHC Inc.).	031–EH040 NJ39–1438–201 NJ39–CS95–005	20,327
Al Gomer Residence, South Orange, NJ, Owner: South Mountain B'NAI BRITH Jewish Comm. Housing Corp.	031–EH190	84,118
Baltimore Belvedere Green, 1651 East Baltimore Avenue, Baltimore, MD 21239, Owner: GS Housing, Inc.	052–EH140 MD06–T861–005 MD06–SC95–001	108,658
East View Unity Apartments, 200 Jefferson Street, Fairmont, WV 26554, Owner: Human Resources Development and Employment, Inc.	045–EH029 WV15–T811–001 WV15–SC95–001	223,930
Lincoln Unity Apartments, 7 Lincoln Plaza—Apartment 109, Branchland, WV 25506, Owner: Lincoln Unity Apartments, Inc.	045–EH098–CA WV15–s891–001	74,610
Four Freedoms House, 6101 Morris Street, Philadelphia, PA 19144, Owner: Four Freedoms House of Philadelphia, Inc.	034–SH013 PA26–M00–008	113,665
Philip Murray House, Inc., 6300 Old York Road, Philadelphia, PA 19141 NA, Owner: Philip Murray House.	034–SH017 PA26–M000–090	113,665
William B. Moore Manor, 9100 Master Street, Philadelphia, PA 19121, Owner: Tenth Memorial Development Corporation.	034–EH345 PA26–T861–00 PA26–CS95–00	81,805
Steven Smith Towers, 1030 Belmont Avenue, Philadelphia, PA 19104, Owner: Stephen Smith Towers, Inc.	034–SH015 PA26–M000–097 PA26–CS95–06	217,690
St. Justin Plaza, 120 Boggs Avenue, Pittsburgh, PA 15211, Owner: St. Justin Plaza, Inc	033–EH035 PA28–T781–023 PA28–CS95–001	101,315
Steelworkers Towers Inc., Steelworkers Tower, 2639 Perrysville Avenue, Pittsburgh, PA 15214, Owner: National Council of SR Citizens/USA Housing Dev. Corp.	033–EH233 PA28–T861–015 PA28–T861–015	25,015
William H. Plummer Plaza, 5520 Townpoint Road, Sulfolk, VA 23435, Owner: Belleville Senior Housing, Inc.	051–EH123 PA36–T851–089 PA36–SC95–004	154,180
J. Michael Hall, President, Culpepper Garden, II, 4435 N. Pershing Drive, Arlington, VA 22203	000–EH162 VA39–T901–001 VA39–CS95–004	110,260
Campbell-Stone Apartments, 2911 Pharr Court South, NW., Atlanta, GA 30305, Owner: CampbellStone Apartments, Inc.	061–SH005 GA06–M000–212 GA06–CS95–001	124,375
Campbell-Stone Apartments, 2911 Pharr Court South, NW., Atlanta, GA 30305, Owner: CampbellStone Apartments, Inc.	061–SH009 GA06–M000–186 GA06–CS95–002	124,375
Wesley Homes, Inc., Branan Lodge, 1146 Wesley Mountain Drive, Blairsville, GA, Owner: Wesley Homes, Inc.	061–EH018 GA06–T771–002 GA06–CS95–008	190,335
Wesley Woods Towers, 1825 Clifton Road, N.E., Atlanta, GA 30329, Owner: Wesley Homes, Inc	061–SH004 GA06–CS95–006	190,335
Calvin Court Apartments, 479 E. Paces Ferry Road, N.E., Atlanta, GA 30305, Owner: Atlanta Area Presbyterian, Homes, Inc.	061–SH007 GA06–M000–182 GA06–CS95–009	231,380
St. Paul Apartments, Macon, GA, Owner: St. Paul Apartments, Inc	061SH011 GA06L000011	127,185
St. Paul Village, Macon, GA, Owner: St. Paul Village, Inc	061EH034	127,185
Magnolia Manor Gardens, Americus, GA, Owner: Methodist Home for the Aging, Inc	061SH014	237,435
Baptist Oaks, 800 Conti Street, Mobile, AL 36602–1280, Owner: Baptist Oaks, Inc	AL09–T821–009 AL–CS95–002	23,832
Cathedral Towers, 601 N. Newnan Street, Jacksonville, FL 32202, Owner: Cathedral Foundation of Jacksonville, Inc.	063–SH017 FL29–SC95–002	159,690
Cathedral Townhouse, 501 N. Ocean Street, Jacksonville, FL 32202, Owner: Cathedral Foundation of Jacksonville, Inc.	063–SH033 FL29–CS95–003	159,690
Calvary Towers, 1099 Clay Street, Winter Park, FL 32789, Owner: Calvary Housing, Inc	067–EH056 FL29–T771–003 FL29–CS95–006	82,885
Four Freedoms House, 3800 Collins Avenue, Miami Beach, FL 33140, Owner: Four Freedoms House of Miami Beach, Inc.	066–SH011 FL29–CS95–005	81,200
AHEPA 421 Apartments, Miami, FL, Owner: AHEPA 421, Inc	066–EH238 FL29–T871–012	88,455
Florida Christian Manor, Sundale Manor, Jacksonville, FL 32205, Owner: Florida Christian Manor, Inc	063–EH092 FL29–CS95–009	129,240
Baptist Terrace, Orlando, FL., Owner: First Baptist Housing, Inc	067–SH040	82,885

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95—Continued

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

Sayre Village, 3816 Camelot Drive, Lexington, KY 40503, Owner: Christian Benevolent Outreach, Inc	083–EH029 KY36–T791–001 KY36–CS95–001	174,305
Berry Manor, Chicago, IL, Owner: T.W.O. Woodlawn Comm. Dev. Corp	071–EH068 IL06–CS95–006	107,990
Woodlawn Manor, Chicago, IL, Owner: Woodlawn Comm. Dev. Corp	071–EH068 IL06–CS95–006	107,990
Kimbark residences, Chicago, IL, Owner: T.W.O. Woodlawn Comm. Dev. Corp	071–EH568 IL06–CS95–005	105,025
Martin Fareell House, Chicago, IL, Owner: Woodlawn Comm. Dev. Corp	071–EH100 IL06–CS95–005	107,990
YMCA South Suburban, Owner: YMCA of Metropolitan Chicago Foundation	071–EH072 IL 06–CS95–004	171,775
St. Paul Lutheran Village, Inc., St. Paul Lutheran Village I, 5515 Madison Road, Cincinnati, OH 45227, Owner: St. Paul Lutheran Village, Inc.	046– OH–CS95–001	125,730
St. Paul Lutheran Village II, 5515 Madison Road, Cincinnati, OH 45227, Owner: St. Paul Lutheran Village, Inc.	046–EH057 OH16–T801–023 OH10–CS95–002	64,960
Lithuanian Center, 34251 Ridge Road, Willoughby, OH 44094, Owner: Lithuanian Center, Inc	042–EH166 OH12–T821–021 OH12–CS95	67,455
Lourexis Apartments, 5111 Hector Avenue, Cleveland, OH 44127, Owner: Lourexis, Inc	042–EH307 OH12–T851–008	114,810
Willowood Manor, 20665 Lorain Road, Fairview Park, OH 44126, Owner: Fairview Park Senior Apartments Corp.	042–EH406 OH12–T871–017	35,390
Pelham Manor, 2700 Pelham Road, Toledo, OH 43606, Owner: Toledo Jewish Home for the Aged	042–EH010 OH12–T781–001	169,630
Epsilon Apartments, Farmington Hill, MI, Owner: Metropolitan Detroit Baptist Manor, Inc	0044–EH–002 MI28–CS95–002	157,210
Drake Apartment, Farmington Hill, MI, Owner: Metropolitan Detroit Baptist Manor, Inc	044–EN055 MI28–CS95–004	157,205
Santa Cruz Apartments, 3029 West Wells Street, Milwaukee, WI 53208, Owner: Council for the Spanish Speaking, Inc.	075–EH020	78,933
El Jardin, 10th and Madison Streets, & 6th and Orchard Streets, Milwaukee, WI 53204, Owner: Council for the Spanish Speaking, Inc.	075–EH046 WI39–T91–100 WI39–SC95–002	78,935
La Paz Apartments, 1223 South 23rd Street, Milwaukee, WI 53204, Owner: Council for the Spanish Speaking, Inc.	075–EH212 WI39–T78–410, WI39–SC95–003	78,935
Chaska Manor-Talheim, 407 Oak Street, Chaska, MN 55318, Chaska Manor, Inc	092–EH098 MN46–T811–004 MN46–CS95–	36,780
Gideon Pond Housing, 10000 Newton Avenue, Bloomington, MN 55431, Owner: Gideon Pond Housing Corporation.	092–EH176 MN46–T831–005 MN46–CS95–002	84,740
Tarnside Court, Bloomington, MN, Owner: Gideon Pond West, Inc	092–EH–264 MN46–CS95–003	84,740
Mount Carmel Manor, West St. Paul, MN, Owner: Mount Carmel Manor	092–EH244 MN46–CS95–004	24,070
St. Marys Residence, Winstead, MN, Owner: St. Mary's Residence, Inc	092–EH090 MN46–CS95–005	92,160
Mt. Zion Sheltering Arms, 3238 Martin Luther King, San Antonio, TX 78220, Owner: Mr. Earl L. Campbell.	115–EH092 TX59–T831–007 TX59–CS95–001	55,000
Shorey Villa, LEAD 2200 NW Polk, Topeka, KS 66608, Owner: North Topeka Housing Corporation	102–EH194 KS16–T88L–015 KS16–CS95–001	19,215
Jefferson Villa, LEAD 2200 NW Polk, Topeka, KS 66605, Owner: Minority Housing Corporation of Topeka.	102–EH199 KS16–T881–015 KS16–CS95–002	36,210
Cathedral Square Towers, 444 W. 12th Street, Kansas City, MO 64110, Owner: Cathedral Square Inc	084–EH004 MO16–1474–201 MO16–CS95–001	207,865
Wasatch Manor, 535 South 200 East, Salt Lake City, UT 84111	105–SH002 UT30–L000–015 UT00–M000–027	213,575
Heritage Towers, 428 North Jefferson, Sheridan, WY 82801–3860	109–EH001 WY99–0594–201 WY99–SC95–001	115,230

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95—Continued

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

Casa de la Vista, 686 E. Redlands Boulevard, Redlands, CA 92373, Owner: Russell Huston	122–EH384 CA16–T851–007 CA16–CS95–00 NA	41,987
Naomi Gardens, 655 W. Naomi Avenue, Arcadia, CA 91006, Owner: Joseph F. Glenn	122–EH165 CA16–T811–017 CA16–CS95–001	290,136
Maple Park Apartments, 711 Maple Street, Glendale, CA 91205, Owner: Roy J. Cain	122–EH170 CA16–1811–022 CA16–CS95–004	56,562
Crown House, 3055 Del Mar Boulevard, Pasadena, CA 91107, Owner: Roy J. Cain	122–EH323 CA16–T811–007 CA16–CS95–005	36,889
Rancho Del Valle, 6530 Winnetka Avenue, Woodland Hills, CA 91367, Owner: Roy J. Cain	122–EH409 CA16–T851–032 CS16–CS95–005	56,562
Pacific Rim Apartments, 230 S. Grevilles, Inglewood, CA 90301, Owner: Roy J. Cain	122–EH501 CA16–T881–014 CA16–CS95–007	95,909
Waymark Gardens, 5325 W. Butler Drive, Glendale, AZ 85302, Owner: Arizona Disciple Homes	123–EH009 AZ16–05952	107,600
Albert Einstein Residence Center, 1935 Wright Street, Sacramento, CA 95821	136–EH002 CA30–T791–002 CA30–CS95–010	205,255
President Thomas Jefferson dna, President James Madison Manor	121–EH011 CA39–0817–201	184,886
El Bethel Terrace, 1099 Fillmore Street, San Francisco, CA 94115	121–EH075 CA39–T801–009 CA29–CS95–003	230,360
Central Terrace, Inc., Four Freedoms House of Seattle, Seattle, WA 98133, Central Terrace, Inc	127–SH007 WA19–M000–102 WA19–L000–007	127,525
Coventry Court I, W. 1600 Pacific Avenue, Spokane, WA 99204	171–EH004 WA25–2016–201 WA19–SC95–002	92,115
Central Terrace, Inc., Coventry Court II, W. 1600 Pacific Avenue, Spokane, WA 99204	171–EH008 WA19–T781–012 WA19–SC95–003	41,390
St Andrews Court III, N. 1815 Post Street, Spokane, WA 99205	171–EH007 WA19–T781–004 WA19–SC95–004	71,320

[FR Doc. 96–13558 Filed 5–29–96; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Roosevelt Park Zoo, Minot, ND, PRT–815150.

The applicant requests a permit to purchase in interstate commerce a female African leopard (*Panthera pardus*) from Wille's Wildlife Zoo for the purpose of enhancement of the survival of the species through propagation.

Applicant: American Zoo and Aquarium Association, Rhino Taxon Advisory Group, Cumberland, OH, PRT–815151.

The applicant requests a permit to import three non-native free-ranging female Eastern black rhinoceros (*Diceros bicornis michaeli*) from Addo Elephant National Park, South Africa, for the purposes of enhancement of the survivial of the species through captive-propagation.

Applicant: International Animal Exchange, Ferndale, MI, PRT–815230.

The applicant requests a permit to export one male Gray wolf (*Canis lupis*) to the Seoul Grand Park Zoo, Seoul, Korea, for the purpose of enhancement of the survival of the species through propagation.

Applicant: Buenos Aires National Wildlife Refuge, Sasabe, AZ, PRT–814486.

The applicant requests a permit to export 10 captive hatched masked bobwhite quail (*Colinus virginianus ridgwayi*) to the El Centro Ecologico de Sonora, Hermosillo, Sonora, Mexico to enhance the survival of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the

following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 24, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–13567 Filed 5–29–96; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Vicinity of Victorville, CA in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

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 possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by the Los Angeles County Museum of Natural History, Los Angeles, CA professional staff in consultation with representatives of the San Manuel Band of Mission Indians.

In 1928, human remains representing four individuals, including three adults and one infant, were excavated by Arthur Woodward, a member of the museum staff. No known individuals were identified. The three associated funerary objects include three strings of olivella shell disk beads.

Accession documentation describes the remains and associated funerary objects as, ''Material from the ranch of J.C. Turner, in sandy Mohave Riverbed 12 miles north of Victorville. Combination village and burial site.'' The human remains and associated funerary objects are dated to A.D. 1690–1770, based on the presence of incised olivella wall beads. A representative of the San Manuel Band of Mission Indians has confirmed that the Turner Ranch site lies within traditional Serrano lands and is an historic Serrano village.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), that the three strings of olivella beads 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 Los Angeles County Museum of Natural History 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 San Manuel Band of Mission Indians.

This notice has been sent to officials of the San Manuel Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Margaret Ann Hardin, Curator and Section Head, Anthropology, the Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA; telephone: (213) 744–3382, before [*thirty days after publication in the* Federal Register]. Repatriation of the human remains and associated funerary objects to the San Manuel Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: May 22, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology and Ethnology Program

[FR Doc. 96–13582 Filed 5-29-96; 8:45 am]

BILLING CODE 4310–70–F

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting; March 12, 1996

TIME AND DATE: Tuesday, June 11, 1996, 1:00 PM (OPEN Portion), 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM: Closed portion will commence at 1:30 PM (approx).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of March 12, 1996 Minutes (Open Portion)
3. Meeting schedule through March, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Insurance Project in Poland
2. Finance Project in Russia
3. Finance Project in Turkey
4. Finance Project in Argentina
5. Insurance Project in Venezuela
6. Insurance Project in Trinidad & Tobago
7. Insurance Project in Brazil
8. Finance Project in Indonesia
9. Finance Project in Philippines
10. Report on Investment Funds Policies
11. Pending Major Projects
12. Approval of March 12, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 24, 1996.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 96–13706 Filed 5–28–96; 2:18 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–738 (Final)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping Investigation No. 731–TA–738 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from the United Kingdom of foam extruded PVC and polystyrene framing stock,[1] currently provided for in subheadings 3924.90.20 and 3926.90.98 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part

[1] The imported products from the United Kingdom subject to this investigation consist of all extruded PVC and polystyrene framing stock regardless of color, finish, width, or length. Finished frames assembled from foam extruded PVC and polystyrene framing stock are excluded.

201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of foam extruded PVC and polystyrene framing stock from the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on September 8, 1995, by Marley Mouldings, Inc., Marion, VA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 12, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 27, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 20, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 24, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is September 19, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 3, 1996; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 3, 1996. On October 24, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 29, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: May 24, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–13571 Filed 5–29–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 25, 1996, Lonza Riverside, 900 River Road, Conchohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1996.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13559 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 22, 1996, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture marihuana cigarettes for the National Institute on Drug Abuse (NIDA) and the cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1996.

Dated: May 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13560 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 14, 1996, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I

The firms plans to manufacture small quantities of the listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1996.

Dated: May 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13561 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 29, 1996, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of tetrahydrocannabinols (7370) a basic class of controlled substance listed in Schedule I.

The tetrahydrocannabinols will be utilized exclusively for non-human consumption in drug of abuse detection kits.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 1, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13562 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of

such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 8, 1996, Sanofi Withrop Inc., 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to import the listed controlled substances for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 1, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13563 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 26, 1996, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059)	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 1, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13564 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; local application form for local law enforcement block grants program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia Dobbs-Medaris, (202) 307–6185, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New collection of information.

(2) Title of the Form/Collection: Local Law Enforcement Block Grants Program, Local Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. Public Law 104–134 enacted the Local Law Enforcement Block Grants Program. This program awards grant money to local units of governments and States and territories to reduce crime and improve public safety. The Local Application Form will be completed by each eligible local applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5000 responses at 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,500 annual burden.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 23, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13499 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; State Application Form for Local Law Enforcement Block Grants Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia Dobbs-Medaris, (202) 307–6185, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New collection of information.

(2) Title of the Form/Collection: Local Law Enforcement Block Grants Program, State Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. Public Law 104–134 enacted the Local Enforcement Block Grants Program. This program awards grant money to local units of governments and States and territories to reduce crime and improve public safety. The Local Application Form will be completed by each eligible local applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 56 responses at 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 28 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 23, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13500 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the Federal Register in order to inform the public.

UIPL 22–96

Federal law requires that all money received in the unemployment fund shall, immediately upon receipt, be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund. This provision is referred to as the ''immediate deposit requirement.'' Federal law also contains a ''withdrawal standard'' which, with limited statutory exceptions, requires that all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment

compensation. This UIPL puts forth the Department of Labor's interpretation of when monies are received in the State's unemployment fund and when they cease to be a part of such fund.

Dated: May 23, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210

Classification: UI
Correspondence Symbol: TEURL
Date: May 22, 1996

Directive: Unemployment Insurance Program Letter No. 22–96

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service

Subject: The Immediate Deposit and Withdrawal Standards

1. *Purpose.* To advise States of the Department of Labor's interpretation of Federal law concerning the applicability of the immediate deposit and withdrawal standards to State unemployment fund moneys.

2. *References.* Sections 3302(a)(1), 3304(a)(3), 3304(a)(4), 3306(f) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Sections 303(a)(1), 303(a)(4), 303(a)(5), and 904 of the Social Security Act (SSA); Cash Management Improvement Act of 1990, Public Law No. 104–453 (1990).

3. *Background.* Over the years the Department of Labor has corresponded with many States concerning the handling and use of moneys in State unemployment funds. Questions which frequently arise include when moneys are ''received in'' the unemployment fund and when moneys cease to be a part of the fund. This UIPL is issued to inform States of the Department's interpretation of Federal law requirements concerning these matters.

4. *Federal law provisions.* The relevant provisions of Federal law follow.

Rescissions: None
Expiration Date: Continuing

a. Section 3302(a)(1), FUTA, provides that: The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation [henceforth ''UC''] law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

b. Section 3304(a)(3), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that: all money received in the unemployment fund shall * * * immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act.

This ''immediate deposit'' requirement is also found in Section 303(a)(4), SSA, as a condition for a State receiving administrative grants.

c. Section 3304(a)(4), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that: all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration * * *.

This ''withdrawal standard'' is also found in Section 303(a)(5), SSA, as a condition for a State receiving administrative grants. Both provisions contain exceptions not germane to this UIPL.

d. Section 3306(f), FUTA, defines the term ''unemployment fund,'' in relevant part, as meaning: a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act * * * shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year * * * no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund * * *.

e. Section 3306(h), FUTA, defines the term ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.''

f. Section 303(a)(1), SSA, requires, as a condition for States receiving administrative grants, that an approved State law include provision for: [s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

g. Section 904, SSA, establishes the Unemployment Trust Fund (UTF) and places specific requirements on the U.S. Secretary of the Treasury for its management and investment. Specifically, Section 904(b), SSA, in pertinent part, provides that: [i]t shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States * * *.

5. *Discussion.* a. *In General.* The management of the funds from which UC was to be paid was given considerable attention by the drafters of the SSA of 1935. Federal investment was adopted over State investment as it was feared that liquidation of State investments on a falling market would worsen the severity of an economic downturn and cause the States to sell securities at a loss in order to pay UC. A Senate committee report described the advantages of Federal investment:

Securities will not have to be dumped on the markets in order that the reserve funds may be liquidated. Instead of increasing the tendency toward deflation, the handling of the reserve funds in the manner provided in the bill [i.e., the SSA] will make possible their use to promote stability. When depression sets in, the funds can be liquidated without actual sale of the securities on the markets, and since they will be used to pay compensation to unemployed workmen, the net effect will be to maintain purchasing power without any offsetting effects toward deflation. [S. Rep. No. 628, 74th Cong., 1st Sess. 15 (1935) (henceforth ''Senate Report'').]

As a result, the current trust fund [1] system was established. The Senate Report makes it clear that a trust fund limited to a specific purpose was intended: ''The States can draw upon the employment trust fund solely for unemployment compensation purposes * * *.'' (Senate Report at 15.) The Senate Report also states that: [Section 904(a)] establishes in the Treasury of the United States a trust fund with the Secretary of the Treasury as trustee and with the respective State Agencies, administering the State unemployment

[1] According to *Black's Law Dictionary,* a ''trust fund'' is a ''fund held by a trustee for the specific purposes of the trust; in a more general sense, it is a fund which, legally or equitably, is subject to be devoted to a particular purpose and cannot or should not be diverted therefrom.''

compensation laws, as beneficiaries of the trust. [Senate Report at 47.]

Unlike many other trust systems, the UC system involves active participation by the beneficiaries: States collect amounts due the trust and make the actual payment of UC. To assure that the States administered these activities in accordance with the purpose of the trust, the immediate deposit and withdrawal standards place specific requirements on the States.

b. *The Unemployment Fund.* Both the immediate deposit and withdrawal standards apply to moneys in the State's unemployment fund. The definition of ''unemployment fund'' in Section 3306(f), FUTA, begins by emphasizing the States' participation in the UC program: the unemployment fund is ''a special fund, established under a State law and administered by a State agency, for the payment of compensation.'' The unemployment fund includes ''[a]ny sums standing to the account of'' the State in the UTF. Further, ''no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State *until expended* by such State agency.'' (Emphasis added.)

Due to the active participation of the States in collecting and expending trust moneys, the parts of the unemployment fund used for these purposes reside in and are managed by the States. A State's unemployment fund consists of three main parts: a clearing account for the temporary and immediate deposit of all moneys paid to the fund, the State's account in the UTF (as provided in Section 3306(f), FUTA), and a benefit payment account consisting of all money requisitioned from the State's account in the UTF for the payment of unemployment benefits.[2]

c. *When Moneys Become Part of a State's Unemployment Fund.* Moneys need not be in any of the three main parts to be in the fund. The exact time moneys become part of the State's unemployment fund is statutorily controlled by the immediate deposit requirement which requires the payment by the State of ''all money received in the unemployment fund and * * * immediately upon such receipt'' to the Secretary of the Treasury to the credit of the UTF.

The Department interprets the phrase ''received in the unemployment fund'' to mean that any money received for purposes of the trust (i.e., the payment of UC) is ''in'' the State's unemployment fund at the instant of its receipt by the State or its agent. This interpretation assures that transfers of moneys in a State's possession are not delayed, thereby giving effect to the immediate deposit requirement that all moneys be immediately[3] paid over to the UTF and assuring the beneficiary has forwarded moneys to the trustee for investment.

This interpretation also assures that an employer paying contributions will receive credit for these payments against the Federal unemployment tax under Section 3302(a)(1), FUTA, which allows the credit to be taken by an employer only for ''the amount of contributions paid by him into an unemployment fund.''

As an example, employer and employee UC contributions are ''received in'' the State's unemployment fund at the instant of receipt by the State or its agent and the State must immediately place such moneys in the clearing account for immediate transfer to the UTF. As another example, if the balance over a certain level in a penalty and interest account is required to be transferred to the State's unemployment fund on a certain date, then the amount required to be transferred is deemed to be ''in'' the State's unemployment fund at the instant the transfer is required to be made. Similarly, all unemployment fund earnings are immediately part of the fund.

In some States the UC agency also collects taxes for other programs, such as temporary disability insurance. In others, a non-UC agency, such as the Department of Revenue, collects UC contributions. In both cases, the UC contributions may be deposited in one State bank account, transferred to another State bank account and then transferred to the UTF. Since UC contributions are in the unemployment fund at the instant they are received by the State, that part of any State account which these contributions pass through its considered to be part of the State's clearing account. Any other interpretation would permit delays in the transfer to the UTF and the other problems discussed above.

d. *Withdrawals From a State's Unemployment Fund.* Under the withdrawal standard, moneys may be withdrawn from the State's unemployment fund only for the payment of UC (or another statutorily permissible use), and, as provided in Section 3306(f), FUTA, do not cease to be a part of the State unemployment fund until actually ''expended.'' The Department interprets the term ''expended'' to mean an amount is actually paid out to a recipient. That is, the State's account is debited for the purpose of settling a payment by electronic fund transfer and/or redeeming a check, warrant, or other paper instrument.

Put another way, unemployment funds are not expended simply because a negotiable instrument is issued. For example, if a claimant fails to cash a check within the time specified in State law, there has been no expenditure. The State may not, therefore, transfer the funds to the State's general account to be used for another purpose.[4] This interpretation assures the purpose of the trust is accomplished since, even though a check for the payment of UC may have been issued, the unexpended funds remain available for the payment of UC.[5]

Similarly, moneys are not expended from the unemployment fund simply because they are transferred from one State account to another prior to transfer to the UTF or prior to an actual payment of UC or other permissible use. Moneys are, however, considered to be expended when the transfer to another State account (e.g., the State's general account) results in the moneys no longer being available for the payment of UC or other permissible use. It should be noted that, under Section 3306(f), FUTA, an unemployment fund exists only if all fund expenditures from the fund are for the payment of UC (or other statutorily permissible purpose.) Therefore, if the State expended an amount for an impermissible purpose, then the State would no longer have an unemployment fund as provided under Section 3306(f).

e. *Withdrawals from any Unemployment Fund Account are Subject to the Withdrawal Standard.* The withdrawal standard applies to ''all amounts withdrawn from the unemployment fund.'' To assure that unemployment fund moneys are properly used and efficiently managed, the Department interprets this requirement as applying to

[2] For example, Section 10(b) of the *Manual of State Employment Security Legislation*, Revised September 1950, provides that the State ''shall maintain within the [unemployment] fund three separate accounts: a clearing account, an unemployment trust fund account, and a benefit account.''

[3] The Department's interpretation of ''immediate'' is implemented in the performance levels it has established for measuring the promptness of (1) depositing contributions received by the State into the clearing account and (2) transferring such contributions from the clearing account to the UTF.

[4] UIPL No. 661, dated June 7, 1962, addressed this escheat of uncashed checks drawn against unemployment fund accounts.

[5] The fact that amounts have not been ''expended'' does not preclude the raising of a withdrawal standard issue on the basis that amounts are constructively withdrawn for an impermissible purpose. UIPL 25–89, 54 Fed. Reg. 22,973 (1989) tranmitted a Secretary's Decision stating that such constructive withdrawals are inconsistent with Federal law.

withdrawals/transfers from one unemployment fund to another. For example, except as otherwise permitted by the Cash Management Improvement Act, any drawdown from the UTF not needed for the immediate payment of UC (or other use authorized by Federal law) is inconsistent with the withdrawal standard. Similarly, a transfer from the clearing account (except as otherwise permitted under Federal law) to any account other than the UTF is inconsistent with the withdrawal standard.

6. *Action Required*. State agency administrators are requested to review existing State law provisions and State procedures to ensure that Federal law requirements as set forth in this UIPL are met. Prompt action, including corrective legislation, should be taken to assure Federal requirements are met.

7. *Inquiries*. Direct questions to your Regional Office.

[FR Doc. 96–13565 Filed 5–29–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 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 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:* June 4, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for Teaching with Technology and Other Development and Demonstration Projects in History submitted to the Division of Research and Education Program, for projects at the October 1, 1996 deadline.

2. *Date:* June 5, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for Teaching with Technology and Other Development and Demonstration Projects in Archaeology, Anthropology, and Western Language submitted to the Division of Research and Education Program, for projects at the October 1, 1996 deadline.

3. *Date:* June 6, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Teaching with Technology and Other Development and Demonstration Projects in Interdisciplinary K–16 submitted to the Division of Research and Education Program, for projects at the October 1, 1996 deadline.

4. *Date:* June 28, 1996.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for the Challenge Grants Program submitted to the Office of Challenge Grants, for projects at the May 1, 1996 deadline.

Michael S. Shapiro,
Acting Advisory Committee Management Officer.

[FR Doc. 96–13471 Filed 5–29–96; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 15, 1996, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on May 23, 1996 to the following applicants:

Ron Koger, Permit #97–001.
David F. Parmelee, Permit #97–003.

Nadene G. Kennedy,
Permit Office.

[FR Doc. 96–13580 Filed 5–29–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Availability of the Environmental Assessment: Wastewater Treatment Plant at McMurdo Station, Antarctica

AGENCY: National Science Foundation.

SUMMARY: The National Science Foundation's research support facility at McMurdo Station, Antarctica currently disposes of sanitary wastes by maceration and discharge through an outfall pipe into the receiving waters of McMurdo Sound. The National Science Foundation is considering the construction and operation of a wastewater treatment facility at McMurdo Station, Antarctica and is seeking comment from interested citizens. An environmental assessment, Wastewater Treatment Plant at McMurdo Station, Antarctica, is available for review and comment.

DATES: Comments regarding the environmental assessment, Wastewater Treatment Plant at McMurdo Station, Antarctica, will be of most use to the planning team if they are received by June 28, 1996.

ADDRESSES: Written comments should be submitted to: Robert S. Cunningham, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Joyce Jatko at the Office of Polar Programs, National Science Foundation TEL: (703) 306–1033, FAX: (703) 306–0139, EMAIL; rcunning@nsf.gov or jjatko@nsf.gov.

SUPPLEMENTARY INFORMATION: The environmental assessment specifically addresses those physical, biological, and social environmental factors and considerations that either affect or are affected by the construction and operation of a wastewater treatment facility at McMurdo Station, Antarctica. Three alternatives are considered: continuation of current practices; extension of the wastwater outfall pipe into McMurdo Sound; and construction and operation of a wastewate treatment facility. In the third alternative, primary, secondary, and tertiary wastewater treatment is considered along with disinfection of wastewater and sludge storage and disposal. The environmental effects of each alternative are compared among alternatives. A preferred alternative is not identified.

Dated: May 22, 1996.

Carol A. Roberts,

Deputy Director, Office of Polar Programs, National Science Foundation.

[FR Doc. 96–13581 Filed 5–29–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: ''Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL.''

3. The form number if applicable: Not applicable.

4. How often the collection is required: The American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) requires that inspection results be submitted to the regulatory and enforcement authorities having jurisdiction at the plant site. The final rule has eliminated the requirement to submit those reports to the NRC. Instead, the records are to be retained by the licensee to be made available to the NRC in the event of an NRC audit. However, if an examination reveals degradation to the extent that the structural integrity of the containment could be affected, a report must be submitted to the NRC. A one-time notification of commitment to the containment inservice inspection program would be submitted prior to implementation.

5. Who will be required or asked to report: Nuclear power plant licensees.

6. An estimate of the number of responses: Each of the 109 nuclear power plant licensees will be required to develop a containment inservice inspection (ISI) program in accordance with the ASME Code requirements, and submit a notification of commitment to the program within five years from the effective date of the rule (one-time submittal). Once the program has been implemented, and all licensees have performed the expedited containment ISI, subsequent containment ISI would be performed in accordance with the regularly scheduled ISI of each 10-year ISI interval. Approximately 12 licensees a year would be performing containment ISI and documenting the results. It is estimated that four of those licensees will detect containment degradation that will require them to report to the NRC the extent of degradation and corrective actions.

7. The estimated number of annual respondents: Once the containment ISI program plan has been implemented, the number of annual respondents is estimated to be four.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 116,554 hours over the first four years, of which 109,000 hours is a one-time implementation burden; and a recurring burden thereafter of 9,768 hours (814 hours for each of 12 licensees).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, ''Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants,'' and Subsection IWL, ''Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants,'' of Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with specified modifications and a limitation. Subsection IWE of the ASME Code provides rules for inservice inspection, repair, and replacement of Class MC pressure retaining components and their integral attachments and of metallic shell and penetration liners of Class CC pressure retaining components and their integral attachments in light-water cooled power plants. Subsection IWL of the ASME Code provides rules for inservice inspection and repair of the reinforced concrete and the post-tensioning systems of Class CC components. Provisions have been included to prevent unnecessary duplication of examinations between the expedited examination and the routine 120-month ISI examinations. Subsection IWE and Subsection IWL have not been previously incorporated by reference into the NRC regulations. This final amendment will specify requirements to assure that the critical areas of containments are routinely inspected to detect defects that could compromise a containment's pressure-retaining integrity.

Submit, by July 1, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by July 1, 1996: Peter Francis, Office of Information and Regulatory Affairs

(3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 8th day of May, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–13514 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its December 29, 1992, application for proposed amendment to Facility Operating License Nos. DPR–71 and DPR–62 for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have revised the Type A test acceptance criterion for the as found containment integration leakage rate from 0.75 La to 1.0 La (and 0.75 Lt to 1.0 Lt) that represents the maximum allowable containment leakage rate.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on June 23, 1993, (58 FR 34070). However, by letter dated January 30, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 29, 1992, and the licensee's letter dated January 30, 1995, which withdrew the application for license amendment. The above documents are 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 University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 16th day of May 1996.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–13516 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–03368; License No. 46–02645–03; EA 96–004]

Department of the Army, Madigan Army Medical Center, Tacoma, Washington; Order Imposing Civil Monetary Penalty

I

Madigan Army Medical Center (MAMC, Licensee) is the holder of NRC Materials License No. 46–02645–03, first issued by the Atomic Energy Commission on May 12, 1960. The Nuclear Regulatory Commission (NRC or Commission) issued its first license amendment to MAMC on May 26, 1977. The license authorizes the Licensee to possess byproduct material of various types and to use such material in implementing a nuclear medicine program in accordance with the conditions specified therein.

II

An inspection and investigation of the Licensee's activities were conducted June 6 through December 21, 1995, following the Licensee's report of medical misadministrations that were discovered in June 1995. The results of the inspection and investigation, documented in a report issued on January 5, 1996, NRC Inspection Report No. 030–03368/95–01 and Investigation Report 4–95–027, indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A predecisional enforcement conference was conducted on January 18, 1996, at the Licensee's facility. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $8,000 was served upon the Licensee by letter dated February 22, 1996. The Notice described the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters both dated March 21, 1996 (Reply to a Notice of Violation and Answer to a Notice of Violation). In its responses, the Licensee admitted the violations but requested mitigation of the proposed civil penalty based on actions taken by the Madigan Army Medical Center (MAMC) to identify and correct the violations.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as described in the Notice, and that the penalty proposed for the violations should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered* that:

The Licensee pay a civil penalty in the amount of $8,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that

time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of May 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On February 22, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $8,000 was issued to Madigan Army Medical Center (MAMC or Licensee) for violations identified during an NRC inspection and investigation. The Licensee responded to the Notice in two letters both dated March 21, 1996. The Licensee admitted the violations but requested mitigation of the proposed civil penalty based on actions taken by MAMC to identify and correct the violations.

Restatement of Violations Assessed a Civil Penalty

I. Violations Assessed a Civil Penalty

A. 10 CFR 35.25(a) (1) and (2) require, in part, that a licensee that permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user shall: (1) instruct the supervised individual in the licensee's written quality management program (QMP); and (2) require the supervised individual to follow the written QMP procedures established by the licensee.

Item 4 of the licensee's QMP specified, in part, that when computer calculations are performed, an individual who did not make the original calculations will check the dose calculation parameters.

Contrary to the above, the licensee did not meet the above requirements as specified in the following examples:

1. As of June 6, 1995, the licensee had not assured that individuals working under the supervision of an authorized user, i.e., the medical physicist and dosimetrist, were adequately instructed in the licensee's written QMP. Specifically, although the medical physicist and dosimetrist had signed a record indicating that they had reviewed department procedures, including the QMP, they had neither received specific instruction in the procedures incorporated in the QMP nor read each of the procedures.

2. Between February 1994 and May 1995, the licensee took no action to require or assure that individuals working under the supervision of an authorized user, i.e., the medical physicist and dosimetrist, were aware of, or were following, the licensee written QMP procedures established by the licensee. Specifically, computer calculations performed were not checked by an individual who did not make the original calculations. (01012)

B. 10 CFR 35.32(a) requires, in part, that the licensee establish and maintain a written QMP to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

10 CFR 35.32(a) (3) and (4) require, in part, that the QMP include written policies and procedures to meet the objectives that: (1) final plans of treatment and related calculations for brachytherapy are in accordance with the applicable written directives and (2) that each administration of radiation from brachytherapy is in accordance with the applicable written directive.

Contrary to the above, between February 1994 and May 1995, the licensee's QMP did not include written procedures that met the above stated objectives. Consequently, in five cases involving patients undergoing brachytherapy treatment during this time period, incorrect data values were entered in a computerized treatment planning system used to develop final treatment plans. The entry of incorrect data resulted in errors in the calculated dose rates identified in final treatment plans, thus causing the administered doses to deviate substantially from the prescribed doses specified in the authorized users' written directives. (01022)

These violations represent a Severity Level II problem (Supplement VI). Civil Penalty—$8,000

Summary of the Licensee's Request for Mitigation

MAMC responded to the Notice on March 21, 1996, admitting the violations but requesting mitigation of the proposed $8,000 civil penalty based on its actions to identify and correct the violations. MAMC noted in its response that ''NRC enforcement actions are intended to act as a deterrent against future violations and to encourage prompt identification and comprehensive correction of violations.'' MAMC then noted that it had identified the violations and made immediate extensive modifications to the radiation safety program and Quality Management Program (QMP) to ensure that the violations would not recur. MAMC described each of the corrective actions and stated that ''processes have been implemented to ensure compliance with the QMP as well as a broad range of internal controls developed to prevent reoccurrence.'' MAMC stated that a standard civil penalty for a Severity Level II violation ($4,000) should be sufficient, noting that this would more appropriately match the intent of NRC's Enforcement Policy and more accurately reflect MAMC's efforts in identifying and correcting the program deficiencies.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee is correct that among the stated purposes of the NRC Enforcement Policy (NUREG–1600) is to encourage prompt identification and comprehensive correction of violations. In this case, normal application of the enforcement policy guidance in Sections VI.B.2.b and c did in fact result in credit for MAMC's identification of the violations and corrective actions. However, Section VII.A. of the Enforcement Policy provides that civil penalties may be escalated to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The violations which led to the misadministrations are of very significant regulatory concern to the NRC.

There were at least five cases involving patients undergoing brachytherapy treatment where MAMC administered radiation in excess of what was intended before MAMC discovered an error in its computerized treatment planning program. At least one of these patient misadministrations was later determined by medical consultants of the Licensee and the NRC to have had potential adverse health effects for the patient involved.

It was determined by NRC inspection and investigation that the misadministrations were caused, at least in part, by the Licensee's failure to assure that the MAMC staff was implementing the facility's Quality Management Program (QMP) as required and failure to adequately oversee the QMP. Additional training of the Licensee's personnel and increased management oversight could have prevented the misadministrations. These misadministrations were preventable.

The violations in this case were classified as a Severity Level II problem in recognition of this fundamental breakdown in the very program that is intended to prevent such misadministrations from occurring. The Enforcement Policy provides at Section VII.A.1(a) that discretion should be considered to escalate civil penalties in cases where problems are categorized at Severity Level I or II. As noted in Section I of the Enforcement Policy, enforcement action should be used not only to encourage identification and prompt, comprehensive correction of violations, but also as a deterrent to emphasize the importance of compliance with NRC requirements. While no violation is acceptable, the fact that these violations were preventable cannot be tolerated. In this case, discretion was clearly warranted to assess a civil penalty to MAMC, notwithstanding application of the identification and corrective action factors, to emphasize the importance of preventing significant misadministrations through supervision, training and management oversight. Considering the significance of the actual effects of the violations and their root causes, it was appropriate and wholly consistent with the Enforcement Policy guidance to deny mitigation, exercise discretion and assess a civil penalty of $8,000.

NRC Conclusion

The NRC concludes that an adequate basis for mitigation of the civil penalty is not provided by the Licensee. The NRC also concludes that the proposed civil penalty of $8,000 is appropriate and should be imposed by order.

[FR Doc. 96–13515 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 55–21849–EA; ASLBP No. 96–716–04–EA]

Emerick S. McDaniel; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Emerick S. McDaniel

Denial of Reactor Operator's License Application

This Board is being established as a result of an April 4, 1996 letter from NRC staff sustaining a denial of Mr. McDaniel's reactor operator's license application. The petitioner, Emerick S. McDaniel, requests a hearing in accordance with 10 C.F.R. § 2.103(b)(2).

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Peter A. Morris, 10825 South Glen Road, Potomac, MD 20854

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 23rd day of May 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–13512 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 84th meeting on June 25–27, 1996, Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Wednesday, December 6, 1995 (60 FR 62485).

The entire meeting will be open to public attendance.

The agenda for this meeting shall be as follows:

Tuesday, June 25, 1996—8:30 A.M. until 6:00 P.M.

Wednesday, June 26, 1996—8:30 A.M. until 6:00 P.M.

Thursday, June 27, 1996—8:30 A.M. until 4:00 P.M.

During this meeting, the Committee plans to consider the following:

A. *Total System Performance Assessment 1995*—The Committee will review comments from the NRC staff on the Department of Energy's Total System Performance Assessment 1995. Participation by the staffs of both DOE and NRC is anticipated.

B. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will discuss items of current interest related to the Division of Waste Management programs which may include: progress at the Yucca Mountain site, the status of EPA's Yucca Mountain standards and NRC's high-level waste regulations, and the status of NRC draft technical guidance on expert elicitation.

C. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including: timeframes for regulatory concern, the use of expert elicitation, elements of an adequate low-level waste program, Committee priorities and task action plans, and biological effects from low-levels of ionizing radiation. The Committee may also prepare reports on topics discussed during this meeting.

D. *Meeting with the NRC Commissioners*—The Committee will discuss items of mutual interest with the Commissioners. Potential topics include: Issues and NRC activities associated with the National Research Council's Report, ''Technical Bases for Yucca Mountain Standards,'' ACNW comments on High-Level Waste Prelicensing Program Strategy and Key Technical Issues, ACNW Priority Issues, health effects of low-levels of ionizing radiation, timespan for compliance of the proposed high-level waste repository at Yucca Mountain, Nevada, and the use of expert judgment in nuclear waste licensing.

E. *Discussions with Dr. Dade Moeller, Moeller and Associates, Inc.*—The Committee will discuss several topics of interest to the ACNW with Dr. Moeller including: the open market trading rule which would allow the operator of a facility that is releasing contaminants into the environment the option of reducing its own discharges or those of other sources in the same geographical area, the use of the linear-no-threshold model of response to doses of ionizing radiation, and defining a critical group to predict the anticipated effects of a waste repository.

F. *DOE's Program Plan*—The Committee will meet with representatives of the Department of Energy and the NRC staff to review DOE's current program for developing a high-level waste repository.

G. *Specification of Critical Group and Reference Biosphere*—The Committee will review options under consideration for specifying the critical group and reference biosphere to be used in a performance assessment of a nuclear waste disposal facility.

H. *Time of Compliance in Low-Level Waste Disposal*—The Committee will discuss options for setting a regulatory time of compliance for a low-level waste disposal facility. Participants may include representatives of the NRC staff, the DOE, and individual states.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

J. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such

rescheduling would result in major inconvenience.

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 Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: May 23, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–13513 Filed 5–29–96; 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 June 11, 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:

Tuesday, June 11, 1996—1:30 p.m. until 3:30 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: May 23, 1996

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–13511 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice requests further comment on the following proposed information collection contained in the revision to Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions,'' published in the Federal Register on May 8, 1996 (61 FR 20880).

The information collection request involves a submission of the Cost Accounting Standards Board's (CASB) Disclosure Statement (DS–2) by educational institutions receiving more than $25 million in Federal sponsored agreements. Circular A–21's information collection requirement covers approximately 20 additional educational institutions than those subject to CASB's regulatory requirement for filing the DS–2, pursuant to Public Law 100–679, which was previously approved and assigned OMB control number 0348–0055 (which expires August 31, 1997).

OMB estimates that the preparation of the DS–2 will take 120 hours to complete.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the revision, contact Gilbert Tran, Office of Federal Financial Management, OMB (telephone: 202–395–3993).

ADDRESSES: Written comments should be sent by July 29, 1996 to: Gilbert Tran, Office of Federal Financial Management, OMB, Room 6025, New Executive Office Building, Washington, DC 20503.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 96–13533 Filed 5–29–96; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11Ab2–1 and Form SIP; SEC File No. 270–23; OMB Control No. 3235–0043.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following rule and form: Rule 11Ab2–1 and Form SIP.

Rule 11Ab2–1 and Form SIP establish the procedures by which a Securities Information Processor (''SIP'') files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2–1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is a SIP which engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or

registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission; The Securities Information Automation Corporation (''SIAC'') and the National Association of Securities Dealers, Inc. (''NASD''). SIAC and the NASD are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 22, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13458 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21981; No. 812–9848]

Aetna Life Insurance and Annuity Company, et al.

May 23, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Aetna Life Insurance and Annuity Company (''Aetna'') and Variable Life Account B of Aetna Life Insurance and Annuity Company (''Separate Account'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants request an order that will permit the Separate Account, any future separate accounts established by Aetna (''Future Accounts''), and all other persons, other than Aetna, that may, in the future serve as a principal underwriter (''Future Broker-Dealers'') of certain flexible premium variable life insurance policies issued by Aetna, to deduct from premium payments an amount that is reasonably related to the Aetna's increased federal tax burden resulting from the receipt of those premium payments, pursuant to Section 848 of the Internal Revenue Code of 1986, as amended (''Code'').

FILING DATE: The application was filed on November 15, 1995 and was amended on May 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 18, 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 requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Susan E. Bryant, Esq., Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Aetna is a stock life insurance company, organized in Connecticut, and is a wholly owned subsidiary of Aetna Life and Casualty Company.

2. The Separate Account is a separate account established by Aetna and registered under the 1940 Act as a unit investment trust. Currently, the Separate Account has 17 subaccounts each of which invests in a corresponding investment portfolio of an open-end management investment company registered under the 1940 Act. The Separate Account funds flexible premium variable life insurance policies issued by Aetna (''Current Policies'') for which a registration statement has been filed with the Commission to register interests in the Current Policies under the Securities Act of 1933, and flexible premium variable life insurance policies developed by Aetna in the future (''Future Policies'') (Current Policies, together with Future Policies, ''Policies''). Aetna anticipates that any Future Accounts established to fund Current Policies or Future Policies would be registered under the 1940 Act as unit investment trusts.

3. Aetna is the principal underwriter and distributor for the Policies. Aetna is a registered broker-dealer under the Securities Exchange Act of 1934 (''1934 Act''), and is a member of the National Association of Securities Dealers, Inc. (''NASD''). Any Future Broker-Dealer will be registered as a broker-dealer under the 1934 Act, and will be a member of the NASD.

4. Applicants propose to deduct from premium payments received under the Policies a 1.25% charge to reimburse Aetna for the increase in its federal income taxes resulting from Section 848 of the Code. The charge will be reasonably related to Aetna's increased federal tax burden.

5. The Omnibus Budget Reconciliation Act of 1990 (''OBRA 1990''), amending Section 848 of the Code, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848, as amended, effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the policies.

6. The amount of expenses subject to Section 848 equals a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Policies will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

7. The increased tax burden on every $10,000 of net premiums received under the Policies is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, Aetna must capitalize $770 (*i.e.*, 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.03 (.35% × $731.50) more in taxes for the current year than Aetna would have owed prior to the enactment of OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

8. In Aetna's business judgement, it is appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions. Capital that Aetna must use to pay its increased federal tax burden under Section 848 will be unavailable for investment. The cost of capital used to satisfy this increased tax burden essentially will be Aetna's after-tax rate of return (*i.e.*, the return sought on invested capital), which is at least 10%.[1] Accordingly, Applicants submit that the targeted rate of return is appropriate for use in this present value calculation.

9. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, amounts to $160.40. The effect of Section 848 on the Policies is, therefore, an increased tax burden with a present value of $95.63 for each $10,000 of net premium payments received (*i.e.*, $256.03 minus $160.40).

10. Aetna does not incur incremental federal income tax when it passes on state premium taxes to Policy owners because state premium taxes are deductible in computing federal income taxes. In contrast, federal income taxes are not deductible in computing Aetna's federal income taxes. To compensate Aetna fully for the impact of Section 848, Aetna must impose an additional charge to make it whole for not only the $95.63 additional tax burden attributable to Section 848, but also the tax on the additional $95.63 itself. This additional charge can be determined by dividing $95.63 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

11. Based on its prior experience, Aetna reasonably expects to take fully almost all future deductions. It is Aetna's judgement that a 1.25% charge would reimburse it for the increased federal income tax liabilities, under Section 848. Applicants represent that the 1.25% charge will be reasonably related to Aetna's increased federal income tax burden under Section 848. This representation takes into account the benefit to Aetna of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Aetna's targeted rate of return) in computing the future deductions resulting from such amortization.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act exempting them and any Future Accounts from the provisions of Section 27(c)(2) of the 1940 Act, and Rule 6e–3(T)(c)(4)(v) thereunder, to the extent necessary to permit Applicants and any Future Accounts to deduct from premium payments made under the Policies, a charge in an amount that is reasonable in relation to Aetna's increased federal tax burden related to the receipt of such premium payments, without treating such charge as a sales load. Applicants assert that it is appropriate to deduct a charge for an insurer's increased tax burden attributable to premiums received, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses. In addition, Applicants request that the order extend the same exemptions granted to Aetna, to any Future Broker-Dealer that may in the future serve as principal underwriter for the Current Policies or Future Policies.

2. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an 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 1940 Act.

3. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, and Aetna are subject to Section 27 of the 1940 Act.

4. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for ''sales load'') must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts.

5. ''Sales load'' is defined under Section 2(a)(35), in relevant part, as:

> The difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments.

6. Rule 6e–3(T) provides a range of exemptive relief to separate accounts issuing flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

For example, paragraph (b)(13)(iii)(E) of Rule 6e–3(T) provides exemptive relief from Section 27(c)(2) by permitting an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed tax burden charge arguably is covered by subparagraph (b)(13)(iii) or Rule 6e–3(T). Applicants note, however, that the language of paragraph (c)(4) of the Rule appears to require that deductions for federal tax obligations resulting from receipt of

[1] In determining the rate of return used in arriving at the discount rate, Aetna considered a number of factors. These factors included current market interest rates and expected interest rate trends, inflation, Aetna's anticipated long-term growth rate, the level of risk acceptable to Aetna, and available information about rates of return obtained by other life insurance companies.

premium payments be treated as ''sales load.''

7. Rule 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rule, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the proposed tax burden charge to be treated as part of ''sales load.''

8. Applicants submit that the Rule 6e–3(T)(c)(4)(v) limitation of the premium tax exclusion from the definition of ''sales load'' to state premium taxes probably is an historical accident related to that fact that when Rule 6e–3(T) was adopted in 1984, and when it was amended in 1987, the additional Code Section 848 tax burden attributable to the receipt of premiums did not exist. Applicants further submit that nothing in the administrative history of Rule 6e–3(T) suggests that the exclusion from the definition of sales load of deductions for tax liabilities attributable to the amount of premium payments received was tied to the type of government entity imposing such taxes.

9. Applicants also request exemptions for any Future Accounts that Aetna may establish to support the Current Policies or any Future Policies, as well as for each Future Broker-Dealer that may distribute the Current Policies or Future Policies.

10. Applicants assert that the standards of Section 6(c) are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. The exemptive relief would eliminate the need for Aetna to file additional exemptive applications for each Current Policy or Future Policy to be issued through a Future Account with respect to the same issues under the 1940 Act that have been addressed in this application, as well as for each Future Broker-Dealer that distributes the Current Policy or Future Policy, and thus would promote competitiveness in the variable life insurance market by avoiding delay, reducing administrative expenses, and maximizing efficient use of resources. Applicants further assert that the exemptive relief would enhance Aetna's ability to effectively take advantage of business opportunities as they arise. If Aetna were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses.

11. Applicants believe that a charge of 1.25% of premium payments would reimburse Aetna for the impact of Section 848 of the Code, as currently written on its federal income tax liabilities. Aetna believes, however, that it may have to increase this charge if any change in, or interpretation of, Section 848 or any successor provision results in a further increased federal income tax burden due to the receipt of premiums. Such an increase could result from a change in corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Conditions for Relief

1. Aetna will monitor the reasonableness of the 1.25% charge.

2. The registration statement for each Policy under which the 1.25% tax burden charge is deducted will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Aetna's increased federal tax burden under Section 848 of the Code.

3. The registration statement for each Policy providing for the 1.25% tax burden charge will contain as an exhibit an actuarial opinion as to: (a) the reasonableness of the charge in relation to Aetna's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by Aetna in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder, are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13544 Field 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21978; 812–10162]

Lord Abbett Global Fund, Inc., et al.; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Lord Abbett Global Fund, Inc. (the ''Fund''), Lord, Abbett & Co. (''Lord Abbett''), and Dunedin Fund Managers Limited (''Dunedin'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the implementation, without shareholder approval, of a new sub-advisory agreement (the ''New Sub-Advisory Contract'') for a period of up to 120 days following the termination of the former sub-advisory contract on March 19, 1996 (''Former Sub-Advisory Contract'') (the ''Interim Period''). The order also would permit the sub-adviser to receive from the Fund fees earned during the Interim Period after shareholders have approved the New Sub-Advisory Contract.

FILING DATE: The application was filed on May 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: The Fund and Lord Abbett, 767 Fifth Avenue, New York, New York 10153 and Dunedin, Dunedin House, 25 Ravelston Terrace, Edinburgh EH4 3EX, Scotland.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and consists of two series, the Equity Series and the Income Series. Lord Abbett, a registered investment adviser, serves as investment adviser to the Fund and has engaged Dunedin to serve as sub-adviser to both series pursuant to the Former Sub-Advisory Contract. Dunedin is a Scottish corporation that is registered under the Investment Adivisers Act of 1940 as an investment adviser and is a wholly-owned subsidiary of DFM Holdings Limited (''DFM Holdings'').

2. Prior to March 19, 1996, 50.5% of the outstanding capital of DFM Holdings was owned by the British Linen Bank Group, Limited, with the remaining interests held by four investment trusts (the ''Vendors''). On February 15, 1996, the Vendors entered into a sale and purchase agreement (the ''Sale Agreement'') pursuant to which Edinburgh Fund Managers Group plc (''Edinburgh'') agreed to acquire all of the outstanding capital shares of DFM Holdings, contingent upon certain events. All Dunedin clients were notified of the proposed sale on February 16, 1996. Representatives of Edinburgh and Dunedin met with representatives of Lord Abbett and the Fund on February 28, 1996 to discuss the possible continuation of the advisory relationship between Dunedin and the Fund. At that time, Edinburgh was told that Lord Abbett would make a recommendation to the Fund's board of directors (the ''Board'') to be considered at a meeting of the Board to be held on March 14, 1996.

3. On March 14, 1996, the Board approved the New Sub-Advisory Contract with respect to the Equity Series. As the same time, the Board determined that the Former Sub-Advisory Contract with respect to the Income Series was no longer desirable and determined not to approve a new contract. The Board also concluded that it was in the best interests of the Equity Series and its shareholders to continue to retain Dunedin as sub-adviser during the Interim Period in order to minimize the disruption in advisory services to the Equity Series. The Board also voted to recommend to shareholders of the Equity Series that they approve the New Sub-Advisory Contract.

4. On March 18, 1996, a preliminary proxy statement was filed with the SEC for a shareholder meeting to vote on the New Sub-Advisory Contract. It is anticipated that the shareholder meeting will be held on June 19, 1996. The terms and conditions of the New Sub-Advisory Contract are identical to those of the Former Sub-Advisory Contract, except that the dates of execution and commencement have changed, and references to the Income Series has been eliminated. The Sale Agreement was consummated on March 19, 1996, immediately after which the Former Sub-Advisory Contract terminated.

5. Among other things, the Board was advised at its March 14th meeting the fact that it is anticipated that most of Dunedin's investment personnel will continue to work for Dunedin after the acquisition and that Edinburgh, has substantial experience in the provision of advisory and management services to U.K. institutions. The Board was also advised that the advisory and other services to be provided to the Equity Series under the New Sub-Advisory Contract would be of a scope and quality equivalent to the scope and quality of services provided to the Equity Series by Dunedin pursuant to the Former Sub-Advisory Contract. At a subsequent meeting held on April 17, 1996, the Board concluded that it would be appropriate for Dunedin to receive compensation for its services during the Interim Period.

6. The Fund and Dunedin propose to enter into a separate agreement providing that amounts otherwise payable to Dunedin under the New Sub-Advisory Contract will be held by an unaffiliated escrow agent pending shareholder consideration of the New Sub-Advisory Contract. Amounts in the account will be paid to Dunedin only upon shareholder approval and in accordance with the requested order.

Applicants' Legal Analysis

1. Applicants seek an exemption pursuant to section 6(c) from section 15(a) of the Act to permit the implementation, without shareholder approval, of the New Sub-Advisory Contract during the Interim Period. Applicants also request relief so that Dunedin may receive all fees earned under the New Sub-Advisory Contract during the Interim Period if and to the extent they are approved by the shareholders of the Equity Series.

2. Section 15(a) prohibits an investment adviser from providing investment advisory services to a registered investment company except under a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Section 2(a)(4) defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor. The consummation of the Sale Agreement resulted in an ''assignment,'' within the meaning of section 2(a)(4), of the Former Sub-Advisory Contract, thereby resulting in the termination of the Former Sub-Advisory Contract, according to its terms.

3. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the requested relief meets this standard.

4. Applicants state that they will take all appropriate actions to prevent any diminution in the scope or quality of services provided to the Equity Series. Applicants state that obtaining shareholder approval prior to the consummation of the Sales Agreement was not possible because the Fund did not have sufficient advance notice of the acquisition, the terms and timing of which were wholly determined by the Vendors in response to a number of factors substantially unrelated to the Fund or Lord Abbett. In addition, applicants state that the terms of the New Sub-Advisory Contract are substantially similar to that of the Former Sub-Advisory Contract. Applicants believe that to deprive Dunedin of advisor fees under the New Sub-Advisory Contract during the Interim Period for no reason other than the fact that the acquisition (over which Dunedin had no direct control) resulted in an assignment of the Former Sub-Advisory Contract would be an unduly harsh and unreasonable penalty.

Applicants' Condition

Applicants agree as conditions to the issuance of the requested exemptive order that:

1. The New Sub-Advisory Contract will have the same terms and conditions as the Former Sub-Advisory Contract, except that the dates of execution and commencement have changed, and references to the Income Series have been eliminated.

2. Fees earned by Dunedin during the Interim Period under the New Sub-Advisory Contract will be maintained in an interest bearing escrow account, and the amounts in such account (including

interest earned on such amounts) will be paid (a) to Dunedin only upon approval of the shareholders of the Equity Series or (b) in the absence of such approval, to the Fund.

3. The fund will hold a special meeting of shareholders to vote on the approval or disapproval of the New Sub-Advisory Contract, on or before the 120th day following March 19, 1996. It is expected that the special meeting will be held June 19, 1996, but it will be held no later than July 17, 1996.

4. Dunedin or Edinburg will bear the costs of preparing and filing this application and the costs of a special meeting relating to the solicitation of the approvals of the Fund's shareholders of the New Sub-Advisory Contract necessitated by the acquisition.

5. Dunedin will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Equity Series under the New Sub-Advisory Contract will be at least equivalent, in the judgment of the Board, including the independent directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Contract, Dunedin will apprise and consult the Board to assure that the Board, including the independent directors, are satisfied that the services provided by Dunedin will not be diminished in scope and quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13546 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21979; 812–10074]

Stagecoach Funds, Inc., et al.; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Stagecoach Funds, Inc. (''Stagecoach''), Life & Annuity Trust (collectively with Stagecoach, the ''Companies''), and Wells Fargo Bank, N.A. (''Wells Fargo Bank'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit Stagecoach to retain its present directors following a reorganization involving other registered investment companies. Without the requested exemption, Stagecoach would have to reconstitute its board of directors after the reorganization to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on April 3, 1996, and amended on May 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: the Companies, 111 Center Street, Little Rock, Arkansas 72201 and Wells Fargo, 420 Montgomery Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Companies is a registered open-end management investment company. Wells Fargo Bank, a wholly-owned subsidiary of Wells Fargo & Company (''Wells Fargo''), currently serves as investment adviser to each series of the Companies.

2. On April 1, 1996, Wells Fargo acquired First Interstate Bancorp (''Interstate'') and its indirect wholly-owned subsidiary of Interstate, First Interstate Capital Management, Inc. (''FICM'') (the ''Holding Company Merger''). Interstate shareholders received consideration in connection with the Holding Company Merger. The Holding Company Merger, whereby FICM became an indirect wholly-owned subsidiary of Wells Fargo, constituted a change in control of FICM.

3. FICM currently serves as investment adviser to the Pacifica Funds Trust and Pacifica Variable Trust (collectively, the ''Pacifica Trusts''). The Holding Company Merger caused an automatic termination of FICM's then current advisory agreements with the Pacifica Trusts. At meetings in February and March 1996, the boards of trustees of the Pacifica Trusts approved the interim continuation of the Pacifica Trusts' advisory relationship with FICM following the Holding Company Merger, subject to shareholder ratification and approval.[1]

4. Several new and existing series of Stagecoach propose to acquire the assets of each series of the Pacific Funds Trust (the ''Reorganization''). The Reorganization is intended to consolidate the operations of separate mutual fund families into fewer separate companies. Among other things, it is believed that the Reorganization will improve efficiency, eliminate duplicate shareholder costs and market overlap, facilitate the consolidation of mutual fund investment advisory capabilities by Wells Fargo Bank, and provide potentially enhanced investment returns.

5. At meetings held in late April and mid-May, the Pacifica Funds Trust board of trustees and the Stagecoach board of directors (collectively, the ''Boards''), determined, after reviewing and evaluating relevant information, that (a) participation in the Reorganization is in the best interest of the particular series and (b) the interests of existing shareholders will not be diluted as a result of participating in the Reorganization.

6. The Pacifica Funds Trust Board has called a special meeting of the Pacifica Funds Trust shareholders to be held in July 1996, for the purpose of considering the Reorganization. Approval of a particular series' participation in the Reorganization will require approval by a majority of the outstanding shares of such series entitled to vote at the meeting, voting separately on a series-by-series basis. If required by its declaration of trust or by state law, approval may also be required

[1] The Pacifica Trusts received an SEC exemptive order permitting them to implement interim advisory contracts with FICM without shareholder approval for up to 120 days following the consummation of the merger. Investment Company Act Release Nos. 21794 (March 1, 1996) (notice) and 21860 (March 27, 1996) (order).

by a majority of the outstanding shares of Pacifica Funds Trust entitled to vote at the meeting, voting in the aggregate and not by series or class. These special meetings also will be called for the purpose of ratifying and approving the Pacifica Funds Trust's interim investment advisory agreements with FICM.[2]

7. There are no plans currently to reorganize any of the series operating under Pacifica Variable Trust into corresponding series of Life & Annuity Trust, although such a transaction may be considered in the future. Accordingly, applicants request that the order extend to Life & Annuity Trust to the same extent as Stagecoach. Any such reorganization in the future will be the same, in all material respects, to the transactions described in the application with respect to Stagecoach.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after such a sale, at least 75% of the board of an investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(v) of the Act defines an interested person of an investment adviser to include any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. In addition, section 2(a)(19)(B)(iii) defines an interested person of an investment adviser to include anyone who has any interest in any security issued by the investment adviser or by a controlling person thereof.

2. The restrictions of section 15(f)(1)(A) do not currently apply to the Companies as a result of the Holding Company Merger because there was no change in control of Wells Fargo Bank. Because Interstate shareholders received consideration in connection with the Holding Company Merger, however, the restrictions of section 15(f)(1)(A) currently apply to the Pacifica Trusts. The Reorganization may, therefore, have the effect of subjecting Stagecoach (which will then be offering series that are successors to the Pacifica Funds Trust[3]), to the restrictions of section 15(f)(1)(A). In particular, Stagecoach will be subject to the requirement that, for at least three years following a change in control of an investment adviser, at least 75% of the directors of a successor investment company not be ''interested persons'' of the predecessor or successor adviser.

3. The board of directors of each Company is comprised of the same seven individuals. Currently, four of the seven directors of each Company may be considered interested persons of Wells Fargo Bank. Two of these directors are officers of a registered broker-dealer, and another is a limited partner of a government securities dealer. As such, these three directors are affiliated persons of a registered broker or dealer (the ''Broker-Affiliated Directors''), and interested persons of Wells Fargo Bank.[4] Another director is a shareholder of Wells Fargo, the parent of Wells Fargo Bank, and therefore is an interested person of Wells Fargo Bank. The three remaining directors are not interested persons of either the Companies or the predecessor or successor adviser.

4. One of the Broker-Affiliated Directors has tendered her resignation, effective upon consummation of the Reorganization. The remaining Stagecoach directors have voted to add one of the individuals currently serving as a non-interested trustee of the Pacifica Trusts as a non-interested director of Stagecoach. This will result in four of the seven Stagecoach directors being non-interested following the consummation of the Reorganization. Because, after the Reorganization, three of the seven directors of the Companies will be interested persons of the predecessor and successor advisers, absent an exemption, applicants would be unable to comply with the requirements of section 15(f)(1)(A).

5. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

6. Applicants believe that the requested exemption is necessary or appropriate in the public interest. Applicants submit that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where a fund's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser or another party to the transaction, and the adviser has a material economic motivation to influence the interested directors. Applicants argue that no such circumstances exist with respect to the Broker-Affiliated Directors and the Holding Company Merger and the Reorganization. Although the Broker-Affiliated Directors are technically interested persons of Wells Fargo Bank and FICM (the ''Advisers''), these directors and the broker-dealers with which they are affiliated are not affiliated persons of the Advisers within the meaning of section 2(a)(3) of the Act, nor are they controlled by or under common control with the Advisers. Moreover, none of these directors is an officer, director, partner, co-partner, or employee of any Adviser. The broker-dealers with which the Broker-Affiliated Directors are affiliated do not share any common directors, officers, or employees with the Advisers and do not control, are not controlled by, and are not under common control with the Advisers. Applicants also state that the Distributor is retained directly by the Companies. Accordingly, the Companies' retention of the Distributor is not dependent on the identity of, or transactions involving, the Adviser. The Distributor's compensation for its services is based on asset levels and/or the receipt of sales loads, and it therefore has a direct economic interest in having the Companies prosper and grow. In this respect, the Distributor's interests are consistent with the interests of the shareholders of the Companies.

7. Applicants believe that the requested exemption is consistent with the protection of investors. Applicants state that all the directors, with the exception of the new non-interested director, have served on the Boards of the Companies since their inception. In addition, applicants state that compelling one or more of the Broker-Affiliated Directors to resign from the Stagecoach Board in connection with

[2] FICM has been renamed Wells Fargo Investment Management, Inc.

[3] None of the trustees of the Pacifica Trusts is an interested person of FICM or Wells Fargo Bank for the purposes of section 15(f)(1)(A).

[4] The exemption provided by rule 2a19–1 is not available with respect to the two directors who are officers of a broker-dealer because the broker-dealer serves as placement agent or distributor to the Companies (the ''Distributor''). The exemption provided by rule 2a19–1 is not available with respect to the director who is a limited partner of a government securities dealer because the dealer engages in government securities transactions with the broker-dealer, as well as the Wells Fargo Bank, all of which fall within the definition of ''complex'' in the rule. Accordingly, this director does not meet the condition specified in the rule.

the Reorganization would deprive Stagecoach and its shareholders of the services of skilled individuals possessing considerable experience and financial and business acumen at a time when their experience may be most needed. Adding a substantial number of disinterested directors to the Board would require a lengthy interview and selection process, which could delay and increase the cost of the Reorganization, and could make the Board unwieldy. Further, applicants state that the three interested directors remaining after the Reorganization will continue to be treated as interested persons of Stagecoach and of Wells Fargo Bank for all purposes other than section 15(f)(1)(A).

8. Applicants also believe that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants submit that section 15(f) is intended to permit the SEC to deal flexibly with situations where the imposition of the 75% requirement might pose an unnecessary obstacle or burden on a fund. Further, applicants state that section 15(f) was intended to ensure that, where there is a change in control of an investment adviser, the interests of the investment company shareholders will be protected and they will not be subject to any unfair burden as a result of such transaction. Applicants argue that the proposed Reorganization is structured to protect the interests of the shareholders of the Pacifica Funds Trust and Stagecoach and that shareholders will benefit from the requested exemption.

Applicants' Condition

Applicants agree as conditions to the issuance of the requested exemptive order that:

If within three years of the consummation of the Holding Company Merger (assuming the Reorganization is also consummated), it becomes necessary to replace any director, that director will be replaced by a director who is not an ''interested person'' of Wells Fargo Bank or FICM within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of Wells Fargo Bank or FICM.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13545 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21980; 812–10104]

THC Partners; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: THC Partners.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an exemption from all provisions of the Act. Applicant is a private family-controlled special purpose investment vehicle whose interests are owned by the family and certain other persons.

FILING DATES: The application was filed on April 23, 1996 and amended on May 23, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant: 4200 Texas Commerce Tower, 600 Travis, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Texas general partnership organized in 1977. Applicant's partners consist of the maternal heirs of Howard R. Hughes, Jr. (''Howard Hughes''), including trusts established for family members of maternal heirs and estates of deceased maternal heirs (collectively, the ''Hughes Maternal Heirs'') and partners and former partners of Andrews & Kurth, L.L.P. (''Andrews & Kurth''), a Houston law firm, including trusts established for Andrews & Kurth family members and heirs of deceased Andrews & Kurth partners (collectively, ''A&K''). Applicant's assets presently consist of common stock of The Hughes Corporation (''THC'') and limited partnership interests in Howard Hughes Properties, L.P. (''HHPLP'') (collectively, ''Hughes''). Hughes was formed to hold, manage, and develop the assets of the estate of Howard Hughes (the ''Hughes Estate'') including casinos, a large military aircraft manufacturer, and widespread real estate holdings.

2. Howard Hughes dies in April 1976 unmarried and childless. A complex estate battle began when 32 wills were offered for probate, and California, Nevada, and Texas each claimed domicile for purposes of subjecting Howard Hughes' assets to death taxes. Andrews & Kurth represented Howard Hughes and various of his companies for over 50 years. William R. Lummis, son of Annette Gano Lummis, Howard Hughes' aunt, and a senior partner at Andrews & Kurth, left the firm shortly after Howard Hughes' death to undertake management of the Hughes Estate and serve as executive officer of Hughes.

3. The Hughes Maternal Heirs, claiming through Annette Gano Lummis, the beneficiary holding the largest single interest in the Hughes Estate, did not possess the resources to finance the long, complicated, multi-jurisdictional legal defense of their claim. The Hughes Maternal Heirs and A&K formed applicant to prosecute and defend the claims of the Hughes Maternal Heirs. In return for the contribution of their interests in the Hughes Estate, the Hughes Maternal Heirs collectively received 66⅔% of the interests in applicant. In return for undertaking to defend, or cause to be defended, and otherwise to provide the financial resources to further applicant's purposes, A&K received a 33⅓% interest in applicant. In 1983, the last of the final, non-appealable orders establishing ownership of the Hughes Estate was issued that decreed that applicant was the beneficiary of approximately 71% of the Hughes Estate's assets. Other than through gifts and testamentary dispositions, applicant has not changed composition since its inception. As of the date of the filing of this application, the Hughes Maternal Heirs owned 67.279% of the interests in

applicant and A&K owned 32.721%. Currently, there are 86 Maternal Heirs and 124 members of A&K.[1]

4. Applicant is internally managed by three of the general partners (the ''Managing Partners'') who receive no compensation. The current Managing Partners are Platt W. Davis, III (''Davis''), Frederick R. Lummis, Jr. (''Frederick Lummis''), and Milton H. West, Jr. (''West''). Davis holds interests in applicant both as a donee of his mother, an original Hughes Maternal Heir, and as a legatee under the will of Annette Gano Lummis. Frederick Lummis is William Lummis' brother. West has been a partner of Andrews & Kurth for over 50 years and was the partner in charge of the firm's representation of Howard Hughes. The Managing Partners originally were selected through informal discussions among the Hughes Maternal Heirs and A&K. The Managing Partners are elected at large from among applicant's partners every three years and were most recently elected in 1995. A committee nominates proposed Managing Partners for election but partners holding interests aggregating 10% or more may propose competing slates. Election is by secret written ballot. Currently, the Managing Partners receive no compensation for their services.

5. Hughes has entered into a merger agreement with The Rouse Company (''Rouse'') that will result in Rouse acquiring all of Hughes (the ''Rouse Transaction''). After consummation of the Rouse Transaction, applicant's assets will consist of: (a) Cash consideration of approximately $85 million; (b) approximately 9 million shares of Rouse (approximately 20% of the outstanding Rouse shares); and (c) contingent rights to receive additional Rouse shares based on the future cash flow generated from, and appraised value of, certain properties acquired by Rouse in the mergers (the ''Earn-Out Rights''). The properties subject to the Earn-Out Rights consist of undeveloped land, rental properties, and interests therein held in four discrete business units in Las Vegas and Los Angeles. The earn-out periods range from 5 to 14 years.

6. Applicant proposes to incur administrative expenses in an amount not to exceed ¼ of 1% of assets following consummation of the Rouse Transaction (the ''Administrative Expense Cap''). Any compensation paid to the Managing Partners will be within the Administrative Expense Cap.

7. Applicant contemplates continuing its existence after the consummation of the Rouse Transaction for several reasons. First, applicant believes that it can coordinate sales of Rouse shares in the future by arranging block trades and thereby avoid the disruptive effect of the uncoordinated sale of a large amount of stock by various partners acting independently.[2] Second, applicant believes that significant cost savings can be achieved through the joint investment of the cash received in the Rouse Transaction which would be invested by the Managing Partners in shares of a number of registered open-end investment companies. Third, applicant believes that issues involved in the determination of the amount of the Earn-Out Rights can be more effectively managed by applicant than by its partners individually. Fourth, applicant, on behalf of its partners, is presently involved in a controversy with the Internal Revenue Service and anticipates that litigation of the matter will ensue (the ''Federal Tax Proceedings''). The Internal Revenue Service (''IRS'') has questioned applicant's partners' reporting of their income relative to applicant's formation and operation for its tax year 1987 and subsequent years. Administrative proceedings with respect to these allegations recently have been concluded without resolution of the matter. The IRS may issue a notice of final partnership administrative adjustments which would be a predicate to institution of litigation by applicant.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines investment company to include any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total unconsolidated assets. Applicant submits that it has been exempt from registration under the Act because its business has primarily consisted of its interests in THC and HHPLP, both majority-owned operating companies engaged in real estate development. Upon the consummation of the Rouse Transaction, however, applicant will become an ''investment company'' as that term is defined in section 3(a)(3) of the Act.

2. Applicant was established as a joint venture between the Hughes Maternal Heirs and A&K to pursue the Hughes Maternal Heirs' interest in the Hughes Estate. Applicant contends that since establishing a 70% interest in the Hughes Estate, applicant has operated as a privately owned and family-controlled special purpose entity to which the Act was not intended to apply. Applicant represents that it has not sought, and will not seek, new public or private investors. In addition, each of the partners is related to either the Hughes Maternal Heirs or A&K.

3. Section 3(c)(1) of the Act excepts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities. Applicant asserts that the SEC may exempt private investment companies that have more than 100 beneficial owners under section 6(c) of the Act.[3] Applicant contends that its request for a conditional order under section 6(c) of the Act is consistent with relief granted to other private investment companies substantially owned and controlled by a single family.[4] Applicant asserts that it will continue to operate as a private investment vehicle not intended to be within the scope of the Act.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, 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. Applicant believes that the requested exemption meets these standards.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. Applicant will provide each partner annual financial statements audited by an accounting firm of recognized national standing.

2. The Partnership shall not issue interests to a new investor who is not

[1] The method chosen by Andrews & Kurth to determine the relative interests of each of its partners in the firm's interest in the Partnership resulted in an allocation to every person who was a partner of the firm from 1976 to 1983.

[2] The Partnership is contractually restricted from selling more than 50% of such shares for a period of one year after consummation of the Rouse Transaction.

[3] See *Maritime Corporation*, 9 SEC 906, 909 (1941).

[4] See, e.g., *Pitcairn Group L.P*, Investment Company Act Release Nos. 21525 (Nov. 20, 1995) (notice) and 21616 (Dec. 20, 1995) (order); *Heber J. Grant & Company*, Investment Company Act Release Nos. 20040 (Jan. 27, 1994) (notice) and 20091 (Feb. 23, 1994) (order); and *Bessemer Securities Corporation*, Investment Company Act Release Nos. 18529 (Feb. 5, 1992) (notice) and 18594 (Mar. 3, 1992) (order).

a member of the Hughes' Maternal Heirs or A&K and will not permit the assignment or transfer of any interest therein except by bequest, gift, or operation of law, and in the case of gifts, only to persons who are members of the donor's family.

3. Applicant will have a ten-year duration from the date of the granting of the order unless earlier terminated pursuant to the terms of the restated partnership agreement or unless it: (a) ceases to be an investment company as such term is defined in the Act; (b) qualifies for a statutory exception from such definition under the Act; (c) obtains an amended exemptive order permitting it to continue as an exempt entity; or (d) registers as an investment company under the Act.

4. Applicant shall not have elected any new Managing Partner without the approval of a majority in interest of the partners, and such new Managing Partner must be a partner of applicant.

5. Applicant shall not knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934, any financial information concerning applicant for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any units of partnership interest.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13547 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21977; 812–10042]

Van Kampen American Capital Comstock Fund, et al.; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Van Kampen American Capital Comstock Fund (''Comstock Fund''); Van Kampen American Capital Enterprise Fund (''Enterprise Fund''); Van Kampen Capital Equity Income Fund (''Equity Income Fund''); Van Kampen American Capital Growth and Income Fund (''Growth and Income Fund''); Van Kampen American Capital Life Investment Trust (''Life Investment Trust''); Van Kampen American Capital Pace Fund (''Pace Fund''); Van Kampen American Capital Equity Trust (''Equity Trust''); Common Sense Trust (collectively, the ''Van Kampen Funds''); Smith Barney/Travelers Series Fund Inc. (''Smith Barney Fund'') (collectively, with the Van Kampen Funds, the ''Public Funds''); Van Kampen American Capital Foreign Securities Fund (''Foreign Securities Fund''); Van Kampen American Capital Investment Advisory Corp. (''Advisory Corp.''); and Van Kampen American Capital Asset Management, Inc. (''VKACAM'') (collectively with Advisory Corp., the ''Advisers''), on behalf of themselves and any future registered open-end management investment companies for which either of the Advisers serves as investment adviser or subadviser.[1]

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 12(d)(1), and under sections (c) and 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit the Foreign Securities Fund to serve as an investment vehicle through which the Public Funds would invest portions of their assets in a portfolio of foreign equity securities.

FILING DATES: The application was filed on March 12, 1996, and amended on May 10, 1996. Applicants have agreed to file an additional amendment during the notice period, the substance of which is reflected in this notice.

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 June 17, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Van Kampen Funds, Foreign Securities Fund, and the Advisers, One Parkview Plaza, Oakbrook Terrace, Illinois 60181; Smith Barney Fund, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Public Funds are registered open-end management investment companies. Each of the Public Funds invests part or all of its assets in equity securities as provided in its investment policies and restrictions. A common characteristic of the Public Funds is that limited investment in foreign securities is an appropriate part of their investment strategies. While the Public Funds differ with respect to the portions of their respective total assets they might invest in foreign securities, their investment objectives with respect to such investments, and their strategies for making them, are identical.

2. The Foreign Securities Fund is a newly formed open-end investment company that will invest primarily in equity securities of foreign issuers. The Foreign Securities Fund will invest in securities of issuers traded on markets of at least three of the world's largest countries by market capitalization, but securities of issuers traded on quoted markets of other countries also will be considered for investment. Although the Foreign Securities Fund is registered under the Act, it does not intend to make a public offering of its shares, and has not registered under the Securities Act of 1933. The only investors in the Foreign Securities Fund will be some or all of the Public Funds. There will be no sales load or other charges associated with distribution of the Foreign Securities Fund's shares. Other expenses incurred by the Foreign Securities Fund will be borne by it, and thus indirectly by the Public Funds that invest in it.

3. The Advisers are wholly owned subsidiaries of Van Kampen American Capital, Inc., and are registered as investment advisers under the Investment Advisers Act of 1940. The Advisers serve as investment adviser or subadviser to each of the Public Funds, and have investment discretion over the

[1] Other existing open-end management investment companies for which Advisory Corp. or VKACAM serves as investment adviser or subadviser do not currently intend to rely on the requested relief and therefore are not named as applicants. These investment companies may rely on the requested relief in the future under the terms and conditions set forth in the application.

entire portfolio of each of the Public Funds they advise. Advisory Corp. also acts as investment adviser to the Foreign Securities Fund, but does not charge any advisory fee for these services.

4. Applicants intend to use the Foreign Securities Fund to pool the Public Funds' investments in foreign securities. Applicants believe that the use of a single investment vehicle to invest in a broadly diversified portfolio of foreign securities will provide the Public Funds with the most effective exposure to the performance of foreign markets while at the same time minimizing costs. Applicants state that the Foreign Securities Fund will be more diversified in foreign markets than a Public Fund investing on its own. As a result, events that affect the price of a single foreign issuer or country can be expected to have less impact on the Foreign Securities Fund than they would have on the foreign securities holdings of a Public Fund. Applicants represent that this diversification can be expected to benefit both the Foreign Securities Fund and the Public Funds by providing greater price stability and lower volatility, while at the same time capturing the performance benefits of exposure to foreign markets.

5. Applicants also expect the Public Funds' investments in the Foreign Securities Fund to increase the efficiency of portfolio management of the Public Funds. Tracking the performance of various country markets and issuers in foreign markets in a time-consuming process and substantially different from tracking the domestic market and domestic issuers, which would normally be attendant with a Public Fund's portfolio management. By obtaining most of its exposure to foreign markets through the Foreign Securities Fund, a Public Fund and its shareholders would gain the benefit of exposure to this sector without incurring the penalty attendant upon a Public Fund's portfolio manager spending a disproportionate amount of his or her time following these relatively small positions.

6. Applicants anticipate that the efficiencies resulting from use of the Foreign Securities Fund will result in cost savings to the Public Funds in three areas: administrative costs, out-of-pocket costs, and trading costs. Savings of administrative costs will be attributable to a great reduction in administrative procedures. Savings of out-of-pocket costs such as audit fees and custodial fees will be substantially offset by increases in other out-of-pocket costs such as legal and transfer agency fees. Applicants expect that the major cost savings will occur because the Foreign Securities Fund will experience trading costs that will be substantially less than the trading costs that would be incurred if foreign stocks were purchased separately for each of the Public Funds. Applicants believe that this cost savings will increase in direct proportion to the number of foreign stocks over which the investment in foreign securities is diversified.

7. When the Foreign Securities Fund begins operations, some of the Public Funds may contribute foreign securities from their own portfolios (in addition to cash) in return for shares of the Foreign Securities Fund. All of the portfolio securities contributed will be appropriate investments for the Foreign Securities Fund, and will be valued at the time of contribution in accordance with rule 17a–7 under the Act.

8. Although the majority of the Public Funds' investments in foreign securities will be through the Foreign Securities Fund, each Public Fund may have some additional direct investments in foreign stocks. Applicants state that the Advisers have adopted a procedure to avoid unnecessary expense that could occur if the Foreign Securities Fund were to sell a particular stock at the same time a Public Fund were to purchase it, or vice versa. The Foreign Securities Fund will generate a list of stocks that it intends to purchase or sell, and will circulate the list among the portfolio managers of the Public Funds. If any portfolio manager wishes to sell or buy a stock on the list, the Foreign Securities Fund will effect the transaction directly with that Public Fund. The value of the stock will be the current market price, determined in accordance with rule 17a–7. Payment will be made by simultaneous transfer of cash or by simultaneous redemption or issuance of shares of the Foreign Securities Fund with an equal value, depending on whether the Public Fund wishes to alter its investment in the Foreign Securities Fund. In cases where the payment for the subject stock is Foreign Securities Fund shares rather than cash, the transactions will comply with the provisions of rule 17a–7 (a) through (f) in all respects other than the requirement that purchases and sales be made only for cash consideration.

9. To minimize the need for the Foreign Securities Fund to maintain large cash balances, the Advisers will coordinate the Public Funds' purchases and sales of shares of Foreign Securities Fund shares to minimize the cash flow into or out of the Foreign Securities Fund, and attempt to anticipate the Public Funds' cash needs and coordinate net cash investments or redemptions (on a *pro rata* basis) to permit the orderly acquisition or disposition of foreign securities within the Foreign Securities Fund. The purchase or sale of shares of the Foreign Securities Fund by the Public Funds also will be coordinated with rebalancing transactions within the Foreign Securities Fund. The Advisers will monitor the process over time to ensure that the best interests of the Public Funds and the Foreign Securities Fund are met.

10. Applicants anticipate that they will be able to follow the foregoing procedures in virtually all instances. There may be occasions, however, when a single Public Fund makes an unusually large purchase or redemption of Foreign Securities Fund shares. Such a large transaction could cause the Public Funds not involved in the transaction to bear significant incremental trading costs associated with the acquisition or disposition of foreign stocks. Accordingly, if a Public Fund intends to make such an acquisition or disposition, the Advisers, as fiduciaries to the Public Funds and the Foreign Securities Fund, may cause the transaction to be executed in kind. In the case of a purchase, the Public Fund would acquire foreign stocks directly, then contribute them to the Foreign Securities Fund in exchange for its shares. In the case of a redemption, the Foreign Securities Fund would deliver redemption proceeds to the Public Fund in the form of a *pro rata* distribution of portfolio securities held by the Foreign Securities Fund, which the Public Fund could then sell. Such in-kind transactions will comply with rule 17a–7 (a) through (f) except that the consideration for the foreign stocks will be Foreign Securities Fund shares rather than cash.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Applicants request an exemption from section 12(d)(1) because the Public Funds in the aggregate will own 100% of the stock of the Foreign Securities Fund, thus any one Public Fund's investment in the Foreign Securities Fund may represent more than 5% of the Public Fund's total assets. Applicants believe that the requested exemption will not implicate any of the abuses that section 12(d)(1) was intended to prevent. For example, the concern that the Public Funds might exercise undue influence over the management of the Foreign Securities Fund is not present because all of the Funds are advised by the Advisers. Moreover, because the Advisers will be paid no advisory fee by the Foreign Securities Fund and because the Advisers are under common control, there will be no incentive for any Public Fund to assert undue control over the Foreign Securities Fund. Furthermore, the concern that large redemptions could disrupt the orderly management of the Foreign Securities Fund will not be a problem because the Advisers will be in a position to anticipate redemption needs, and the costs associated with large redemptions of Foreign Securities Fund shares would be mitigated by the ability of the Fund to redeem its shares in kind. In addition, the Foreign Securities Fund will not cause investors in the Public Funds to incur two layers of costs. The Foreign Securities Fund will pay no advisory fee, and its shares will not be subject to any sales load or rule 12b–1 fee.

3. Applicants also request an exemption from section 17(a) of the Act, which prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3) of the Act. VKACAM is an affiliated person of each of the Public Funds its advises, and Advisory Corp, is an affiliated person of the Foreign Securities Fund and of each Public Fund it advises. In addition, each of Advisory Corp. and VKACAM is an affiliated person of the other by reason of being under common control. To the extent that the Funds may be deemed to be under common control, each Fund would be an affiliated person of each other Fund. Accordingly, purchases or sales of securities between the Foreign Securities Fund and a Public Fund may violate section 17(a).

4. Sections 6(c) and 17(b) of the Act set forth the standards for exempting a series of transactions from section 17(a). Under section 17(b), the terms of any such transaction must be reasonable and fair and must not involve overreaching on the part of any person, the transaction must be consistent with the policy of each investment company concerned, and the transaction must be consistent with the general purposes of the Act. In addition, under section 6(c), the exemption must be necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the proposed transactions meet the standards for relief under sections 6(c) and 17(b). Applicants contend that the terms of the transactions between the Foreign Securities Fund and the Public Funds are reasonable and fair and do not involve overreaching. The consideration paid and received for the purchase and redemption of Foreign Securities Fund shares will be based on the net asset value of the Foreign Securities Fund. The Foreign Securities Fund will not pay an advisory fee, and there will be no sales load or other charge associated with distribution of its shares. Applicants believe that the transactions are consistent with the policies of the Public Funds and the Foreign Securities Fund. The Public Funds' investments in the Foreign Securities Fund, and the Foreign Securities Fund's issuance of shares, will be in accordance with each Fund's investment restrictions and policies. Applicants also believe that the transactions are consistent with the general purposes of the Act. Section 17(a) was intended to prohibit affiliated persons from furthering their own interests by, for example, selling property to an investment company at less than fair value. Applicants believe that their proposal does not present those concerns.

Applicants' Conditions

Applicants agree that the following conditions will govern transactions under the requested order:

1. The Public Funds and the Foreign Securities Fund will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

2. The Foreign Securities Fund shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of the Public Funds will not be ''interested persons'' (as defined in section 2(a)(19) of the Act).

4. Advisory Corp. will not charge any advisory fee for managing the Foreign Securities Fund.

5. Any sales charges or service fees charged with respect to securities of the Public Funds, when aggregated with any sales charges or service fees paid by the Public Funds with respect to securities of the Foreign Securities Fund, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; monthly purchases and redemptions (other than by exchange) for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; annual expense ratios for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; and a description of any vote taken by the shareholders of the Foreign Securities Fund, including a statement of the percentage of votes cast for and against the proposal by the Public Funds and by the other shareholders of the Foreign Securities Fund, if any. Such information will be provided as soon as reasonably practicable following each fiscal year-end of each of the Public Funds (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13456 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21975; File No. 812–9696]

Washington National Insurance Company, et al.

May 22, 1996.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Washington National Insurance Company (''Washington National'') and Separate Account I of Washington National Insurance Company (the ''Separate Account'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order exempting Washington National and the Separate Account, which will be reorganized from a managed separate account to a separate

account organized as a unit investment trust (the ''Continuing Separate Account''), from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, to the extent necessary to permit Washington National to deduct a mortality risk charge from the Continuing Separate Account.

FILING DATE: The application was filed July 27, 1995, and amended on November 15, 1995, February 8, 1996, and April 26, 1996.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Craig R. Edwards, Esq., Washington National Insurance Company, 300 Tower Parkway, Lincolnshire, Illinois 60069–3665.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Washington National, the sponsor and depositor of the Separate Account, is a stock life insurance company organized under the laws of Illinois. Washington National is a wholly-owned subsidiary of Washington National Corporation, a holding company incorporated in Delaware in 1968 that acquired Washington National in 1968.

2. The Separate Account was established by Washington National as a separate investment account to fund Washington National's tax-qualified and non-tax-qualified retirement benefits offered through group and individual variable annuity contracts (the ''Contracts''). The Separate Account meets the definition of a ''separate account'' under the 1940 Act and is registered under the 1940 Act as an open-end management investment company. The Separate Account is divided into three sub-accounts (the ''Sub-Accounts''), the Bond Sub-Account, the Short-Term Portfolio Sub-Account and the Stock Sub-Account. Washington National is the investment adviser for the Separate Account. Washington National has contracted with NBD Bank, an Illinois banking corporation, to act as sub-adviser for and to manage the investments of the Stock Sub-Account.

3. Applicants state that the Contracts are designed to provide retirement benefits under a variety of retirement programs. Although payments under outstanding Contracts continue to be received, Washington National no longer offers the Contracts for sale. Purchase payments under a Contract may be allocated to the fixed account or the variable account. The Contract also provides for, among other things: (a) a variety of annuity payout options beginning on the annuity commencement date; (b) surrender of the Contract prior to its maturity date for a cash payment representing all or part of the Contract's value; and (c) a death benefit payable if the annuitant dies before the maturity date.

4. Washington National Equity Company (''WNEC''), formerly a registered broker-dealer which was a wholly-owned subsidiary of Washington National, served as the underwriter for the Separate Account. Applicants state that WNEC is no longer in existence.

5. Various fees and charges are deducted under the Contracts. A daily mortality risk charge (the ''annuity rate guarantee charge'') equal to an effective annual rate of 0.80% of the average net assets of the Separate Account is deducted to compensate Washington National for bearing certain mortality risks under the Contracts. The mortality risk arises from Washington National's obligation to make annuity payments regardless of the mortality experience of persons receiving such payments. Washington National states that the mortality risk charge may not be increased under the Contract. If the deductions are insufficient to cover the actual cost of the mortality risk, Washington National will bear the loss. Conversely, if the deductions prove more than sufficient, the excess will be a profit to Washington National.

6. Applicants state that currently an investment management charge is made daily from the Separate Account to Washington National which is equal on an annual basis to 0.50% of the average net assets of the Separate Account. Washington National pays NBD Bank, the sub-adviser for the Stock Sub-Account, a fee of 0.40% of the average net assets of the Stock Sub-Account.

7. A daily asset-based financial accounting service charge equal to an effective annual rate of 0.35% of the average net assets of the Separate Account is deducted to reimburse Washington National for providing financial accounting services to the Separate Account, including preparation and maintenance of all accounting, bookkeeping, financial and other statements for the conduct of the business and operations of the Separate Account. Applicants state that this charge is guaranteed not to increase and is designed to cover the actual expenses incurred in providing these services. Washington National does not expect or intend to profit from the charge which will be deducted in reliance on Rule 26a–1.

8. An annual contract maintenance charge of $30 is deducted from the Contract value on each Contract anniversary or on the date of full withdrawal or election of a settlement option if that date is not the Contract anniversary. The charge is deducted on a pro rata basis from the Contract value of each Sub-Account and the fixed account. The charge is not guaranteed, may be changed in the future and may be deducted more frequently than annually. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 and is not greater than the cost of the bookkeeping and other administrative services to be provided for one year.

9. The Separate Account currently pays all taxes, interest, brokerage fees and commissions, fees and expenses of legal counsel and independent auditors, custodian fees and expenses, expenses associated with meetings of the Contract owners, expenses incurred in the preparation, printing and distribution of reports and prospectuses by the Separate Account to its current owners, fees of and expenses incurred by directors of the Separate Account who are not Washington National's directors, officers or employees, fees and expenses associated with the approval, qualification or registration of the Contracts, extraordinary expenses if permitted by applicable laws and regulations, and all other fees and expenses incurred by or on behalf of the Separate Account which are not borne by Washington National (collectively, ''Separate Account Expenses''). During 1995, charges for the Separate Account Expenses were made against the assets of each Sub-Account of the Separate Account at an annual rate of 0.20%.

10. Although Washington National currently pays premium taxes, Washington National reserves the right to deduct premium taxes from purchase payments or to charge them against the Contracts to which they are attributable in the future. Premium taxes currently range up to 3.5%.

11. No sales charge is deducted from purchase payments. However, certain full or partial surrenders are subject to a contingent deferred sales charge (''Withdrawal Charge''). The Withdrawal Charge covers expenses relating to the sale of the Contracts. If the proceeds received from the Withdrawal Charge are not sufficient to pay such expenses, then Washington National will pay the excess out of its general assets, which may include proceeds derived from the annuity rate guarantee charge.

The Withdrawal Charge is made at the rate of 6% of the amount withdrawn and is deducted from the amount withdrawn. In calculating the Withdrawal Charge, any amount which the Contract owner withdraws will be treated as a withdrawal of purchase payments until the Contract owner has withdrawn the total amount of all purchase payments received within 72 months of the date of withdrawal. The Withdrawal Charge applies to purchase payments on a first-in, first-out basis. The total Withdrawal Charge will never exceed 6% of the total purchase payments.

Washington National will not deduct the Withdrawal Charge: (a) on the first 10% of the Contract value withdrawn from a Contract during any Contract year (determined as of the date of the first withdrawal during the year); (b) on purchase payments received more than 72 months prior to the date of withdrawal; (c) if the amount withdrawn is applied to (i) a settlement option after the Contract has been in effect for five or more years, or (ii) settlement options 2, 5 or 6 (as defined in the Contract) at any time; and (d) if the annuitant dies.

12. Pursuant to an Asset Transfer Agreement and Plan of Reorganization (the ''Reorganization Agreement'') and subject to approval by persons entitled to vote in respect of the Separate Account (''Separate Account Voters''), the Separate Account will be restructured as a unit investment trust (the ''Reorganization''). Applicants state that the unit investment trust will be divided into three sub-accounts, each of which will invest exclusively in shares of a corresponding series of the Scudder Variable Life Investment Fund (the ''Fund'') whose investment objective is substantially the same as the current investment objective of the relevant Sub-Account of the Separate Account. In connection with the Reorganization, the assets of each Sub-Account of the Separate Account will be transferred to the corresponding portfolio of the Fund in exchange for shares of the portfolio of equal value. Applicants state that the Reorganization is intended to counteract the trend of net redemptions in the Separate Account which limits investment flexibility and threatens the ability of the Separate Account to best achieve its investment objectives. Applicants also state that the Reorganization will benefit Contract owners by providing economies of scale and simplifying record keeping.

13. The Fund was organized as a Massachusetts business trust on March 15, 1985, for the purpose of serving as the funding vehicle for variable annuity contracts and variable life insurance policies to be offered by the separate accounts of certain life insurance companies. The Fund has six separate investment portfolios: the Bond Portfolio, the Money Market Portfolio; the Capital Growth Portfolio; the Growth and Income Portfolio; the Balanced Portfolio; and the International Portfolio. Only the Bond Portfolio, the Money Market Portfolio and the Capital Growth Portfolio of the Fund will be involved in the Reorganization. Scudder Investor Services, Inc. serves as the underwriter for the Fund.

14. The Fund has adopted a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act for a newly authorized class of shares (''Class B'' shares). Applicants state that the Continuing Separate Account will, at the time of the Reorganization and thereafter, invest only in a class of the Fund's shares for which such a Rule 12b–1 plan has not been adopted (''Class A'' shares).

15. Pursuant to an investment advisory agreement with the Fund, and subject to the supervision and approval of the Fund's Board of Trustees, Scudder, Stevens & Clark, Inc. (the ''Adviser'') renders investment advisory services to the Fund's portfolios. Under the investment advisory agreement, the Adviser charges the Fund an investment management fee with respect to the Bond Portfolio at the annual rate of 0.475% of its average net assets, with respect to the Money Market Portfolio at the annual rate of 0.370% of its average net assets, and with respect to the Capital Growth Portfolio at the annual rate of 0.475% of its average net assets. In addition, the Fund bears certain expenses for clerical, accounting and certain other services provided to the Fund. In 1995, these other expenses were deducted at an annual rate of 0.085%, 0.130% and 0.095% of the average net assets of the Bond Portfolio, the Money Market Portfolio and the Capital Growth Portfolio, respectively.

16. Applicants state that Washington National will assume all costs to be incurred by the Separate Account in effecting the Reorganization. In exchange for the assets of each of the Sub-Accounts of the Separate Account, shares of the corresponding portfolio of the Fund will be issued. Shares of the Capital Growth Portfolio will be issued in return for the assets of the Stock Sub-Account, shares of the Bond Portfolio will be issued for the assets of the Bond Sub-Account, and shares of the Money Market Portfolio will be issued for the assets of the Short-Term Portfolio Sub-Account.

17. The number of shares of each portfolio to be issued in connection with the Reorganization to the respective corresponding sub-account of the Continuing Separate Account will be determined by dividing the value of the net assets to be transferred from the particular Sub-Account of the Separate Account as of the business day immediately preceding the effective date of the Reorganization by the net asset value per share of the corresponding portfolio of the Fund.

18. Applicants state that, after the Reorganization, the investment management fee and the charge for Separate Account Expenses will not be deducted from the Continuing Separate Account. Applicants state, however, that the portfolios of the Fund in which the sub-accounts of the Continuing Separate Account will invest after the Reorganization will deduct an investment management fee and a charge for operating expenses of each portfolio of the Fund.

19. Applicants state that the Reorganization will not have any adverse economic impact on the Contract owners' interests under the Contracts. Applicants state that the overall level of fees and charges borne, directly or indirectly, by Contract owners will not be materially greater (and generally should be lower) immediately after the Reorganization than immediately before it. The investment management fee for each of the three available portfolios of the Fund is lower than the current rate charged to any of the Sub-Accounts of the Separate Account. Applicants state that in 1995 the sum of the investment management fee and the other operating expenses deducted from each of the three portfolios of the Fund (0.56% for the Bond Portfolio, 0.50% for the Money

Market Portfolio and 0.57% for the Capital Growth Portfolio) is less than the 0.70% sum of the investment management fee and the deduction for other expenses currently imposed against the assets of the three corresponding Sub-Accounts of the Separate Account.

20. The application states that a Special Meeting of Separate Account Voters was held on March 12, 1996. The proposed transactions were approved at the Special Meeting by the vote of a majority of the outstanding voting securities with respect to each Sub-Account of the Separate Account. Applicants state that on September 22, 1995, a registration statement was filed on Form N–14 in connection with the Reorganization.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent 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 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(a)(2) of the 1940 Act to the extent necessary to permit the deduction of the 0.80% mortality risk charge from the assets of the Continuing Separate Account. Applicants represent that the annuity rate guarantee charge under the Contracts is within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based upon Washington National's analysis of publicly available information about such other contracts, taking into consideration the particular annuity features of the comparable contracts, including such factors as current charge levels, charge level or annuity rate guarantees, the manner in which the charges are imposed and the markets in which the contracts have been offered. Applicants state that Washington National will maintain a memorandum, available to the Commission upon request, setting forth in detail the products analyzed in the course of, and the methodology and results of, its review.

3. Applicants state that amounts derived from the annuity rate guarantee charge that exceed the expenses that the deductions were designed to cover will be offset by aggregate expenses of Washington National, which will include any distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the annuity rate guarantee charge could be viewed as providing for a portion of the costs relating to distribution of the Contracts.

4. Applicants state that there is currently no distribution financing arrangement for the Contracts because no new Contracts are being distributed. Nevertheless, Applicants represent that there is a reasonable likelihood that the distribution financing arrangement for the Continuing Separate Account (to the extent that such an arrangement may be deemed to exist) will benefit the Continuing Separate Account and the Contract owners. Applicants state that Washington National will maintain a memorandum, available to the Commission upon request, setting forth in detail the basis for this conclusion.

5. Washington National represents that the assets of the Continuing Separate Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by a board of directors, the majority of whom are not ''interested persons'' of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13457 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37238, File No. SR–NYSE–96–06]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Continued Listing Standards for Specialized Securities

May 22, 1996.

On March 18, 1996, the New York Stock Exchange, Inc. (''NYSE'' 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 establish continued listing criteria for certain specialized securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37056 (Apr. 1, 1996), 61 FR 15547 (Apr. 8, 1996). No comments were received on the proposal.

Currently, the NYSE has listing standards for certain specialized securities: stock warrants, foreign currency warrants and currency index warrants, stock index warrants, contingent value rights (''CVRs'') [3] other securities, and equity-linked debt securities (''ELDS'').[4] The uniform listing standards for specialized securities require one million shares outstanding, 400 holders, $4 million aggregate market value and a minimum life of one year.[5]

With this rule proposal, the Exchange proposes to establish uniform continued listing criteria for these specialized securities in paragraphs 801 and 802 of the Exchange's Listed Company Manual (''Manual'') to correspond to the initial listing standards. The NYSE would consider delisting these specialized securities when the number of publicly-held shares is less than 100,000, the

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CVRs are unsecured obligations of an issuer that provide for a possible cash payment upon maturity depending upon the price performance of an affiliate's equity security.

[4] ELDS are intermediate-term (two to seven years), non-convertible, hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock or other equity security. ELDS may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. Moreover, ELDS may be subject to a ''cap'' on the maximum principal amount to be repaid to holders upon maturity and, additionally, may feature a ''floor'' on the minimum principal amount to be repaid to holders upon maturity.

[5] There are additional standards for several of these securities. For example, ELDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security.

number of holders is less than 100, and the aggregate market value of shares outstanding is less than $1,000,000.

Moreover, the Exchange is proposing additional requirements for securities that are related to other securities. For stock warrants and CVRs, the NYSE would require that the related security remain listed. For ELDS, the issuer of the linked security must remain subject to the reporting obligations of the Act and the linked security must remain trading in a market in which there is last sale reporting. The Exchange also will require the issuer of specialized debt securities to be able to meet its obligations on such debt. For all specialized securities listed pursuant to paragraph 703 of the Manual, the Exchange will delist any specialized securities if the related or linked securities are delisted for violation of the Exchange's ''Corporate Responsibility'' criteria in Section 3 of the Manual.[6]

The proposed rule change also eliminates the delisting criteria relating to creation of a class of non-voting common stock. The Exchange believes that these criteria are no longer appropriate because the Exchange currently has listing criteria specifically addressing non-voting common stock. Finally, the proposed rule change would delete the current warrant continued listing criteria and include stock, foreign currency and currency index, and stock index warrants within the new uniform continued listing criteria. The Exchange believes that the continued listing criteria for warrants do not conform to the current warrant listing standards.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] Specifically, the Commission believes the 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; and are not designed to permit unfair discrimination between issuers.

The Commission believes that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to exchange markets and to the investing public. Listing standards serve as a means for the self-regulatory organizations (''SROs'') to screen issuers and to provide listed status only to bona fide companies with substantial float, investor base, and trading interest to ensure sufficient liquidity for fair and orderly markets. Listing standards also enable an exchange to assure itself of the bona fides of the company and its past trading history. In this regard, over the past several years the Exchange has proposed, and the Commission has approved, uniform initial listing standards for specialized securities.

With this rule proposal, the Exchange proposes uniform continued listing criteria to correspond to the initial listing standards adopted for specialized securities. The Commission believes that adequate maintenance standards are of equal importance to the development of adequate standards for initial inclusion on an exchange. The Commission notes that once an issue has been initially approved for listing, the Exchange must monitor continually the status and trading characteristics of that issue to endure that it continues to meet exchange standards for trading depth and liquidity.

In this regard, the Commission believes that the quantitative continuing listing standards for specialized securities will ensure that there is sufficient public float and investor interest in the securities to support continued trading consistent with fair and orderly markets. Further, the additional requirements for specialized securities that are related to other securities should ensure, among other things, that these securities cannot, through continued listing, become a surrogate for trading a security that has been delisted due to corporate responsibility violations.[8] As described above, for continued listing of stock warrants and CVRs, the Exchange will require that the related security be, and remain, a NYSE listed security. For ELDS, the issuer of the linked security must remain subject to the reporting obligations of the Act and the linked security must remain subject to last sale reporting. The Commission believes that these standards are appropriate under the Act and will ensure that the linked or related securities have adequate transparency and information available and meet certain minimum requirements. With respect to CVRs and stock warrants, the additional requirements should also help to address concerns that such securities will not become a surrogate for trading other securities not eligible for NYSE listing.

In summary, the Commission believes that the maintenance criteria, established by the rule proposal, should help to ensure the stability of the marketplace, as well as protect investors, by subjecting the securities of an issuer to delisting if the listed security fails to meet the new maintenance standards.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–96–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13459 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[6] Section 3 (Corporate Responsibility) includes, among others, policies concerning voting rights, quorums, and shareholder approval.

[7] 15 U.S.C. § 78f(b).

[8] *See supra* note 6 and accompanying text.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0205]

Eastern Virginia Small Business Investment Corporation; Notice of Issuance of a Small Business Investment Company License

On July 31, 1995, an application was filed by Eastern Virginia Small Business Investment Corporation, 2101 Parks Avenue, Suite 803, Virginia Beach, Virginia, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0205 on May 14, 1996, to Eastern Virginia SBIC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 21, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–13501 Filed 5–29–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Bureau of Transportation Statistics (BTS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 1, 1996 [FR 61, page 8096].

DATES: Comments must be submitted on or before June 23, 1996.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Report of Financial and Operation Statistics for Large Certificated Air Carriers. This is a request for extension of a currently approved collection.

OMB Control Number: 2138–0013.

Abstract: Pursuant to Public Law nos. 95–504 and 98–443 and 49 U.S.C. 329 (b)(1), the Secretary of Transportation is required to collect and disseminate information on civil aeronautics, and to continue certain data collection activities of the former Civil Aeronautics Board (CAB).

This collection provides basic financial, traffic and employment data filed by large certificated air carriers and used extensively by the Department of Transportation in its ongoing programs.

Respondents: Business or other for-profit organizations.

Annual Reporting and Recordkeeping Burden: The number of respondents are 98. The total annual responses are 9,004. The total annual burden hours are 35,287.

Frequency: Reporting is quarterly and semi-annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention BTS Desk Officer.

Issued in Washington, DC, on May 22, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–13449 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–7E–P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; James M. Cox-Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for James M. Cox-Dayton International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150 by the city of Dayton, Ohio. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for James M. Cox-Dayton International Airport were in compliance with applicable requirements effective June 6, 1994. The proposed noise compatibility program will be approved or disapproved on or before October 30, 1996.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the noise compatibility program is May 3, 1996. The public comment periods ends July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Airports Engineer, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for James M. Cox-Dayton International Airport which will be approved or disapproved on or before October 30, 1996. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally recieved the noise compatibility program for James M. Cox-Dayton International Airport, effective on May 3, 1996. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 30, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local and land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Mr. Roy Williams, Director of Aviation, James M. Cox-Dayton International Airport, Terminal Building, Vandalia, OH 45377

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on May 3, 1996.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 96–13554 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Northeast Illinois Railroad Corporation (Metra) a request for an extension of the time period necessary to comply with a previously granted temporary waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of the relief.

Northeast Illinois Railroad Corporation (Metra); Waiver Petition Docket Number LI–93–13

The Locomotive Safety Standards (49 CFR Part 229) were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 miles per hour to be equipped with an event recorder by May 5, 1995. On September 3, 1993, Metra petitioned FRA for an extension of the May 5, 1995 time limit in which to apply event recorders under 49 CFR 229.135. On February 6, 1995, FRA granted authority to extend this time limit for compliance to July 1, 1996, as requested, under Docket LI–93–13, and contingent upon Metra providing FRA with a status report of their event recorder installation schedule at quarterly intervals thereafter.

Metra seeks an extension of the time period necessary to comply with the previously granted temporary waiver of compliance. Metra's projected completion dates were contingent upon the delivery of event recording devices, the rebuilding of their electric multiple unit cars by an outside company, and the construction of new non-multiple unit control cab cars to replace a group of older non-multiple unit control cab cars. Metra has been unable to maintain the projected completion dates due to a lack of manpower within Metra, internal scheduling problems at the car rebuilder, and internal scheduling problems at the car builder. Metra requests that the compliance date be extended to March 3, 1998.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–93–13) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on May 23, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–13532 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that First Union Bank of Connecticut, with offices at 10 State House Square, 2nd Floor CT5845, Hartford, Connecticut 06103–3698, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: May 23, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–13529 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Research and Special Programs Administration (RSPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on March 5, 1996 (61 FR 8706, 8707, 8708, and 8709).

DATES: Comments must be submitted on or before June 22, 1996.

FOR FURTHER INFORMATION CONTACT: Jackie Smith at RSPA, (202) 366–8553, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Inspection and Testing of Portable Tanks and Immediate Bulk Containers [Former Title: Portable Tank Inspection and Testing]. This is a request for reinstatement with change of a previously approved collection for which approval has expired.

OMB Control Number: 2137–0018

Abstract: This collection consolidates provisions for documenting qualifications, inspections and tests pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions in parts 173, 178 and 180 of the HMR.

It is needed to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected and retested in accordance with the HMR.

The information is used to verify that portable tanks and intermediate bulk containers meet required performance standards prior to being authorized for initial use or reuse as bulk packaging for hazardous materials.

Respondents: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden: The number of respondents is 314. The total annual responses are 51,220. The total annual burden hours are 51,340.

Frequency: Design qualification testing is performed at the start of

production for each new or different design type, periodic design type retesting is performed at one year intervals for intermediate bulk containers only, and periodic requalification of tanks in use is performed every 2–5 years, depending on the type of testing required and the tank specification.

Title: Testing, Inspection, and Marking Requirements for Cylinders [Former title: Recordkeeping and Information Collection for Cylinders].

OMB Control Number: 2137–0022.

Abstract: This information collection consolidates provisions for documenting qualifications, inspections and tests pertaining to the manufacture and use of cylinders under various provisions in parts 173, 178 and 180 of the HMR.

It is needed to ascertain whether cylinders have been qualified, inspected and retested in accordance with the HMR. For example, provisions in 49 CFR 173.34 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements also address registration of retesters and marking of cylinders by retesters and recertifiers.

The information is used to verify that cylinders meet required manufacturing standards prior to being authorized for initial use, and that once manufactured the cylinders are maintained and used in compliance with applicable requirements of the HMR as packaging for hazardous materials.

Respondents: Fillers, owners, users and retesters of reusable cylinders.

Annual Reporting and Recordkeeping Burden: The number of respondents 139,352. The total annual responses are 153,287. The total annual burden hours 171,681.

Frequency: Collection Reports are required for cylinders as they are manufactured and initially tested. Cylinders are required to be marked after manufacture with specific information. Inspection reports are also required to verify compliance with the provisions of the HMR, including verification that the cylinders passed the required tests. Registration of retesters is performed on a one-time basis. Retester marking on a cylinder is performed once every 5 to 20 years depending on cylinder specification and type of service. Pressure verification for acetylene cylinders is performed daily.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Abstract: This collection is applicable upon occurrence of incidents as prescribed in 49 CFR 171.15 and 171.16. Basically, a Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a carrier of hazardous materials after a hazardous material transportation incident occurs, such as a release of material, serious accident, evacuation or highway shutdown. Serious incidents meeting criteria in 49 CFR 171.15 also require a telephonic report by the carrier.

This information collection enhances RSPA's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes and address emerging hazardous materials transportation safety issues. The requirement applies to all carriers engaged in the transportation of hazardous materials by rail, air, water and highway.

Respondents: Each carrier who transports hazardous materials.

Annual Reporting and Recordkeeping Burden: The number of respondents is 700. The total annual responses are 16,600.

The total annual burden hours are 24,190.

Frequency: Reports are required upon occurrence of a reportable incident.

Title: Flammable Cryogenic Liquids [Previous title: Cryogenic Liquids Requirements].

OMB Control Number: 2137–0542.

Abstract: Provisions in 49 CFR 177.818 require the carriage on a motor vehicle of written procedures for venting flammable cryogenic liquids and for responding to emergencies. Sections 173.318(g), 177.840(h), and 180.405(h) specify certain safety procedures and documentation requirements for drivers of these motor vehicles. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability.

This information is used to ensure safe transportation of flammable cryogenic liquids and that proper proactive mitigation measures are taken if necessary to preclude an uncontrolled breach of the cargo tank.

Respondents: Carriers of flammable cryogenic liquids in bulk.

Annual Reporting and Recordkeeping Burden: The number of respondents are 65. The total annual responses are 18,200. The total annual burden hours are 1,213.

Frequency: A response is required for each shipment of a flammable cryogenic material.

Title: Approvals for Hazardous Materials. This is a request for reinstatement with change of a previously approved collection for which approval has expired.

OMB Control Number: 2137–0557.

Abstract: The Department shippers and manufacturers use these approvals to assure the safe transportation of hazardous material which pose specific packing requirements.

Pursuant to section 49 CFR Part 107, Hazardous Material Procedures and Hazardous Materials Regulations, Part 171–180, requires RSPA to collect this information.

This information is used by RSPA to determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.

Respondents: The respondents are individuals, businesses, not-for-profit institutions, Federal Government and State, local or tribal Government.

Annual Reporting and Recordkeeping Burden: The number of respondents are 3,503. The total annual responses are 3,853. The total annual burden hours are 18,302.

Frequency: On occasion of application for a benefit.

Title: Testing Requirements for Packaging.

OMB Control Number: 2137–0572.

Abstract: Detailed packaging manufacturing specifications have been replaced by a series of performance tests that a non-bulk packaging must be capable of passing before it is authorized to be used for transporting hazardous materials. The HMR require proof that packaging meet these testing requirements. Manufacturers must retain records of design qualification tests and periodic retests. Manufacturers must notify, in writing, persons to whom packaging are transferred of any specification requirements that have not been met at the time of transfer. Subsequent distributors, as well as manufacturers must provide written notification. Performance-oriented packaging standards allow manufacturers and shippers much greater flexibility in selecting more economical packaging.

Respondents: Each non-bulk packaging manufacturer that tests packaging to ensure the safe transportation of hazardous materials.

Annual Reporting and Recordkeeping Burden: The number of respondents are 5,000. The total annual responses are 15,000. The total annual burden hours are 30,000.

Frequency: Tests are performed at start of production of a packaging design type and repeated at one or two-year

intervals, depending on the type of packaging. Written notification is provided at time of first transfer, to each person to whom a packaging is transferred.

Title: Container Certification Statement [Previous title: Statement of Structural Serviceability for Freight Containers to be used for Class 1.1 and 1.2 Explosives].

OMB Control Number: 2137–0582.

Abstract: As required in Sec. 176.27, shippers of hazardous materials, in freight containers or transport vehicles by vessel, are required to certify that the freight container or transport vehicle is serviceable, that the hazardous materials are properly marked, labeled, or placarded, loaded and secured. For explosives in Division 1.1 and 1.2, shippers are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements (see Sec. 176.172).

These requirements are intended to ensure an adequate level of safety for transport of hazardous materials aboard vessel and ensure consistency with similar requirements in international standards.

Respondents: Shippers of hazardous materials, including explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden: The number of respondents are 530. The total annual responses are 604,000. The total annual burden hours are 15,100.

Frequency: The statement is required for each shipment of hazardous material in a freight container or transport vehicle aboard a vessel.

Title: Hazardous Materials Public Sector Planning and Training Grants.

OMB Control Number: 2137–0586.

Abstract: Part 110 of 49 CFR sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to deal with hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, reporting and requesting modifications.

Respondents: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping Burden: The number of respondents are 66. The total annual responses are 66. The total annual burden hours are 4,082.

Frequency: Application for a grant is at the discretion of the applicant and can be made as frequently as every annual grant cycle. Financial status reports are submitted quarterly. Grantees must complete a performance report at the end of the grant period.

Title: Response Plans for Shipments of Oil [Previous title: Preparation of Response Plans for Shipments of Oil].

OMB Control Number: 2137–0591.

Abstract: In recent years several major oil discharges damaged the marine environment of the United States. As required by the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, RSPA has issued regulations that require preparation of written spill response plans and, in certain instances, submission of these plans to RSPA for the transportation of oil in bulk by motor vehicle or rail car. These plans are intended to aid in the mitigation of the effects of unintended discharges of oil to the environment.

Respondents: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden: The number of respondents are 8,000. The total annual responses are 8,000. The total annual burden hours are 10,560.

Frequency: One time report, plus notification of changes when needed.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention RSPA Desk Officer.

Issued in Washington, DC, on May 21, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–13570 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–60–P

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to prepare for the twelfth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE).

DATES: June 26, 1996 at 9:30 a.m.

ADDRESSES: Room 8236–8240, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the twelfth session of the UNSCOE held from July 1 to 12, 1996, in Geneva, Switzerland. During this public meeting, U.S. positions on proposals submitted to the twelfth session of the UNSCOE will be discussed. Topics to be covered include matters related to international harmonization of classification criteria, restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, and infectious substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the twelfth session of the UNSCOE may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.dis.anl.gov.

Issued in Washington, DC, on May 23, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–13531 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

[STB Finance Docket No. 32958]

Warren & Trumbull Railroad Co.—Trackage Rights Exemption—Economic Development Rail II Corporation

Economic [1]Development Rail II Corporation (EDR–II) will agree to grant

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on

trackage rights to The Warren & Trumbull Railroad Company (WTRC) over approximately 4 miles of railroad located in Ohio between Conrail mileposts 164.52 and 160.6 in Warren Township, and a 1-mile connecting track in Holland Township. The trackage rights are to become effective on such date as the parties may agree in writing as provided in their trackage rights agreement, but not sooner than May 17, 1996 (the effective date of the exemption).[2]

This transaction will permit WTRC to move freight between points on its existing line and an interchange with Conrail near North Warren, OH, and to serve local points on the line, including the facilities of the Packard Electric Division of General Motors Corporation.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32958, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036.

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.

Decided: May 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13569 Filed 5–29–96; 8:45 am]

BILLING CODE 4915–00–P

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. 11323–24.

[2] Under 49 U.S.C. 10502, the Board exempted EDR–II's acquisition of the above-described line from the prior approval requirements of 49 U.S.C. 10902, in a decision served April 15, 1996, in STB Finance Docket No. 32798, *Economic Development Rail II Corporation—Acquisition Exemption—Lines of Consolidated Rail Corporation.* EDR-II is expected to close on the purchase from Conrail not later than May 17, 1996.

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1995—Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Century Indemnity Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Century Indemnity Company, of Hartford, Connecticut, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective May 8, 1996.

The Company was last listed as an acceptable surety on Federal bonds at 60 FR 34438, June 30, 1995.

With respect to any bonds currently in force with Century Indemnity Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/6872/6953/7034/8608. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202/FTS) 874–7116.

Dated: May 21, 1996.

Diane E. Clark,

Assistant Commissioner, Financial Information.

[FR Doc. 96–13540 Filed 5–29–96; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on June 20 and 21, 1996, from 8:30 a.m. to 4:30 p.m. on Thursday, June 20, and from 8:30 a.m. to 1:00 p.m. on Friday, June 21. The meeting will take place at the Department of Veterans Affairs Central Office, Room 530, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting will be to discuss Veterans Affairs' education issues.

On Thursday the Committee will discuss the increasing utilization of the Montgomery GI Bill benefits. On Friday the Committee will hold a planning session and discuss future projects of the Committee.

The meeting will be open to the public up to the seating capacity of the conference room. Due to limited seating capacity, it will be necessary for those wishing to attend to contact Ms. June Schaeffer, Assistant Director, Education Policy and Program Administration, (phone 202–273–7186) prior to June 14, 1996.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 10:00 a.m. on June 21, 1996.

Dated: May 21, 1996.

By Direction of the Secretary.

Hayward Bamister,

Committee Management Officer.

[FR Doc. 96–13475 Filed 5–29–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
May 30, 1996

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

Final Standards for Hazardous Air Pollutant Emissions from the Printing and Publishing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5509–1]

RIN 2060–AD95

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act (CAA), as amended in 1990 for the printing and publishing industry. The NESHAP requires existing and new major sources to control emissions using the maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). The standards were proposed in the Federal Register on March 14, 1995 (60 FR 13664). This Federal Register action announces the EPA's final decisions on the rule.

The final rule includes organic HAP emission limits for publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. A variety of organic HAP are used as solvents and components of inks and other materials used by printers. The HAP emitted by the facilities covered by this final rule include xylene, toluene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, methanol, ethylene glycol, and certain glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; and damage to the heart, liver, kidneys, and blood cells. The final rule is estimated to reduce baseline emissions of HAP by 31 percent or 6700 megagrams per year (Mg/yr) (7400 tons per year (tpy)).

The emissions reductions achieved by these standards, combined with the emissions reductions achieved by similar standards, will achieve the primary goal of the CAA, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population''. The intent of this final regulation is to protect the public health by requiring the maximum degree of reduction in emissions of organic HAP from new and existing sources, taking into consideration the cost of achieving such emission reduction, any nonair quality, health and environmental impacts, and energy requirements.

EFFECTIVE DATE: May 30, 1996.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia, 22161, telephone number (703) 487–4650. Please refer to ''National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry—Background Information for Promulgated Standards,'' EPA–453/R–96–005b. The BID contains (1) a summary of the changes made to the standards since proposal, and (2) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. 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 data transfer of up to 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

Docket. Docket No. A–92–42, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 5:30 p.m., Monday through Friday, at the EPA Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street, SW, Washington, DC 20460; telephone number (202) 260–7548, FAX (202) 260–4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Salman at (919) 541–0859, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which have the potential to emit HAP listed in section 112(b) of the CAA in the following regulated categories and entities:

Category	Examples of regulated entities
Industry	Printers, publishers, and manufacturers of packaging, wall and floor coverings, house furnishings and sanitary paper products employing rotogravure printing or wide-web flexographic printing technologies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.820 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Under section 307(b)(1) of the CAA, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background
  A. Regulatory Background and Purpose
  B. Common Sense Initiative
II. The Standards
III. Summary of Impacts
IV. Significant Changes to the Proposed Standards
  A. Public Participation
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  D. Minor Changes
V. Administrative Requirements
  A. Docket
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  C. Executive Order 12866: Administrative Designation and Regulatory Analysis
  D. Executive Order 12875
  E. Regulatory Flexibility Act
  F. Unfunded Mandates Act of 1995
  G. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

I. Background

A. Regulatory Background and Purpose

Section 112 of the CAA requires control of emissions of HAP to protect public health and the environment. This final regulation will reduce emissions of organic HAP from rotogravure and wide-web flexographic printing operations.

In part, section 112 requires that emission standards be promulgated for all categories of major sources of HAP, and for many categories of small ''area'' sources. The CAA lists 189 HAP believed to cause adverse health or environmental effects. Major sources are defined as those that emit or have the potential to emit at least 10 tons per year of any single HAP or 25 tons per year of any combination of HAP.

In the July 16, 1992, Federal Register (57 FR 31576), the EPA published the initial list of categories of sources slated for regulation. This list includes the printing and publishing category. Emissions standards for the listed source categories are required to be promulgated between November 1992 and November 2000.

Congress specified that each of these standards must require the maximum reduction in emissions of HAP that the EPA determines is achievable considering cost, non-air-quality health and environmental impacts, and energy requirements. In essence, these MACT standards ensure that all major sources of air toxics achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach creates a level economic playing field, ensuring that facilities that employ cleaner processes and good emissions controls are not disadvantaged relative to competitors with poorer controls. At the same time, this approach provides assurance to every citizen, in every community, that any major source of toxic air pollution located nearby will have to effectively control its emissions.

All U.S. publication rotogravure facilities and some product and packaging rotogravure and wide-web flexographic printing facilities are major sources of HAP emissions, with the potential to emit over 23 Mg/yr (25 tpy) of organic HAP, including toluene, xylene, ethylbenzene, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol, and certain glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include irritation of the eyes, nose, throat, and skin; and damage to the heart, liver, kidneys, and blood cells.

The EPA recognizes that the degree of adverse effects to health resulting from the most significant emissions identified can range from mild to severe. The extent to which the effects could be experienced is dependent upon the ambient concentrations and exposure time. The latter is further influenced by source-specific characteristics such as emission rates and local meteorological conditions. Human variability factors, including genetics, age, pre-existing health conditions, and lifestyle also influence the degree to which effects to health occur.

The final standards will reduce organic HAP emissions from rotogravure and wide-web flexographic printing operations by 6,700 Mg/yr (7,400 tpy) from a baseline level of 21,700 Mg/yr (23,900 tpy). No small firms are at risk of closure as a result of the final standards, and there will not be a significant economic impact on a substantial number of small entities.

B. Common Sense Initiative

On October 17, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with the Federal Advisory Committee Act (U.S.C. App. 2, section 9(c)) requirements. The CSI addresses six industrial sectors. The Printing CSI Subcommittee addresses the Printing and Publishing industry.

The following are the six principles of the CSI program, as stated in the ''Advisory Committee Charter.''

1. *Regulation.* Review existing regulations for opportunities to get better environmental results at less cost. Improve new rules through increased coordination.

2. *Pollution Prevention.* Actively promote pollution prevention as the standard business practice and a central ethic of environmental protection.

3. *Recordkeeping and Reporting.* Make it easier to provide, use, and publicly disseminate relevant pollution and environmental information.

4. *Compliance and Enforcement.* Find innovative ways to assist companies that seek to comply and exceed legal requirements while consistently enforcing the law for those that do not achieve compliance.

5. *Permitting.* Improve permitting so that it works more efficiently, encourages innovation, and creates more opportunities for public participation.

6. *Environmental Technology.* Give industry the incentives and flexibility to develop innovative technologies that meet and exceed environmental standards while cutting costs.

The Printing CSI Subcommittee met for the first time just before the proposed rule was published. Several Subcommittee members were very involved in the development of the proposed rule. All Subcommittee members were made aware of the proposal and copies of the proposal were provided to all interested Subcommittee members. Although the Subcommittee did not choose to make review of the proposed rule one of its projects, several Subcommittee members did submit comments on the proposed rule. The subcommittee was provided with an update on the final rule at its March 19, 1996 meeting.

Many aspects of the CSI principles are reflected in the final standards. The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing printing facilities, are based on process and emissions data received from over 600 printing facilities. The EPA met with industry and trade groups on numerous occasions to discuss these data. In addition, printers, trade organizations, ink manufacturers, and State and local regulatory authorities commented on draft versions of the proposed regulation and on the proposed regulation. Two trade organizations provided extensive comments. All comments were considered, and a number of changes to the final rule reflect these comments. Of major concern to industry were the opportunity to comply through pollution prevention by using low HAP content materials, the analytical method for HAP content determination, reliance on formulation data for HAP and volatile matter determination, and flexible compliance demonstration provisions that account for different configurations of work stations and printing presses within a facility.

The regulation allows sources the flexibility to select from various options for compliance. Sources may reduce HAP usage and emissions through conversion to waterborne, lower HAP solvent-borne or ultraviolet/electron beam cure materials. Alternatively, sources may install or upgrade existing capture and control devices to meet the proposed standard. Finally, sources have the option to comply by a combination of lower HAP materials and capture and control. Facilities may select the most cost-effective option based on facility specific considerations.

The final rule allows existing facilities three years from the date of promulgation to comply. This is the maximum amount of time allowed under the CAA. This time frame will provide the greatest opportunity for

developing and adopting low-HAP content materials, and provide sufficient time for facilities that choose to install or upgrade capture and control equipment.

Included in the final rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The EPA has also attempted to maintain consistency with existing regulations.

Representatives from other interested EPA offices and programs were included in the regulatory development process as members of the work group. The work group reviewed and concurred with the regulation before proposal and promulgation. Therefore, the EPA believes that the implications to other EPA offices and programs have been adequately considered during the development of the rule.

II. The Standards

The final rule is applicable to all existing and new rotogravure and wide-web flexographic facilities that are major sources of HAP or are located at plant sites that are major sources of HAP.

Publication rotogravure facilities subject to this rule must limit emissions of organic HAP to no more than eight percent of the total volatile matter used each month. The emission limitation may be achieved by capture and control of at least 92 percent of organic HAP used, by substitution of non-HAP materials for organic HAP, or by a combination of capture and control technologies and substitution of materials.

Product and packaging rotogravure and wide-web flexographic printing facilities subject to this rule must limit emissions to no more than five percent of the organic HAP applied each month, or to no more than four percent of the mass of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied each month, or to no more than 20 percent of the solids applied each month, or to an equivalent allowable mass based on the as-applied solids contents of the materials applied each month.

Section 112(a) of the CAA defines major source as a source, or group of sources, located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tpy) or more of any individual HAP or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are stationary sources that do not qualify as ''major.'' ''Potential to emit'' is defined in the section 112 General Provisions (40 CFR 63.2) as ''the maximum capacity of a stationary source to emit a pollutant under its physical or operational design.'' Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

The EPA notes that in recent decisions, *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995) and *Chemical Manufacturers Ass'n* v. *EPA*, No. 89–1514, slip op. (D.C. Cir. Sept. 15, 1995), the District of Columbia Circuit court addressed challenges related to the EPA's requirement that a source which wishes to limit its potential to emit must obtain a federally enforceable limit for the New Source Review and NESHAP programs. The EPA is currently reviewing its Federal enforceability requirements in light of these court decisions, and has not yet decided how it will address this issue. Once the EPA has completed its review of the Federal enforceability requirements in all relevant programs including the NESHAP program, the EPA will make available in a Federal Register notice its response to the court decisions. In the interim, the EPA has issued its Interim Policy on Enforceability of Limitations on Potential to Emit (January 22, 1996), which summarizes how certain State-enforceable limits may be recognized under this definition pending further rulemaking.

To determine the applicability of this rule to facilities that are within a contiguous area of other HAP-emitting emission sources that are not part of the source category covered by this rule, the owner or operator must determine whether the plant site as a whole is a major source. A formal HAP emissions inventory must be used to determine if total potential HAP emissions from all HAP emission sources at the plant site meet the definition of a major source. If the facility commits to HAP usage restrictions as provided in the rule that ensure potential HAP emissions will be below the major source cutoffs, only simplified reporting and recordkeeping requirements apply. A facility may also limit its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

Existing major sources may switch to area source status by obtaining and complying with a federally enforceable limit on their potential to emit prior to the ''compliance date'' of the regulation. The ''compliance date'' for existing sources for this regulation is defined as May 30, 1999. New major sources are required to comply with the NESHAP requirements upon start-up or the promulgation date, whichever is later. A facility that has not obtained federally enforceable limits on its potential to emit by the compliance date, and that has not complied with the NESHAP requirements, will be in violation of the NESHAP. All sources that are major sources for HAP on the compliance date or become major sources after the compliance date are required to comply permanently with the NESHAP to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained.

The final standards impose limits on organic HAP emissions from rotogravure and wide-web flexographic printing. Publication rotogravure facilities must demonstrate compliance on a monthly basis considering all organic HAP used on publication rotogravure presses and all affiliated equipment, including proof presses, cylinder and parts cleaners, ink and solvent mixing and storage equipment, and solvent recovery equipment. Facilities may comply using capture and control equipment, substitution of non-HAP solvents for HAP, or a combination of these methods.

Product and packaging rotogravure and wide-web flexographic printing facilities must demonstrate compliance on a monthly basis considering all organic HAP applied on product and packaging rotogravure and wide-web flexographic printing presses. Certain presses which are used primarily for coating, laminating, or printing using other technologies than rotogravure printing and wide-web flexographic printing may be excluded from the affected source, subject only to simplified recordkeeping requirements. Owners or operators of such equipment will be subject to the appropriate source category standard when such a standard is issued.

Product and packaging rotogravure and wide-web flexographic printers may comply through the use of capture and control equipment, the substitution of non-HAP solvents for HAP, or a combination of these methods. Facilities may comply on the basis of organic HAP emissions per mass of solids applied, organic HAP emissions per mass of

materials applied, allowable organic HAP emissions based on the as-applied solids content of the materials applied, or overall organic HAP control efficiency.

III. Summary of Impacts

These standards will reduce nationwide emissions of HAP from rotogravure and wide-web flexographic printing operations by approximately 6700 Mg/yr (7400 tpy) in 1999 compared to the emissions that would result in the absence of the standards. These standards will also, to some extent, reduce volatile organic compounds (VOC) emissions from those same operations compared to the emissions that would result in the absence of the standards. The extent of the reduction in VOC emissions cannot be predicted because of uncertainty over the extent to which printers will comply through substitution of water and non-VOC organics for organic HAP. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

Implementation of this regulation is expected to result in nationwide annual costs (including capital recovery) of approximately $40 million beyond baseline. These costs include $21 million per year for publication rotogravure printers and $19 million per year for package and product rotogravure and wide-web flexographic printers. These costs include capital recovery over a ten year period, operating costs for newly installed and upgraded capture and control systems, and costs for recordkeeping, reporting, and monitoring. Cost estimates for publication rotogravure printers remain unchanged from the proposed rule. Estimated costs for package and product rotogravure and wide-web flexographic printers are $2 million less than those for the proposed rule as a result of the facility-wide definition of affected source.

The economic impact analysis conducted before proposal showed that the economic impacts from the proposed standards would be insignificant. Since compliance costs and reporting and recordkeeping burdens have been reduced in the final rule, the economic impacts of the final rule are also insignificant.

IV. Significant Changes to the Proposed Standards

A. Public Participation

The standards were proposed and the preamble was published in the Federal Register on March 14, 1995 (60 FR 13664). The preamble to the proposed standards discussed the availability of the regulatory text and proposal BID, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and BID were distributed to interested parties. Electronic versions of the preamble, regulation, and BID were made available to interested parties via the TTN (see **SUPPLEMENTARY INFORMATION** section of this preamble). A correction notice which addressed minor typographical errors was published in the Federal Register on April 3, 1995 (60 FR 16920).

The preamble to the proposed standards provided the public the opportunity to request a public hearing. However, a public hearing was not requested. The public comment period was from March 14, 1995 to May 30, 1995. In all, 117 comment letters were received. The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 117 commenters; the commenters were comprised of printers, ink manufacturers, State and local air pollution control agencies, trade organizations for printers and control equipment manufacturers, and citizens. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The discussion of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Many of the comment letters contained multiple comments.

C. Significant Changes

Several significant changes have been made in response to the comments received on the proposed standards. A summary of the major changes is presented below.

(1) Incidental Printing and Ancillary Printing Equipment

The rule affects rotogravure and wide-web flexographic printing operations at major sources. Several commenters noted that this will include facilities that use little or no HAP on rotogravure or wide-web flexographic printing presses, but are major sources as a result of activities conducted on other equipment in other source categories. In addition, commenters noted that equipment that meets the definition of rotogravure or wide-web flexographic printing press but conducts only a small amount of rotogravure or wide-web flexographic printing operations and is primarily used for coating, laminating, or printing by other processes would have, as proposed, been subject to the standard.

The first case above can be characterized as ''incidental printing'' because the total work done on rotogravure and wide-web flexographic printing presses at the facility is minimal and is incidental to the other operations conducted at the facility. In the second case above, the equipment can be characterized as ''ancillary printing equipment'' because the work being done on rotogravure and wide-web flexographic print stations is minimal in comparison to, and ancillary to, the work being done on other work stations (i.e., coating stations) on that equipment.

The EPA has considered control requirements for incidental printing as a separate subgroup. Under the rule, product and packaging rotogravure and wide-web flexographic printing affected sources that apply no more than 500 kilograms of materials each month and that are located at facilities that are major sources of HAP are considered incidental printers. This definition ensures that the total work done on product and packaging rotogravure and wide-web flexographic presses at the facility is minimal and is incidental to the other operations conducted at the facility.

The EPA believes it is appropriate not to subject incidental printing operations to the requirements in § 63.825 that apply to product and packaging rotogravure and wide-web flexographic printing. The EPA's analysis of the MACT floor for product and packaging rotogravure and wide-web flexographic printing is based on emissions levels and control techniques at facilities primarily engaged in printing that generally apply more than 500 kilograms of material each month on product and packaging rotogravure and wide-web flexographic presses. The EPA has little information on which to establish a MACT control level for incidental printing. The available information indicates that the MACT floor for this subgroup is no control.

The final standard includes simplified requirements and does not mandate emission controls for incidental printers. Affected sources within this subgroup are those which apply no more than 500 kilograms of material

each month or no more than 400 kilogams of HAP each month on product and packaging rotogravure and wide-web flexographic presses. The 400 kilogram of HAP applied per month alternative threshold has been included to provide affected sources applying somewhat more than 500 kilograms of material per month with the opportunity to maintain incidental printer status if they reduce the HAP content of the materials applied so that the monthly HAP applied is no more than would be applied by an affected source that applied 500 kilograms of material per month. Affected sources in this subgroup would be subject only to initial notification requirements and recordkeeping requirements to show that one of the thresholds is met every month.

The type of simplified requirements included in the final standard for this subgroup of product and packaging or wide-web flexographic sources were not made available to publication rotogravure affected sources because each press at a publication rotogravure affected source would far exceed the thresholds every month. A single publication rotogravure press would, in fact, be a major source of HAP.

The final standard also permits the owner or operator of a product and packaging rotogravure or wide-web flexographic printing affected source to choose to exclude ancillary printing equipment from the affected source. This equipment is used primarily for coating, laminating, or other operations besides product and packaging rotogravure and wide-web flexographic printing. Presses on which five weight-percent or less of the total material applied each month is applied by rotogravure or wide-web flexographic print stations would be subject only to a simplified recordkeeping requirement. The EPA believes it is appropriate to provide the owner or operator with the option not to subject these presses to the HAP emission limitations for product and packaging and wide-web flexographic printing in § 63.825 because the work being done on the rotogravure and wide-web flexographic print stations on these presses is ancillary to the work being done on other work stations (i.e., coating stations) on these presses. The EPA is separately establishing MACT for other source categories, such as the paper and other web coating source category and the metal coil coating source category, which may be more appropriate for this type of equipment. Ancillary printing equipment, if excluded from this standard, will be subject to the appropriate source category standard when such a standard is issued.

(2) Research and Laboratory Equipment

Several comments were received requesting exemption of research and laboratory equipment. Commenters noted that the purpose and operation of research presses are independent of their location. One commenter noted that research and laboratory operations could be exempted from this standard and a separate standard for these operations could be developed.

All research and laboratory equipment has been excluded from the final standard whether or not it is collocated with production facilities. In order to regulate research and laboratory equipment, it would be necessary to develop a separate source category as directed by section 112(c)(7) of the CAA to assure equitable treatment of such equipment.

(3) Addition of Presses to Existing Affected Sources

Comments were received concerning triggering of new source compliance deadlines as a result of adding new presses to existing control systems or new stations to existing presses. Commenters noted that this would discourage replacement and modification of presses or stations to take advantage of low-HAP materials.

Addition of presses to existing affected sources will subject the affected source to the compliance deadline for new sources only if the additional press or presses constitutes a reconstruction of the source, as defined in § 63.2. Additions, replacements, and modifications to existing sources which do not meet the definition of reconstruction do not alter the compliance deadline.

(4) Affected Source for Product and Packaging Rotogravure and Wide-web Flexographic Printing Facilities

Comments were received suggesting changes in the definition of affected source at product and packaging rotogravure and wide-web flexographic printing facilities to simplify compliance demonstration. One commenter stated that a facility-wide definition of affected source would significantly cut recordkeeping expenses.

In response, the final standard considers all rotogravure and wide-web flexographic printing equipment at a given facility as a single affected source. This grouping is more consistent with the way that the MACT floor was determined and is consistent with other MACT standards which have grouped various emission points into a single affected source. It is also more consistent with the definition of affected source for publication rotogravure.

This definition of affected source simplifies reporting and recordkeeping in many cases. In addition, sources may achieve the required emissions reductions by considering emissions from the entire affected source, including controlled and uncontrolled presses. This will allow sources to comply in the most cost-effective way and will not require expensive control equipment for small presses which emit relatively small amounts of organic HAP if equivalent emissions reductions can be achieved elsewhere in the affected source.

(5) Organic HAP Analysis Methods

Ninety-six comments were received requesting that the EPA accept formulation data in lieu of requiring the use of EPA Method 311 to determine organic HAP content of printing materials. Formulation data were preferred to reduce analytical cost and delays due to chemical analysis. Some commenters also suggested various modifications to the proposed analytical technique in the interests of improved accuracy, consistency with apparatus presently in operation, and reduced analytical costs.

The final standard adopts Method 311, as revised and promulgated with the Wood Furniture Manufacturing Operations NESHAP (60 FR 62930), for organic HAP analysis. Printers and ink manufacturers have the option of relying on formulation data if the data meet specified criteria. In the event of any discrepancy between formulation data and the results of EPA Method 311, the results of EPA Method 311 shall be presumed to govern for all compliance purposes. In addition, the printer may determine the total volatile matter content of the material and use this value for the organic HAP content for all compliance purposes. This option may be chosen by printers using materials in which all, or nearly all, of the volatile matter is organic HAP in order to avoid the need for a more time-consuming analytic procedure.

(6) Volatile Matter Analysis Methods

Several comments were received requesting that formulation data be acceptable instead of chemical analysis data. Commenters noted this would greatly reduce analytical costs.

The final standard allows printers and ink manufacturers the option of relying on formulation data for volatile matter and solids content, in lieu of EPA Methods 24 and 24A. In the event of any

discrepancy between formulation data and the results of the EPA test methods, the test methods shall be presumed to govern for all compliance purposes.

(7) Compliance Monitoring for Catalytic Oxidizers

Nine commenters noted that the temperature downstream of a catalytic oxidizer was inappropriate for use as a monitoring parameter to indicate HAP destruction. The commenters noted that downstream temperature parameters established during performance testing under normal conditions might not be maintained during low-load conditions, yet this would not be an indication of excess emissions.

The final standard requires owners or operators using a catalytic oxidizer (that is, a catalytic incinerator) and monitoring an operating parameter to ensure compliance with the standard to monitor the temperature immediately upstream of the catalyst bed. The requirement to monitor the temperature downstream of the catalyst bed has been eliminated. Since the operating parameters are established during a test under normal operating conditions, a downstream temperature monitoring parameter might be impossible to meet during periods when organic loading to the oxidizer was lower than normal. This might have led to exceedances which were not indicative of improper operating conditions or excessive emissions.

(8) Additional Compliance Options for Product and Packaging Rotogravure and Wide-web Flexographic Printing Affected Sources

Several commenters requested clarification that compliance need only be demonstrated by a single procedure appropriate to the source's compliance strategy. Several commenters suggested that the rule should provide a variety of compliance demonstration alternatives to accomodate different aggregations of work stations and HAP control strategies.

In order to make the compliance options consistent with facility-wide definition of affected source, additional means of demonstrating compliance have been added to the final rule. Facilities may demonstrate that each material applied meets either of the organic HAP thresholds, or that all materials on average meet either of the organic HAP thresholds, or that the organic HAP emitted is less than the organic HAP allowed taking these thresholds into account. In addition, emissions from controlled and uncontrolled presses are aggregated to determine compliance across the entire affected source.

The final rule has been expanded to include ten procedures under which compliance can be demonstrated under different circumstances. Any one of the ten procedures can be used. These procedures are consistent with the proposed standards for low HAP materials and HAP emission control device operation. These procedures encompass the range of suggestions made by the commenters. The new compliance demonstration procedures in the final rule are expected to have a negligible impact on HAP emissions compared to the provisions in the proposed rule.

(9) Capture Efficiency Protocols and Test Methods

Four commenters requested that the rule allow the use of alternate capture efficiency test protocols approved by the EPA in lieu of the procedures specified in § 52.741.

The final rule includes additional options for capture efficiency tests. Provisions of the proposed rule pertaining to verification of permanent total enclosures and temporary total enclosure capture efficiency testing in accordance with § 52.741 have been retained in the final rule. The final rule also allows, as an alternative, the use of any capture efficiency protocol and test methods which satisfy the criteria of either the Data Quality Objective or Lower Confidence Limit approaches. An appendix describing these approaches has been added to the final rule. The use of these alternative approaches is optional for the owner or operator of the affected source and the EPA has determined that capture efficiency tests satisfying the criteria of these alternate approaches will be sufficiently rigorous to ensure compliance with the standard.

(10) Transition from Area Source to Major Source Status

A commenter requested that a provision allowing a transition period for a newly designated major source to come into compliance be incorporated in the rule. The commenter noted that the proposed rule had no provisions for a source to make this transition without being in violation of the standard.

A provision has been added to the final rule which provides a mechanism for owners or operators that have used the provisions of § 63.820(a)(2) to establish the facility as an area source to reestablish the facility as a major source. Such a source must continue to comply with its HAP usage commitments until it meets all requirements for major sources.

(11) Definition of ''Month''

In response to a comment, the definition of ''month'' in the final rule has been changed to include prespecified periods of 28 to 35 days. The revised definition will fit better with the materials accounting systems used by some facilities and have little or no effect on the emission reduction achieved by the standard.

(12) Alternatives to Vent Stream Flow Rate Monitoring

Seven commenters requested inclusion of alternative methods for vent stream flow rate monitoring, substitution of flow indicators rather than flow meters, or elimination of the flow rate monitoring requirement. One commenter recommended that press interlocks be permitted as an alternative to vent stream flow rate monitoring.

The final regulation includes alternatives to the vent stream flow rate measurement requirement. These alternatives are simpler than the requirements in the proposed rule, but still ensure that sufficient records will be generated to show when HAP containing vent streams are being delivered to a control device and to allow for proper calculation of HAP emissions. Owners or operators of product and packaging rotogravure or wide-web flexographic presses with intermittently-controllable work stations may, as alternatives to measuring vent stream flow rate, install flow indicators on the bypass lines, secure bypass line valves with locking mechanisms or car seals, continuously monitor bypass valve position, or equip the press with an interlock preventing operation when the control device is bypassed. Sampling lines for gas analyzers and relief valves needed for safety purposes are not considered bypass lines for the purposes of these provisions. Presses that do not have any intermittently-controllable work stations are not subject to these provisions.

(13) Provisions for Inclusion of Stand-alone Coating Equipment in Affected Source

One comment was received suggesting that off-line coaters sharing a common control device with printing presses should be included in the affected source at the discretion of the facility. It was noted that such a provision would avoid penalizing facilities that had tightened up their control systems by tying in other sources of HAP.

Provisions have been added to the final rule through which owners or operators of affected sources may, at

their option, under certain conditions, include stand-alone coating equipment in the affected source subject to this standard. This type of coating equipment is expected to be covered by one of several MACT standards (e.g., Paper and Other Web Coating) which are scheduled to be promulgated in the future. Printers choosing this option may avoid the difficulty of complying with multiple standards in the future. Stand-alone coating equipment must meet certain requirements to be eligible for inclusion under this provision. To be eligible, stand-alone coating equipment must either share a control device with a press included in the affected source, or process the same substrate as a press included in the affected source, or apply one or more of the same solids-containing materials as a press included in the affected source. If any eligible equipment is included under this provision, all eligible equipment at the facility must be included.

(14) Addition of Criteria To Determine Whether Method 25 or Method 25A is Appropriate for Performance Testing

The proposed rule required that performance tests employ either Method 25 or 25A, as appropriate to the conditions of the site. The final rule has been clarified to specify the conditions based on the required or anticipated organic volatile matter concentration at the exhaust from the control device. These conditions are based on guidance provided to regional offices and State programs, and clarify the conditions under which Method 25A are appropriate. This will reduce the administrative burden on some sources and will not reduce the stringency of the rule.

(15) Conditions Under Which Performance Test Is To Be Conducted

One commenter recommended testing under reasonably expected conditions and a second commenter recommended testing under normal conditions instead of maximum conditions.

The final rule has been made consistent with the General Provisions to require performance testing under ''normal operating conditions'' rather than ''maximum capacity.'' This will result in establishment of more representative operating parameters and will not cause an increase in HAP emissions.

(16) Clarification of Reporting and Recordkeeping Requirements

Several comments were received requesting clarification that only recordkeeping and reporting applicable to the specific control strategy employed were required. One commenter stated that area sources should be required to submit initial notifications so that States would be advised of their operations.

The final rule enumerates the types of excess emissions (including operating parameter exceedences) which must be included, as applicable, in the summary report. Recordkeeping requirements for incidental printing, ancillary printing equipment, and optional inclusion of stand-alone coating equipment have been added to the final rule.

The requirement for annual reporting of HAP usage by sources using the optional provisions of this rule to establish area source status has been eliminated from the final rule. A less burdensome requirement that such sources submit initial notifications has been added to the final rule. This initial notification will inform the Administrator that a source is using these optional provisions to establish area source status. The annual report was determined to be unnecessary because the source is required to maintain monthly records of HAP usage and to report any 12 month period in which the area source commitment is not met as part of its summary report.

D. Minor Changes

This section contains a list of several of the minor changes to the final rule.

(1) Revisions to definitions and phrasing have been made to clarify the regulation.

(2) Variables have been redefined as necessary to avoid ambiguity, and additional variables have been defined where necessary to explicitly describe the additional compliance options available in the final rule.

(3) Typographical errors have been corrected.

(4) The citation of the basis for delegation of regulatory authority has been corrected.

(5) The summary table in the proposed rule has been eliminated. (The General Provisions cross reference table has been retained and additional clarifying notes have been added.)

(6) Language has been added to the final rule which clarifies that the optional area source mechanism included in the rule does not preclude an owner or operator from taking advantage of other mechanisms which are available to establish area source status.

(7) A provision in the proposed rule requiring owners or operators of affected sources to obtain part 70 or part 71 operating permits has been eliminated from the final rule because this provision may have been inadvertently interpreted to require these permits for sources which used the optional provisions of the rule to establish area source status. Such sources may be required to obtain such permits, but are not required to obtain them as a result of using the optional provision in this standard.

(8) The deadline for initial notification for existing sources has been extended until one year before the compliance date.

V. Administrative Requirements

A. Docket

The Docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The Docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the Docket, including the BID for the proposed and promulgated standards and the EPA responses to significant comments, will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0335. The EPA is therefore amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, the EPA finds that there is ''good cause'' under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)) to amend the table in part 9 without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, the EPA finds that there is good cause under 5 U.S.C. 553(d)(3).

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of section 114 of the CAA. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in title 40, part 2, subpart B—Confidentiality of Business Information.

The total annual reporting and recordkeeping burden for this collection averaged over the first three years is estimated to be 89,965 hours per year. The average burden, per respondent, is 164 hours per year. The rule requires an initial one-time notification from each respondent and subsequent reports/notification would have to be submitted semiannually. Respondents operating capture systems and control devices would also be required to submit notifications of performance tests, performance test plans and reports of performance tests. There would be an estimated 500 respondents to the collection requirements. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing methods for compliance 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.

Send comments on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20503; marked ''Attention: Desk Officer for EPA.'' Include the OMB control number in any correspondence.

C. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA is required to judge whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of this executive order to prepare a regulatory impact analysis (RIA). 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 obligation 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 Executive Order 12866, OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the executive order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled *Enhancing the Intergovernmental Partnership*. In particular, this executive order is designed to require agencies to assess the effects of regulations that are not required by statute and that create mandates upon State, local, or tribal governments. Two methods exist for complying with the requirements of the executive order: (1) Assure that funds necessary to pay direct costs of compliance with a regulation are provided, or (2) provide OMB a description of the communications and consultations with State/local/tribal governments, the nature of their concerns, any written submission from them, and the EPA's position supporting the need to issue the regulation.

The EPA has always been concerned about the effect of the cost of regulations on small entities; the EPA has consulted with and sought input from public entities to explain costs and burdens they may incur.

The EPA advised interested parties on July 16, 1992 (57 FR 21592), of the categories considered as major and area sources of HAP, and the printing/publishing (surface coating) industry was listed as a category of both major and area sources. The EPA made significant effort to hear from all levels of interest and all segments of the rotogravure and wide-web flexographic printing industry. To facilitate comments and input, the EPA participated in numerous meetings with trade organizations representing all industry sectors affected by this rule. Throughout the regulatory development process, and more specifically, in consultation meetings, industry representatives from printing companies, ink manufacturers, and various trade associations were given an opportunity to comment on the proposed regulatory approach and the MACT alternatives being developed. The major topic areas resulting from these discussions included industry segmentation, the determination of the MACT floor, test methods, monitoring procedures, facility-wide averaging, compliance deadlines, and pollution prevention. Documentation of all meetings and public comments can be found in Docket A–92–42.

Representatives of State and local air pollution control agencies participated in all of the EPA work group meetings, and several State and local agencies submitted public comments in response to the proposed standards.

The EPA has considered the purpose and intent of Executive Order 12875 and has determined that printing and publishing NESHAP are needed. The rule is generally required by statute under section 112 of the CAA because printing and publishing facilities emit significant quantities of air pollutants. Through meetings and consultations during project development and proposal, efforts were made to inform entities of the costs required to comply with the regulation; in addition, modifications were made to reduce the burden to small entities.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business ''entities.'' If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a final Regulatory Flexibility Analysis

(RFA) must be prepared. The EPA's analysis of these impacts was summarized in the preamble to the proposed rule (60 FR 13664).

In addition, the EPA has a set of Regulatory Flexibility Guidelines (RFG), published in April 1992, that require the EPA to conduct a final RFA if any small business or small entity impacts occur resulting from a rule whose Start Action Notice (SAN) is approved after the date of publication of the EPA RFG. The SAN for this rule was approved before that date, thus the former Regulatory Flexibility Act guidelines hold. An RFA was conducted, however, as part of the larger economic impact analysis whose results were presented in the preamble to the proposed rule. The RFA prepared meets the EPA RFG as well as the original Regulatory Flexibility Act Guidelines. It also meets the analytical requirements of the Small Business Regulatory Enforcement Fairness Act of 1996.

This analysis found that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on this analysis. The changes made in the final rule reduce the cost of achieving and demonstrating compliance for affected small and large entities. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

F. Unfunded Mandates Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more in any one year to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the UMRA do not apply to this action.

G. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Pursuant to Subtitle E of SBREFA, this rule, which is nonmajor, was submitted to Congress before publication in the Federal Register.

List of Subjects in 40 CFR parts 9 and 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Standard for printing and publishing industry.

Dated: May 15, 1996.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for Part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313(d), 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [13]	
* * * * *	
63.829–63.830	2060–0335
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 183(f) and 301 of the CAA, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7511b(f), 7601).

2. Part 63 is amended by adding a new subpart KK consisting of §§ 63.820 through 63.839 to read as follows:

Subpart KK—National Emission Standards for the Printing and Publishing Industry

Sec.
63.820 Applicability.
63.821 Designation of affected sources.
63.822 Definitions.
63.823 Standards: General.
63.824 Standards: Publication rotogravure printing.
63.825 Standards: Product and packaging rotogravure and wide-web flexographic printing.
63.826 Compliance dates.
63.827 Performance test methods.
63.828 Monitoring requirements.
63.829 Recordkeeping requirements.
63.830 Reporting requirements.
63.831 Delegation of Authority.
63.832—63.839 [Reserved]

Table 1 to Subpart KK—Applicability of General Provisions to Subpart KK

Appendix A to Subpart KK—Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods

Subpart KK—National Emission Standards for the Printing and Publishing Industry

§ 63.820 Applicability.

(a) The provisions of this subpart apply to:

(1) Each new and existing facility that is a major source of hazardous air

pollutants (HAP), as defined in 40 CFR 63.2, at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated, and

(2) each new and existing facility at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated for which the owner or operator chooses to commit to, and meets the criteria of paragraphs (a)(2)(i) and (a)(2)(ii) of this section for purposes of establishing the facility to be an area source with respect to this subpart:

(i) Use less than 9.1 Mg (10 tons) per each rolling 12-month period of each HAP at the facility, including materials used for source categories or purposes other than printing and publishing, and

(ii) Use less than 22.7 Mg (25 tons) per each rolling 12-month period of any combination of HAP at the facility, including materials used for source categories or purposes other than printing and publishing.

(3) Each facility for which the owner or operator chooses to commit to and meets the criteria stated in paragraph (a)(2) of this section shall be considered an area source, and is subject only to the provisions of § 63.829(d) and § 63.830(b)(1) of this subpart.

(4) Each facility for which the owner or operator commits to the conditions in paragraph (a)(2) of this section may exclude material used in routine janitorial or facility grounds maintenance, personal uses by employees or other persons, the use of products for the purpose of maintaining electric, propane, gasoline and diesel powered motor vehicles operated by the facility, and the use of HAP contained in intake water (used for processing or noncontact cooling) or intake air (used either as compressed air or for combustion).

(5) Each facility for which the owner or operator commits to the conditions in paragraph (a)(2) of this section to become an area source, but subsequently exceeds either of the thresholds in paragraph (a)(2) of this section for any rolling 12-month period (without first obtaining and complying with other limits that keep its potential to emit HAP below major source levels), shall be considered in violation of its commitment for that 12-month period and shall be considered a major source of HAP beginning the first month after the end of the 12-month period in which either of the HAP-use thresholds was exceeded. As a major source of HAP, each such facility would be subject to the provisions of this subpart as noted in paragraph (a)(1) of this section and would no longer be eligible to use the provisions of paragraph (a)(2) of this section, even if in subsequent 12-month periods the facility uses less HAP than the thresholds in paragraph (a)(2) of this section.

(6) An owner or operator of an affected source subject to paragraph (a)(2) of this section who chooses to no longer be subject to paragraph (a)(2) of this section shall notify the Administrator of such change. If, by no longer being subject to paragraph (a)(2) of this section, the facility at which the affected source is located becomes a major source:

(i) The owner or operator of an existing source must continue to comply with the HAP usage provisions of paragraph (a)(2) of this section until the source is in compliance with all relevant requirements for existing affected sources under this subpart;

(ii) The owner or operator of a new source must continue to comply with the HAP usage provisions of paragraph (a)(2) of this section until the source is in compliance with all relevant requirements for new affected sources under this subpart.

(7) Nothing in this paragraph is intended to preclude a facility from establishing area source status by limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(b) This subpart does not apply to research or laboratory equipment.

§ 63.821 Designation of affected sources.

(a) The affected sources subject to this subpart are:

(1) All of the publication rotogravure presses and all affiliated equipment, including proof presses, cylinder and parts cleaners, ink and solvent mixing and storage equipment, and solvent recovery equipment at a facility.

(2) All of the product and packaging rotogravure or wide-web flexographic printing presses at a facility plus any other equipment at that facility which the owner or operator chooses to include in accordance with paragraph (a)(3) of this section, except

(i) Proof presses, and

(ii) Any product and packaging rotogravure or wide-web flexographic press which is used primarily for coating, laminating, or other operations which the owner or operator chooses to exclude, provided that

(A) The sum of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using product and packaging rotogravure work stations and the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using wide-web flexographic print stations in each month never exceeds five weight-percent of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press in that month, including all inboard and outboard stations, and

(B) The owner or operator maintains records as required in § 63.829(f).

(3) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source stand-alone coating equipment subject to the following provisions:

(i) Stand-alone coating equipment meeting any of the criteria specified in this subparagraph is eligible for inclusion:

(A) The stand-alone coating equipment and one or more product and packaging rotogravure or wide-web flexographic presses are used to apply solids-containing materials to the same web or substrate, or

(B) The stand-alone coating equipment and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material, or

(C) A common control device is used to control organic HAP emissions from the stand-alone coating equipment and from one or more product and packaging rotogravure or wide-web flexographic printing presses;

(ii) All eligible stand-alone coating equipment located at the facility is included in the affected source; and

(iii) No product and packaging rotogravure or wide-web flexographic presses are excluded from the affected source under the provisions of paragraph (a)(2)(ii) of this section.

(b) Each product and packaging rotogravure or wide-web flexographic printing affected source at a facility that is a major source of HAP, as defined in 40 CFR 63.2, that complies with the criteria of paragraphs (b)(1) or (b)(2) on and after the applicable compliance date as specified in § 63.826 of this subpart is subject only to the requirements of § 63.829(e) and § 63.830(b)(1) of this subpart.

(1) The owner or operator of the source applies no more than 500 kg per month, for every month, of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials on product and packaging rotogravure or wide-web flexographic printing presses, or

(2) The owner or operator of the source applies no more than 400 kg per month, for every month, of organic HAP

on product and packaging rotogravure or wide-web flexographic printing presses.

(c) Each product and packaging rotogravure or wide-web flexographic printing affected source at a facility that is a major source of HAP, as defined in 40 CFR 63.2, that complies with neither the criterion of paragraph (b)(1) nor (b)(2) of this section in any month after the applicable compliance date as specified in § 63.826 of this subpart is, starting with that month, subject to all relevant requirements of this subpart and is no longer eligible to use the provisions of paragraph (b) of this section, even if in subsequent months the affected source does comply with the criteria of paragraphs (b)(1) or (b)(2) of this section.

§ 63.822 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the CAA and in subpart A of this part.

Always-controlled work station means a work station associated with a dryer from which the exhaust is delivered to a control device, with no provision for the dryer exhaust to bypass the control device. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that are delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that exhausts to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (e.g., from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Certified product data sheet (CPDS) means documentation furnished by suppliers of inks, coatings, varnishes, adhesives, primers, solvents, and other materials or by an outside laboratory that provides the organic HAP content of these materials, by weight, measured using Method 311 of appendix A of this Part 63 or an equivalent or alternative method (or formulation data as provided in § 63.827(b)) and the solids content of these materials, by weight, determined in accordance with § 63.827(c). The purpose of the CPDS is to assist the owner or operator in demonstrating compliance with the emission limitations presented in §§ 63.824–63.825.

Coating operation means the application of a uniform layer of material across the entire width of a substrate.

Coating station means a work station on which a coating operation is conducted.

Control device means a device such as a carbon adsorber or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total HAP emissions that are introduced into the control device, expressed as a percentage.

Day means a 24-consecutive-hour period.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Flexographic press means an unwind or feed section, a series of individual work stations, one or more of which is a flexographic print station, any dryers (including interstage dryers and overhead tunnel dryers) associated with the work stations, and a rewind, stack, or collection station. The work stations may be oriented vertically, horizontally, or around the circumference of a single large impression cylinder. Inboard and outboard work stations, including those employing any other technology, such as rotogravure, are included if they are capable of printing or coating on the same substrate.

Flexographic print station means a work station on which a flexographic printing operation is conducted. A flexographic print station includes a flexographic printing plate which is an image carrier made of rubber or other elastomeric material. The image (type and art) to be printed is raised above the printing plate.

HAP applied means the organic HAP content of all inks, coatings, varnishes, adhesives, primers, solvent, and other materials applied to a substrate by a product and packaging rotogravure or wide-web flexographic printing affected source.

HAP used means the organic HAP applied by a publication rotogravure printing affected source, including all organic HAP used for cleaning, parts washing, proof presses, and all organic HAP emitted during tank loading, ink mixing, and storage.

Intermittently-controllable work station means a work station associated with a dryer with provisions for the dryer exhaust to be delivered to or diverted from a control device depending on the position of a valve or damper. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Month means a calendar month or a prespecified period of 28 days to 35 days.

Never-controlled work station means a work station which is not equipped with provisions by which any emissions, including those in the exhaust from any associated dryer, may be delivered to a control device.

Overall Organic HAP control efficiency means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency and the control device efficiency or

(2) A liquid-liquid material balance.

Print station means a work station on which a printing operation is conducted.

Printing operation means the formation of words, designs, and pictures on a substrate other than fabric through the application of material to that substrate.

Product and packaging rotogravure printing means the production, on a rotogravure press, of any printed substrate not otherwise defined as publication rotogravure printing. This includes, but is not limited to, folding cartons, flexible packaging, labels and wrappers, gift wraps, wall and floor coverings, upholstery, decorative laminates, and tissue products.

Proof press means any device used only to check the quality of the image formation of rotogravure cylinders or flexographic plates, which prints only non-saleable items.

Publication rotogravure printing means the production, on a rotogravure press, of the following saleable paper products:

(1) Catalogues, including mail order and premium,

(2) Direct mail advertisements, including circulars, letters, pamphlets, cards, and printed envelopes,

(3) Display advertisements, including general posters, outdoor advertisements, car cards, window posters; counter and floor displays; point of purchase and other printed display material,

(4) Magazines,

(5) Miscellaneous advertisements, including brochures, pamphlets, catalog sheets, circular folders, announcements, package inserts, book jackets, market circulars, magazine inserts, and shopping news,

(6) Newspapers, magazine and comic supplements for newspapers, and preprinted newspaper inserts, including hi-fi and spectacolor rolls and sections,

(7) Periodicals, and

(8) Telephone and other directories, including business reference services.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Rotogravure press means an unwind or feed section, a series of one or more work stations, one or more of which is a rotogravure print station, any dryers associated with the work stations, and a rewind, stack, or collection section. Inboard and outboard work stations including those employing any other technology, such as flexography, are included if they are capable of printing or coating on the same substrate.

Rotogravure print station means a work station on which a rotogravure printing operation is conducted. A rotogravure print station includes a rotogravure cylinder and ink supply. The image (type and art) to be printed is etched or engraved below the surface of the rotogravure cylinder. On a rotogravure cylinder the printing image consists of millions of minute cells.

Stand-alone coating equipment means an unwind or feed section, a series of one or more coating stations and any associated dryers, and a rewind, stack or collection section that:

Is not part of a product and packaging rotogravure or wide-web flexographic press, and

Is used to conduct one or more coating operations on a substrate. Stand-alone coating equipment

May or may not process substrate that is also processed by a product and packaging rotogravure or wide-web flexographic press, apply solids-containing materials that are also applied by a product and packaging rotogravure or wide-web flexographic press, and utilize a control device that is also utilized by a product and packaging rotogravure or wide-web flexographic press. Stand-alone coating equipment is sometimes referred to as ''off-line'' coating equipment.

Wide-web flexographic press means a flexographic press capable of printing substrates greater than 18 inches in width.

Work station means a unit on a rotogravure or wide-web flexographic press where material is deposited onto a substrate.

(b) The symbols used in equations in this subpart are defined as follows:

(1) C_{ahi}=the monthly average, as-applied, organic HAP content of solids-containing material, i, expressed as a weight-fraction, kg/kg.

(2) C_{asi}=the monthly average, as applied, solids content, of solids-containing material, i, expressed as a weight-fraction, kg/kg.

(3) C_{hi}=the organic HAP content of ink or other solids-containing material, i, expressed as a weight-fraction, kg/kg.

(4) C_{hij}=the organic HAP content of solvent j, added to solids-containing material i, expressed as a weight-fraction, kg/kg.

(5) C_{hj}=the organic HAP content of solvent j, expressed as a weight-fraction, kg/kg.

(6) C_i=the organic volatile matter concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 25 or Method 25A.

(7) C_{si}=the solids content of ink or other material, i, expressed as a weight-fraction, kg/kg.

(8) C_{vi}=the volatile matter content of ink or other material, i, expressed as a weight-fraction, kg/kg.

(9) E=the organic volatile matter control efficiency of the control device, percent.

(10) F=the organic volatile matter capture efficiency of the capture system, percent.

(11) G_i=the mass fraction of each solids containing material, i, which was applied at 20 weight-percent or greater solids content, on an as-applied basis, kg/kg.

(12) H=the total monthly organic HAP applied, kg.

(13) H_a=the monthly allowable organic HAP emissions, kg.

(14) H_L=the monthly average, as-applied, organic HAP content of all solids-containing materials applied at less than 0.04 kg organic HAP per kg of material applied, kg/kg.

(15) H_s=the monthly average, as-applied, organic HAP to solids ratio, kg organic HAP/kg solids applied.

(16) H_{si}=the as-applied, organic HAP to solids ratio of material i.

(17) L=the mass organic HAP emission rate per mass of solids applied, kg/kg.

(18) M_{Bi}=the sum of the mass of solids-containing material, i, applied on intermittently-controllable work stations operating in bypass mode and the mass of solids-containing material, i, applied on never-controlled work stations, in a month, kg.

(19) M_{Bj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on intermittently-controllable work stations operating in bypass mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on never-controlled work stations, in a month, kg.

(20) M_{ci}=the sum of the mass of solids-containing material, i, applied on intermittently-controllable work stations operating in controlled mode and the mass of solids-containing material, i, applied on always-controlled work stations, in a month, kg.

(21) M_{cj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on intermittently-controllable work stations operating in controlled mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on always-controlled work stations in a month, kg.

(22) M_f=the total organic volatile matter mass flow rate, kg/h.

(23) M_{fi}=the organic volatile matter mass flow rate at the inlet to the control device, kg/h.

(24) M_{fo}=the organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(25) M_{hu}=the mass of organic HAP used in a month, kg.

(26) M_i=the mass of ink or other material, i, applied in a month, kg.

(27) M_{ij}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, added to solids-containing material, i, in a month, kg.

(28) M_j=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied in a month, kg.

(29) M_{Lj}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, added to solids-containing materials which were applied at less than 20 weight-percent solids content, on an as-applied basis, in a month, kg.

(30) M_{vr}=the mass of volatile matter recovered in a month, kg.

(31) M_{vu}=the mass of volatile matter, including water, used in a month, kg.

(32) MW_i=the molecular weight of compound i in the vent gas, kg/kg-mol.

(33) n=the number of organic compounds in the vent gas.

(34) p=the number of different inks, coatings, varnishes, adhesives, primers, and other materials applied in a month.

(35) q=the number of different solvents, thinners, reducers, diluents, or other non-solids-containing materials applied in a month.

(36) Q_{sd}=the volumetric flow rate of gases entering or exiting the control device, as determined by Method 2, dscm/h.

(37) R=the overall organic HAP control efficiency, percent.

(38) R_e=the overall effective organic HAP control efficiency for publication rotogravure, percent.

(39) R_v=the organic volatile matter collection and recovery efficiency, percent.

(40) S=the mass organic HAP emission rate per mass of material applied, kg/kg.

(41) 0.0416=conversion factor for molar volume, kg-mol/m^3(@ 293 K and 760 mmHg).

§ 63.823 Standards: General.

Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to this subpart KK.

§ 63.824 Standards: Publication rotogravure printing.

(a) Each owner or operator of any publication rotogravure printing affected source that is subject to the requirements of this subpart shall comply with these requirements on and after the compliance dates as specified in § 63.826 of this subpart.

(b) Each publication rotogravure affected source shall limit emissions of organic HAP to no more than eight percent of the total volatile matter used each month. The emission limitation may be achieved by overall control of at least 92 percent of organic HAP used, by substitution of non-HAP materials for organic HAP, or by a combination of capture and control technologies and substitution of materials. To demonstrate compliance, each owner or operator shall follow the procedure in paragraph (b)(1) of this section when emissions from the affected source are controlled by a solvent recovery device, the procedure in paragraph (b)(2) of this section when emissions from the affected source are controlled by an oxidizer, and the procedure in paragraph (b)(3) of this section when no control device is used.

(1) Each owner or operator using a solvent recovery device to control emissions shall demonstrate compliance by showing that the HAP emission limitation is achieved by following the procedures in either paragraph (b)(1)(i) or (b)(1)(ii) of this section:

(i) Perform a liquid-liquid material balance for each month as follows:

(A) Measure the mass of each ink, coating, varnish adhesive, primer, solvent, and other material used by the affected source during the month.

(B) Determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent and other material used by the affected source during the month following the procedure in § 63.827(b)(1).

(C) Determine the volatile matter content, including water, of each ink, coating, varnish, adhesive, primer, solvent, and other material used by the affected source during the month following the procedure in § 63.827(c)(1).

(D) Install, calibrate, maintain and operate, according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device shall be initially certified by the manufacturer to be accurate to within ±2.0 percent.

(E) Measure the amount of volatile matter recovered for the month.

(F) Calculate the overall effective organic HAP control efficiency (R_e) for the month using Equation 1:

$$R_e = (100)\frac{M_{vu} - M_{hu} + \left[(M_{vr})(M_{hu}/M_{vu})\right]}{M_{vu}} \qquad \text{Eq 1}$$

For the purposes of this calculation, the mass fraction of organic HAP present in the recovered volatile matter is assumed to be equal to the mass fraction of organic HAP present in the volatile matter used.

(G) The affected source is in compliance for the month, if R_e is at least 92 percent each month.

(ii) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency as specified in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(E) of this section:

(A) Install continuous emission monitors to determine the total organic volatile matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter, and the volumetric flow rate in cubic meters per second, such that the total organic volatile matter mass flow rate in grams per second can be calculated and summed) at both the inlet to and the outlet from the control device, such that the percent control efficiency (E) of the control device can be calculated for each month.

(B) Determine the percent capture efficiency (F) of the capture system according to § 63.827(e).

(C) Calculate the overall effective organic HAP control efficiency (R_e) achieved for each month using Equation 2.

$$R_e = (100)\frac{M_{vu} - M_{hu} + \left[(E/100)(F/100)M_{hu}\right]}{M_{vu}} \qquad \text{Eq 2}$$

(D) Install, calibrate, operate and maintain the instrumentation necessary to measure continuously the site-specific operating parameter established in accordance with § 63.828(a)(5) whenever a publication rotogravure printing press is operated.

(E) The affected source is in compliance with the requirement for the month if R_e is at least 92 percent, and the capture device is operated at an average value greater than, or less than (as appropriate) the operating parameter value established in accordance with § 63.828(a)(5) for each three-hour period.

(2) Each owner or operator using an oxidizer to control emissions shall demonstrate compliance by showing that the HAP emission limitation is achieved by following the procedure in either paragraph (b)(2)(i) or (b)(2)(ii) of this section:

(i) Demonstrate initial compliance through performance tests and continuing compliance through continuous monitoring as follows:

(A) Determine the oxidizer destruction efficiency (E) using the procedure in § 63.827(d).

(B) Determine the capture efficiency (F) using the procedure in § 63.827(e).

(D) Calculate the overall effective organic HAP control efficiency (R_e) achieved using Equation 2.

(E) The affected source is in initial compliance if R_e is at least 92 percent. Demonstration of continuing compliance is achieved by continuous monitoring of an appropriate oxidizer operating parameter in accordance with § 63.828(a)(4), and by continuous monitoring of an appropriate capture system monitoring parameter in accordance with § 63.828(a)(5). The affected source is in continuing compliance if the capture device is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.828(a)(5), and

(*1*) if an oxidizer other than a catalytic oxidizer is used, the average combustion temperature for all three-hour periods is greater than or equal to the average combustion temperature established under § 63.827(d), or

(*2*) if a catalytic oxidizer is used, the average catalyst bed inlet temperature for all three-hour periods is greater than or equal to the average catalyst bed inlet temperature established in accordance with § 63.827(d).

(ii) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency in accordance with the requirements of paragraph (b)(1)(ii) of this section.

(3) To demonstrate compliance without the use of a control device, each owner or operator shall compare the mass of organic HAP used to the mass of volatile matter used each month, as specified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section:

(i) Measure the mass of each ink, coating, varnish adhesive, primer, solvent, and other material used in the affected source during the month,

(ii) Determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material used during the month following the procedure in § 63.827(b)(1), and

(iii) Determine the volatile matter content, including water, of each ink, coating, varnish, adhesive, primer, solvent, and other material used during the month following the procedure in § 63.827(c)(1).

(iv) The affected source is in compliance for the month if the mass of organic HAP used does not exceed eight percent of the mass of volatile matter used.

§ 63.825 Standards: Product and packaging rotogravure and wide-web flexographic printing.

(a) Each owner or operator of any product and packaging rotogravure or wide-web flexographic printing affected source that is subject to the requirements of this subpart shall comply with these requirements on and after the compliance dates as specified in § 63.826 of this subpart.

(b) Each product and packaging rotogravure or wide-web flexographic printing affected source shall limit emissions to no more than five percent of the organic HAP applied for the month; or to no more than four percent of the mass of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month; or to no more than 20 percent of the mass of solids applied for the month; or to a calculated equivalent allowable mass based on the organic HAP and solids contents of the inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month. The owner or operator of each product and packaging rotogravure or wide-web flexographic printing affected source shall demonstrate compliance with this standard by following one of the procedures in paragraphs (b)(1) through (b)(10) of this section:

(1) Demonstrate that each ink, coating, varnish, adhesive, primer, solvent, diluent, reducer, thinner, and other material applied during the month contains no more than 0.04 weight-fraction organic HAP, on an as-purchased basis, as determined in accordance with § 63.827(b)(2).

(2) Demonstrate that each ink, coating, varnish, adhesive, primer, and other solids-containing material applied during the month contains no more than 0.04 weight-fraction organic HAP, on a monthly average as-applied basis as determined in accordance with paragraphs (b)(2)(i)–(ii) of this section. The owner or operator shall calculate the as-applied HAP content of materials which are reduced, thinned, or diluted prior to application, as follows:

(i) Determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, diluent, reducer, thinner, and other material applied on an as-purchased basis in accordance with § 63.827(b)(2).

(ii) Calculate the monthly average as-applied organic HAP content, C_{ahi} of each ink, coating, varnish, adhesive, primer, and other solids-containing material using Equation 3.

$$C_{ahi} = \frac{\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq 3}$$

(3)(i) Demonstrate that each ink, coating, varnish, adhesive, primer, and other solids-containing material applied, either

(A) Contains no more than 0.04 weight-fraction organic HAP on a monthly average as-applied basis, or

(B) Contains no more than 0.20 kg of organic HAP per kg of solids applied, on a monthly average as-applied basis.

(ii) The owner or operator may demonstrate compliance in accordance with paragraphs (b)(3)(ii) (A)–(C) of this section.

(A) Use the procedures of paragraph (b)(2) of this section to determine which materials meet the requirements of paragraph (b)(3)(i)(A) of this section,

(B) Determine the as-applied solids content following the procedure in § 63.827(c)(2) of all materials which do not meet the requirements of paragraph (b)(3)(i)(A) of this section. The owner or operator may calculate the monthly average as-applied solids content of materials which are reduced, thinned, or diluted prior to application, using Equation 4, and

$$C_{asi} = \frac{C_{si}M_i}{M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq 4}$$

(C) Calculate the as-applied organic HAP to solids ratio, H_{si}, for all materials which do not meet the requirements of

paragraph (b)(3)(i)(A) of this section, using Equation 5.

$$H_{si} = \frac{C_{ahi}}{C_{asi}} \qquad \text{Eq 5}$$

(4) Demonstrate that the monthly average as-applied organic HAP content, H_L, of all materials applied is less than 0.04 kg HAP per kg of material applied, as determined by Equation 6.

$$H_L = \frac{\sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj}}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_j} \qquad \text{Eq 6}$$

(5) Demonstrate that the monthly average as-applied organic HAP content on the basis of solids applied, H_s, is less than 0.20 kg HAP per kg solids applied as determined by Equation 7.

$$H_S = \frac{\sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj}}{\sum_{i=1}^{p} M_i C_{si}} \qquad \text{Eq 7}$$

(6) Demonstrate that the total monthly organic HAP applied, H, as determined by Equation 8, is less than the calculated equivalent allowable organic HAP, H_a, as determined by paragraph (e) of this section.

$$H = \sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj} \qquad \text{Eq 8}$$

(7) Operate a capture system and control device and demonstrate an overall organic HAP control efficiency of at least 95 percent for each month. If the affected source operates more than one capture system or more than one control device, and has only always-controlled work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of either paragraph (f) or (h) of this section. If the affected source operates one or more never-controlled work stations or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance in accordance with the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(8) Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.20 kg organic HAP emitted per kg solids applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance following the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(9) Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.04 kg organic HAP emitted per kg material applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance following the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(10) Operate a capture system and control device and limit the monthly organic HAP emissions to less than the allowable emissions as calculated in accordance with paragraph (e) of this section. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance following the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(c) To demonstrate compliance with the overall organic HAP control efficiency requirement in § 63.825(b)(7) or the organic HAP emissions limitation requirements in § 63.825(b)(8)–(10), each owner or operator using a solvent recovery device to control emissions shall show compliance by following the procedures in either paragraph (c)(1) or (c)(2) of this section:

(1) Perform a liquid-liquid material balance for each and every month as follows:

(i) Measure the mass of each ink, coating, varnish, adhesive, primer, solvent and other material applied on the press or group of presses controlled by a common solvent recovery device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(b)(2).

(iii) Determine the volatile matter content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, determine the solids content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(v) Install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device shall be initially certified by the manufacturer to be accurate to within ±2.0 percent.

(vi) Measure the amount of volatile matter recovered for the month.

(vii) Calculate the volatile matter collection and recovery efficiency, R_v, using Equation 9.

$$R_v = 100 \frac{M_{vr}}{\sum_{i=1}^{p} M_i C_{vi} + \sum_{j=1}^{q} M_j} \qquad \text{Eq 9}$$

(viii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP

emission rate based on material applied or emission of less than the calculated allowable organic HAP, calculate the organic HAP emitted during the month, H, using Equation 10.

$$H = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p}\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)\right] \qquad \text{Eq 10}$$

(ix) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, using Equation 11.

$$L = \frac{H}{\sum_{i=1}^{p} C_{si}M_i} \qquad \text{Eq 11}$$

(x) If demonstrating compliance on the basis of organic HAP emission rate based on materials applied, calculate the organic HAP emission rate based on material applied, S, using Equation 12.

$$S = \frac{H}{\sum_{i=1}^{p}\left[M_i + \sum_{j=1}^{q} M_{ij}\right]} \qquad \text{Eq 12}$$

(xi) The affected source is in compliance if

(A) The organic volatile matter collection and recovery efficiency, R_v, is 95 percent or greater, or

(B) The organic HAP emission rate based on solids applied, L, is 0.20 kg organic HAP per kg solids applied or less, or

(C) the organic HAP emission rate based on material applied, S, is 0.04 kg organic HAP per kg material applied or less, or

(D) the organic HAP emitted during the month, H, is less than the calculated allowable organic HAP, H_a, as determined using paragraph (e) of this section.

(2) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency following the procedures in paragraphs (c)(2)(i) through (c)(2)(xi) of this section:

(i) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on materials applied, or emission of less than the calculated allowable organic HAP, measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material applied on the press or group of presses controlled by a common control device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(b)(2).

(iii) Install continuous emission monitors to determine the total organic volatile matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter, and the volumetric flow rate in cubic meters per second, such that the total organic volatile matter mass flow rate in grams per second can be calculated and summed) at both the inlet to and the outlet from the control device, such that the percent control efficiency (E) of the control device can be calculated for each month.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, determine the solids content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(v) Install, calibrate, operate and maintain the instrumentation necessary to measure continuously the site-specific operating parameter established in accordance with § 63.828(a)(5) whenever a product and packaging rotogravure or wide-web flexographic printing press is operated.

(vi) Determine the capture efficiency (F) in accordance with § 63.827(e)–(f).

(vii) Calculate the overall organic HAP control efficiency, (R), achieved for each month using Equation 13.

$$R = \frac{EF}{100} \qquad \text{Eq 13}$$

(viii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, calculate the organic HAP emitted during the month, H, for each month using Equation 14.

$$H = \left[1 - \left(\frac{E}{100}\,\frac{F}{100}\right)\right]\left[\sum_{i=1}^{p}\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)\right] \qquad \text{Eq 14}$$

(ix) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, using Equation 15.

$$L = \frac{H}{\sum_{i=1}^{p} C_{si}M_i} \qquad \text{Eq 15}$$

(x) If demonstrating compliance on the basis of organic HAP emission rate based on materials applied, calculate the organic HAP emission rate based on material applied, S, using Equation 16.

$$S = \frac{H}{\sum_{i=1}^{p}\left[M_i + \sum_{j=1}^{q} M_{ij}\right]} \qquad \text{Eq 16}$$

(xi) The affected source is in compliance if the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter

value established in accordance with § 63.828(a)(5) for each three hour period, and

(A) The organic volatile matter collection and recovery efficiency, R_v, is 95 percent or greater, or

(B) The organic HAP emission rate based on solids applied, L, is 0.20 kg organic HAP per kg solids applied or less, or

(C) The organic HAP emission rate based on material applied, S, is 0.04 kg organic HAP per kg material applied or less, or

(D) The organic HAP emitted during the month, H, is less than the calculated allowable organic HAP, H_a, as determined using paragraph (e) of this section.

(d) To demonstrate compliance with the overall organic HAP control efficiency requirement in § 63.825(b)(7) or the overall organic HAP emission rate limitation requirements in § 63.825(b)(8)–(10), each owner or operator using an oxidizer to control emissions shall show compliance by following the procedures in either paragraph (d)(1) or (d)(2) of this section:

(1) demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters following the procedures in paragraph (d)(1)(i) through (d)(1)(xi) of this section:

(i) Determine the oxidizer destruction efficiency (E) using the procedure in § 63.827(d).

(ii) Determine the capture system capture efficiency (F) in accordance with § 63.827(e)–(f).

(iii) Calculate the overall organic HAP control efficiency, (R), achieved using Equation 13.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on materials applied or emission of less than the calculated allowable organic HAP, measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material applied on the press or group of presses controlled by a common solvent recovery device during the month.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(b)(2).

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, determine the solids content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(vii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, calculate the organic HAP emitted during the month, H, for each month using Equation 14.

(viii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, for each month using Equation 15.

(ix) If demonstrating compliance on the basis of organic HAP emission rate based on materials applied, calculate the organic HAP emission rate based on material applied, S, using Equation 16.

(x) Install, calibrate, operate and maintain the instrumentation necessary to measure continuously the site-specific operating parameters established in accordance with § 63.828(a)(4)–(5) whenever a product and packaging rotogravure or wide-web flexographic press is operating.

(xi) The affected source is in compliance, if the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.828(a)(4) for each three-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.828(a)(5) for each three hour period, and

(A) The overall organic HAP control efficiency, R, is 95 percent or greater, or

(B) The organic HAP emission rate based on solids applied, L, is 0.20 kg organic HAP per kg solids applied or less, or

(C) The organic HAP emission rate based on material applied, S, is 0.04 kg organic HAP per kg material applied or less, or

(D) The organic HAP emitted during the month, H, is less than the calculated allowable organic HAP, H_a, as determined using paragraph (e) of this section.

(2) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency. Compliance shall be demonstrated in accordance with the requirements of paragraph (c)(2) of this section.

(e) Owners or operators may calculate the monthly allowable HAP emissions, H_a, for demonstrating compliance in accordance with paragraph (b)(6), (c)(1)(xi)(D), (c)(2)(xi)(D), or (d)(1)(xi)(D) of this section as follows:

(1) Determine the as-purchased mass of each ink, coating, varnish, adhesive, primer, and other solids-containing material applied each month, M_i.

(2) Determine the as-purchased solids content of each ink, coating, varnish, adhesive, primer, and other solids-containing material applied each month, in accordance with § 63.827(c)(2), C_{si}.

(3) Determine the as-purchased mass fraction of each ink, coating, varnish, adhesive, primer, and other solids-containing material which was applied at 20 weight-percent or greater solids content, on an as-applied basis, G_i.

(4) Determine the total mass of each solvent, diluent, thinner, or reducer added to materials which were applied at less than 20 weight-percent solids content, on an as-applied basis, each month, M_{Lj}.

(5) Calculate the monthly allowable HAP emissions, H_a, using Equation 17.

$$H_a = 0.20\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.04\left[\sum_{i=1}^{p} M_i\left(1-G_i\right) + \sum_{j=1}^{q} M_{Lj}\right] \qquad \text{Eq 17}$$

(f) Owners or operators of product and packaging rotogravure or wide-web flexographic printing presses shall demonstrate compliance according to the procedures in paragraphs (f)(1) through (f)(7) of this section if the affected source operates more than one capture system, more than one control device, one or more never-controlled

work stations, or one or more intermittently-controllable work stations.

(1) The owner or operator of each solvent recovery system used to control one or more product and packaging rotogravure or wide-web flexographic presses for which the owner or operator chooses to comply by means of a liquid-liquid mass balance shall determine the organic HAP emissions for those presses controlled by that solvent recovery system either

(i) in accordance with paragraphs (c)(1)(i)–(iii) and (c)(1)(v)–(viii) of this section if the presses controlled by that solvent recovery system have only always-controlled work stations, or

(ii) in accordance with paragraphs (c)(1)(ii)–(iii), (c)(1)(v)–(vi), and (g) of this section if the presses controlled by that solvent recovery system have one or more never-controlled or intermittently-controllable work stations.

(2) The owner or operator of each solvent recovery system used to control one or more product and packaging rotogravure or wide-web flexographic presses, for which the owner or operator chooses to comply by means of an initial test of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, shall

(i) For each capture system delivering emissions to that solvent recovery system, monitor an operating parameter established in accordance with § 63.828(a)(5) to assure capture system efficiency, and

(ii) Determine the organic HAP emissions for those presses served by each capture system delivering emissions to that solvent recovery system either

(A) In accordance with paragraphs (c)(2)(i)–(iii) and (c)(2)(v)–(viii) of this section if the presses served by that capture system have only always-controlled work stations, or

(B) In accordance with paragraphs (c)(2)(ii)–(iii), (c)(2)(v)–(vii), and (g) of this section if the presses served by that capture system have one or more never-controlled or intermittently-controllable work stations.

(3) The owner or operator of each oxidizer used to control emissions from one or more product and packaging rotogravure or wide-web flexographic presses choosing to demonstrate compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters, shall

(i) Monitor an operating parameter established in accordance with § 63.828(a)(4) to assure control device efficiency, and

(ii) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in accordance with § 63.828(a)(5) to assure capture efficiency, and

(iii) Determine the organic HAP emissions for those presses served by each capture system delivering emissions to that oxidizer either

(A) In accordance with paragraphs (d)(1)(i)–(v) and (d)(1)(vii) of this section if the presses served by that capture system have only always-controlled work stations, or

(B) In accordance with paragraphs (d)(1)(i)–(iii), (d)(1)(v), and (g) of this section if the presses served by that capture system have one or more never-controlled or intermittently-controllable work stations.

(4) The owner or operator of each oxidizer used to control emissions from one or more product and packaging rotogravure or wide-web flexographic presses choosing to demonstrate compliance through an initial capture efficiency test, continuous emission monitoring of the control device and continuous monitoring of a capture system operating parameter, shall

(i) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in accordance with § 63.828(a)(5) to assure capture efficiency, and

(ii) Determine the organic HAP emissions for those presses served by each capture system delivering emissions to that oxidizer either

(A) In accordance with paragraphs (c)(2)(i)–(iii) and (c)(2)(v)–(viii) of this section if the presses served by that capture system have only always-controlled work stations, or

(B) In accordance with paragraphs (c)(2)(ii)–(iii), (c)(2)(v)–(vii), and (g) of this section if the presses served by that capture system have one or more never-controlled or intermittently-controllable work stations.

(5) The owner or operator of one or more uncontrolled product and packaging rotogravure or wide-web flexographic printing presses shall determine the organic HAP applied on those presses using Equation 8. The organic HAP emitted from an uncontrolled press is equal to the organic HAP applied on that press.

(6) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, the owner or operator shall determine the solids content of each ink, coating, varnish, adhesive, primer, solvent and other material applied during the month following the procedure in § 63.827(c)(2).

(7) The owner or operator shall determine the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (f)(1), (f)(2)(ii), (f)(3)(iii), (f)(4)(ii), and (f)(5) of this section. The affected source is in compliance for the month, if all operating parameters required to be monitored under paragraphs (f)(2)–(4) of this section were maintained at the appropriate values, and

(i) The total mass of organic HAP emitted by the affected source was not more than four percent of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, diluents, reducers, thinners and other materials applied by the affected source, or

(ii) The total mass of organic HAP emitted by the affected source was not more than 20 percent of the total mass of solids applied by the affected source, or

(iii) The total mass of organic HAP emitted by the affected source was not more than the equivalent allowable organic HAP emissions for the affected source, H_a, calculated in accordance with paragraph (e) of this section, or

(iv) The total mass of organic HAP emitted by the affected source was not more than five percent of the total mass of organic HAP applied by the affected source. The total mass of organic HAP applied by the affected source in the month shall be determined by the owner or operator using Equation 8.

(g) Owners or operators determining organic HAP emissions from a press or group of presses having one or more never-controlled or intermittently-controllable work stations and using the procedures specified in paragraphs (f)(1)(ii), (f)(2)(ii)(B), (f)(3)(iii)(B), or (f)(4)(ii)(B) of this section shall for that press or group of presses:

(1) Determine the sum of the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on intermittently-controllable work stations in bypass mode and the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on never-controlled work stations during the month, M_{Bi}.

(2) Determine the sum of the mass of all solvents, reducers, thinners, and other diluents which are applied on intermittently-controllable work stations in bypass mode and the mass of all solvents, reducers, thinners, and other diluents which are applied on never-

controlled work stations during the month, M_{Bj}.

(3) Determine the sum of the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on intermittently-controllable work stations in controlled mode and the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on always-controlled work stations during the month, M_{Bj}.

(4) Determine the sum of the mass of all solvents, reducers, thinners, and other diluents which are applied on intermittently-controllable work stations in controlled mode and the mass of all solvents, reducers, thinners, and other diluents which are applied on always-controlled work stations during the month, M_{Cj}.

(5) For each press or group of presses for which the owner or operator uses the provisions of paragraph (f)(1)(ii) of this section, the owner or operator shall calculate the organic HAP emitted during the month using Equation 18.

$$H = \left[\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right]\left[1 - \frac{M_{vr}}{\sum_{i=1}^{p} M_{Ci}C_{vi} + \sum_{j=1}^{q} M_{Cj}}\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \qquad \text{Eq 18}$$

(6) For each press or group of presses for which the owner or operator uses the provisions of paragraphs (f)(2)(ii)(B), (f)(3)(iii)(B), or (f)(4)(ii)(B) of this section, the owner or operator shall calculate the organic HAP emitted during the month using Equation (19).

$$H = \left[\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right]\left[1 - \left(\frac{E}{100}\,\frac{F}{100}\right)\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \qquad \text{Eq 19}$$

(h) If the affected source operates more than one capture system or more than one control device, and has no never-controlled work stations and no intermittently-controllable work stations, then the affected source is in compliance with the 95 percent overall organic HAP control efficiency requirement for the month if for each press or group of presses controlled by a common control device:

(1) The volatile matter collection and recovery efficiency, R_v, as determined by paragraphs (c)(1)(i), (c)(1)(iii), and (c)(1)(v)–(vii) of this section is equal to or greater than 95 percent, or

(2) The overall organic HAP control efficiency as determined by paragraphs (c)(2)(iii) and (c)(2)(v)–(vii) of this section for each press or group of presses served by that control device and a common capture system is equal to or greater than 95 percent and the average capture system operating parameter value for each capture system serving that control device is greater than or less than (as appropriate) the operating parameter value established for that capture system in accordance with § 63.828(a)(5) for each three hour period, or

(3) The overall organic HAP control efficiency as determined by paragraphs (d)(1)(i)–(iii) and (d)(1)(x) of this section for each press or group of presses served by that control device and a common capture system is equal to or greater than 95 percent, the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.828(a)(4) for each three hour period, and the average capture system operating parameter value for each capture system serving that control device is greater than or less than (as appropriate) the operating parameter value established for that capture system in accordance with § 63.828(a)(5) for each three hour period.

§ 63.826 Compliance dates.

(a) The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is May 30, 1999.

(b) The compliance date for an owner or operator of a new affected source subject to the provisions of this subpart is immediately upon start-up of the affected source, or May 30, 1996, whichever is later.

(c) Affected sources which have undergone reconstruction are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment are not considered in determining whether the affected source has been reconstructed. Additionally, the costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs.

§ 63.827 Performance test methods.

(a) An owner or operator using a control device to comply with the requirements of §§ 63.824–63.825 is not required to conduct an initial performance test to demonstrate compliance if one or more of the criteria in paragraphs (a)(1) through (a)(3) of this section are met:

(1) A control device that is in operation prior to May 30, 1996, does not need to be tested if

(i) It is equipped with continuous emission monitors for determining inlet and outlet total organic volatile matter concentration, and capture efficiency has been determined in accordance with the requirements of this subpart, such that an overall HAP control efficiency can be calculated, and

(ii) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.828, or

(2) The owner or operator has met the requirements of either § 63.7(e)(2)(iv) or § 63.7(h), or

(3) The control device is a solvent recovery system and the owner or operator chooses to comply by means of a monthly liquid-liquid material balance.

(b) Determination of the organic HAP content of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials for the purpose of meeting the requirements of § 63.824 shall be

conducted according to paragraph (b)(1) of this section. Determination of the organic HAP content of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials for the purpose of meeting the requirements of § 63.825 shall be conducted according to paragraph (b)(2) of this section.

(1) Each owner or operator of a publication rotogravure facility shall determine the organic HAP weight-fraction of each ink, coating, varnish, adhesive, primer, solvent, and other material used in a publication rotogravure affected source by following one of the procedures in paragraphs (b)(1)(i) through (b)(1)(iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this Part 63. The Method 311 determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 311, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The recovery efficiency of the technique must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(ii) The owner or operator may determine the volatile matter content of the material in accordance with § 63.827(c)(1) and use this value for the organic HAP content for all compliance purposes.

(iii) The owner or operator may, except as noted in paragraph (b)(1)(iv) of this section, rely on formulation data provided by the manufacturer of the material on a CPDS if

(A) The manufacturer has included in the organic HAP content determination all HAP present at a level greater than 0.1 percent in any raw material used, weighted by the mass fraction of each raw material used in the material, and

(B) The manufacturer has determined the HAP content of each raw material present in the formulation by Method 311 of appendix A of this part 63, or by an alternate method approved by the Administrator, or by reliance on a CPDS from a raw material supplier prepared in accordance with § 63.827(b)(1)(iii)(A).

(iv) In the event of any inconsistency between the Method 311 of appendix A of this part 63 test data and formulation data, that is, if the Method 311 test value is higher, the Method 311 test data shall govern, unless after consultation, an owner or operator demonstrates to the satisfaction of the enforcement authority that the formulation data are correct.

(2) Each owner or operator of a product and packaging rotogravure or wide-web flexographic printing facility shall determine the organic HAP weight fraction of each ink, coating, varnish, adhesive, primer, solvent, thinner, reducer, diluent, and other material applied by following one of the procedures in paragraphs (b)(2)(i) through (b)(2)(iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this part 63. The Method 311 determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 311, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The recovery efficiency of the technique must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(ii) The owner or operator may determine the volatile matter content of the material in accordance with § 63.827(c)(2) and use this value for the organic HAP content for all compliance purposes.

(iii) The owner or operator may, except as noted in paragraph (b)(2)(iv) of this section, rely on formulation data provided by the manufacturer of the material on a CPDS if

(A) The manufacturer has included in the organic HAP content determination, all organic HAP present at a level greater than 0.1 percent in any raw material used, weighted by the mass fraction of each raw material used in the material, and

(B) The manufacturer has determined the organic HAP content of each raw material present in the formulation by Method 311 of appendix A of this part 63, or, by an alternate method approved by the Administrator, or, by reliance on a CPDS from a raw material supplier prepared in accordance with § 63.827(b)(2)(iii)(A).

(iv) In the event of any inconsistency between the Method 311 of appendix A of this part 63 test data and a facility's formulation data, that is, if the Method 311 test value is higher, the Method 311 test data shall govern, unless after consultation, an owner or operator demonstrates to the satisfaction of the enforcement authority that the formulation data are correct.

(c) Determination by the owner or operator of the volatile matter content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials used for the purpose of meeting the requirements of § 63.824 shall be conducted according to paragraph (c)(1) of this section. Determination by the owner or operator of the volatile matter and solids content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials applied for the purpose of meeting the requirements of § 63.825 shall be conducted according to paragraph (c)(2) of this section.

(1) Each owner or operator of a publication rotogravure facility shall determine the volatile matter weight-fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material used using Method 24A of 40 CFR part 60, appendix A. The Method 24A determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 24A, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The owner or operator may rely on formulation data, subject to the provisions of paragraph (c)(3) of this section.

(2) Each owner or operator of a product and packaging rotogravure or wide-web flexographic printing facility shall determine the volatile matter and solids weight-fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material applied using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 24, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The owner or operator may rely on formulation data, subject to the provisions of paragraph (c)(3) of this section.

(3) Owners or operators may determine the volatile matter content of materials based on formulation data, and may rely on volatile matter content data provided by material suppliers. In the event of any inconsistency between the formulation data and the results of Test Methods 24 or 24A of 40 CFR part 60, appendix A, the applicable test method shall govern, unless after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(d) A performance test of a control device to determine destruction

efficiency for the purpose of meeting the requirements of §§ 63.824–63.825 shall be conducted by the owner or operator in accordance with the following:

(1) An initial performance test to establish the destruction efficiency of an oxidizer and the associated combustion zone temperature for a thermal oxidizer and the associated catalyst bed inlet temperature for a catalytic oxidizer shall be conducted and the data reduced in accordance with the following reference methods and procedures:

(i) Method 1 or 1A of 40 CFR part 60, appendix A is used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A is used to determine gas volumetric flow rate.

(iii) Method 3 of 40 CFR part 60, appendix A is used for gas analysis to determine dry molecular weight.

(iv) Method 4 of 40 CFR part 60, appendix A is used to determine stack gas moisture.

(v) Methods 2, 2A, 3, and 4 of 40 CFR part 60, appendix A shall be performed, as applicable, at least twice during each test period.

(vi) Method 25 of 40 CFR part 60, Appendix A, shall be used to determine organic volatile matter concentration, except as provided in paragraphs (d)(1)(vi)(A)–(C) of this section. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with notice of the performance test required under § 63.7(c). The owner or operator may use Method 25A of 40 CFR part 60, appendix A, if

(A) An exhaust gas organic volatile matter concentration of 50 parts per million by volume (ppmv) or less is required to comply with the standards of §§ 63.824–63.825, or

(B) The organic volatile matter concentration at the inlet to the control system and the required level of control are such to result in exhaust gas organic volatile matter concentrations of 50 ppmv or less, or

(C) Because of the high efficiency of the control device, the anticipated organic volatile matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Each performance test shall consist of three separate runs; each run conducted for at least one hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining organic volatile matter concentrations and mass flow rates, the average of results of all runs shall apply.

(viii) Organic volatile matter mass flow rates shall be determined using Equation 20:

$$M_f = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right]\left[0.0416\right]\left[10^{-6}\right] \qquad \text{Eq 20}$$

(ix) Emission control device efficiency shall be determined using Equation 21:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{Eq 21}$$

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance test. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) For the purpose of determining the value of the oxidizer operating parameter that will demonstrate continuing compliance, the time-weighted average of the values recorded during the performance test shall be computed. For an oxidizer other than catalytic oxidizer, the owner or operator shall establish as the operating parameter the minimum combustion temperature. For a catalytic oxidizer, the owner or operator shall establish as the operating parameter the minimum gas temperature upstream of the catalyst bed. These minimum temperatures are the operating parameter values that demonstrate continuing compliance with the requirements of §§ 63.824–63.825.

(e) A performance test to determine the capture efficiency of each capture system venting organic emissions to a control device for the purpose of meeting the requirements of §§ 63.824(b)(1)(ii), 63.824(b)(2), 63.825(c)(2), 63.825(d)(1)–(2), 63.825(f)(2)–(4), or 63.825(h)(2)–(3) shall be conducted by the owner or operator in accordance with the following:

(1) For permanent total enclosures, capture efficiency shall be assumed as 100 percent. Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure as found in appendix B to § 52.741 of part 52 of this chapter shall be used to confirm that an enclosure meets the requirements for permanent total enclosure.

(2) For temporary total enclosures, the capture efficiency shall be determined according to the protocol specified in § 52.741(a)(4)(iii)(B) of part 52 of this chapter. The owner or operator may exclude never-controlled work stations from such capture efficiency determinations.

(f) As an alternative to the procedures specified in § 63.827(e) an owner or operator required to conduct a capture efficiency test may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective (DQO) or the Lower Confidence Limit (LCL) approach as described in Appendix A of this subpart. The owner or operator may exclude never-controlled work stations from such capture efficiency determinations.

§ 63.828 Monitoring requirements.

(a) Following the date on which the initial performance test of a control device is completed, to demonstrate continuing compliance with the standard, the owner or operator shall monitor and inspect each control device required to comply with §§ 63.824–63.825 to ensure proper operation and maintenance by implementing the applicable requirements in paragraph (a)(1) through (a)(5) of this section.

(1) Owners or operators of product and packaging rotogravure or wide-web flexographic presses with intermittently-controllable work stations shall follow one of the procedures in paragraphs (a)(1)(i) through (a)(1)(iv) of this section for each dryer associated with such a work station:

(i) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the dryer was directed to the control device or was diverted from the control device. The time and flow control position must be recorded at least once per hour, as well as every time the flow direction is changed. The flow control position indicator shall be installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(ii) Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration; a visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve or damper is maintained in the closed position and the exhaust stream is not diverted through the bypass line.

(iii) Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position. The monitoring system shall be inspected at least once every month to ensure that it is functioning properly.

(iv) Use an automatic shutdown system in which the press is stopped when flow is diverted away from the control device to any bypass line. The automatic system shall be inspected at least once every month to ensure that it is functioning properly.

(2) Compliance monitoring shall be subject to the provisions of paragraphs (a)(2)(i) and (a)(2)(ii) of this section, as applicable.

(i) All continuous emission monitors shall comply with performance specifications (PS) 8 or 9 of 40 CFR part 60, appendix B, as appropriate. The requirements of Appendix F of 40 CFR part 60 shall also be followed. In conducting the quarterly audits required by appendix F, owners or operators must challenge the monitors with compounds representative of the gaseous emission stream being controlled.

(ii) All temperature monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications. The calibration of the chart recorder, data logger, or temperature indicator shall be verified every three months; or the chart recorder, data logger, or temperature indicator shall be replaced. The replacement shall be done either if the owner or operator chooses not to perform the calibration, or if the equipment cannot be calibrated properly.

(3) An owner or operator complying with §§ 63.824–63.825 through continuous emission monitoring of a control device shall install, calibrate, operate, and maintain continuous emission monitors to measure the total organic volatile matter concentration at both the control device inlet and the outlet.

(4) An owner or operator complying with the requirements of §§ 63.824–63.825 through the use of an oxidizer and demonstrating continuous compliance through monitoring of an oxidizer operating parameter shall:

(i) For an oxidizer other than a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±1 °C, whichever is greater. The thermocouple or temperature sensor shall be installed in the combustion chamber at a location in the combustion zone.

(ii) For a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in °C or ±1 °C, whichever is greater. The thermocouple or temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet.

(5) An owner or operator complying with the requirements of §§ 63.824–63.825 through the use of a control device and demonstrating continuous compliance by monitoring an operating parameter to ensure that the capture efficiency measured during the initial compliance test is maintained, shall:

(i) Submit to the Administrator with the compliance status report required by § 63.9(h) of the General Provisions, a plan that

(A) Identifies the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained,

(B) Discusses why this parameter is appropriate for demonstrating ongoing compliance, and

(C) Identifies the specific monitoring procedures;

(ii) Set the operating parameter value, or range of values, that demonstrate compliance with §§ 63.824–63.825, and

(iii) Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(b) Any excursion from the required operating parameters which are monitored in accordance with paragraphs (a)(4) and (a)(5) of this section, unless otherwise excused, shall be considered a violation of the emission standard.

§ 63.829 Recordkeeping requirements.

(a) The recordkeeping provisions of 40 CFR part 63 subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart.

(b) Each owner or operator of an affected source subject to this subpart shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section on a monthly basis in accordance with the requirements of § 63.10(b)(1) of this part:

(1) Records specified in § 63.10(b)(2) of this part, of all measurements needed to demonstrate compliance with this standard, such as continuous emission monitor data, control device and capture system operating parameter data, material usage, HAP usage, volatile matter usage, and solids usage that support data that the source is required to report.

(2) Records specified in § 63.10(b)(3) of this part for each applicability determination performed by the owner or operator in accordance with the requirements of § 63.820(a) of this subpart, and

(3) Records specified in § 63.10(c) of this part for each continuous monitoring system operated by the owner or operator in accordance with the requirements of § 63.828(a) of this subpart.

(c) Each owner or operator of an affected source subject to this subpart shall maintain records of all liquid-liquid material balances performed in accordance with the requirements of §§ 63.824–63.825 of this subpart. The records shall be maintained in accordance with the requirements of § 63.10(b) of this part.

(d) The owner or operator of each facility which commits to the criteria of § 63.820(a)(2) shall maintain records of all required measurements and calculations needed to demonstrate compliance with these criteria, including the mass of all HAP containing materials used and the mass fraction of HAP present in each HAP containing material used, on a monthly basis.

(e) The owner or operator of each facility which meets the limits and criteria of § 63.821(b)(1) shall maintain records as required in paragraph (e)(1) of this section. The owner or operator of each facility which meets the limits and criteria of § 63.821(b)(2) shall maintain records as required in paragraph (e)(2) of this section. Owners or operators shall maintain these records for five years, and upon request, submit them to the Administrator.

(1) For each facility which meets the criteria of § 63.821(b)(1), the owner or operator shall maintain records of the total volume of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

(2) For each facility which meets the criteria of § 63.821(b)(2), the owner or operator shall maintain records of the

total volume and organic HAP content of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

(f) The owner or operator choosing to exclude from an affected source, a product and packaging rotogravure or wide-web flexographic press which meets the limits and criteria of § 63.821(a)(2)(ii)(A) shall maintain the records specified in paragraphs (f)(1) and (f)(2) of this section for five years and submit them to the Administrator upon request:

(1) The total mass of each material applied each month on the press, including all inboard and outboard stations, and

(2) The total mass of each material applied each month on the press by product and packaging rotogravure or wide-web flexographic printing operations.

§ 63.830 Reporting requirements.

(a) The reporting provisions of 40 CFR part 63 subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart.

(b) Each owner or operator of an affected source subject to this subpart shall submit the reports specified in paragraphs (b)(1) through (b)(6) of this section to the Administrator:

(1) An initial notification required in § 63.9(b).

(i) Initial notifications for existing sources shall be submitted no later than one year before the compliance date specified in § 63.826(a).

(ii) Initial notifications for new and reconstructed sources shall be submitted as required by § 63.9(b).

(iii) For the purpose of this subpart, a Title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA.

(iv) Permit applications shall be submitted by the same due dates as those specified for the initial notifications.

(2) A Notification of Performance Tests specified in § 63.7 and § 63.9(e) of this part. This notification, and the site-specific test plan required under § 63.7(c)(2) shall identify the operating parameter to be monitored to ensure that the capture efficiency measured during the performance test is maintained. The operating parameter identified in the site-specific test plan shall be considered to be approved unless explicitly disapproved, or unless comments received from the Administrator require monitoring of an alternate parameter.

(3) A Notification of Compliance Status specified in § 63.9(h) of this part.

(4) Performance test reports specified in § 63.10(d)(2) of this part.

(5) Start-up, shutdown, and malfunction reports specified in § 63.10(d)(5) of this part, except that the provisions in subpart A pertaining to start-ups, shutdowns, and malfunctions do not apply unless a control device is used to comply with this subpart.

(i) If actions taken by an owner or operator during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6(e)(3) of this part, the owner or operator shall state such information in the report. The start-up, shutdown, or malfunction report shall consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator.

(ii) Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(6) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semi-annual basis (i.e., once every six-month period). In addition to a report of operating parameter exceedances as required by § 63.10(e)(3)(i), the summary report shall include, as applicable:

(i) Exceedances of the standards in §§ 63.824–63.825.

(ii) Exceedances of either of the criteria of § 63.820(a)(2).

(iii) Exceedances of the criterion of § 63.821(b)(1) and the criterion of § 63.821(b)(2) in the same month.

(iv) Exceedances of the criterion of § 63.821(a)(2)(ii)(A).

§ 63.831 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under 40 CFR part 63 subpart E of this part, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 63.827(b), approval of alternate test method for organic HAP content determination; § 63.827(c), approval of alternate test method for volatile matter determination.

TABLE 1 TO SUBPART KK.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to subpart KK	Comment
§ 63.1(a)(1)–(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)–(a)(8)	No.	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)–(a)(14)	Yes.	
§ 63.1(b)(1)	No	Subpart KK specifies applicability.
§ 63.1(b)(2)–(b)(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	No	Area sources are not subject to subpart KK.
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	No.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional definitions in subpart KK.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(a)(3)	Yes.	
§ 63.4(a)(4)	No	Section reserved.

TABLE 1 TO SUBPART KK.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK—Continued

General provisions reference	Applicable to subpart KK	Comment
§ 63.4(a)(5)	Yes.	
§ 63.4(b–c)	Yes.	
§ 63.5(a)(1)–(a)(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)–(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)–(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(c)(2)	Yes.	
§ 63.6(c)(3)–(c)(4)	No	Sections reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes	Provisions pertaining to start-ups, shutdowns, malfunctions, and CMS do not apply unless an add-on control system is used.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart KK does not require COMS.
§ 63.6(i)(1)–(i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes.	
§ 63.8(a)(1)–(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	No	Subpart KK specifies the use of solvent recovery devices or oxidizers.
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes.	
§ 63.8(c)(4)	No	Subpart KK specifies CMS sampling requirements.
§ 63.8(c)(5)	No	Subpart KK does not require COMS.
§ 63.8(c)(6)–(c)(8)	Yes	Provisions for COMS are not applicable.
§ 63.8(d)–(f)	Yes.	
§ 63.8(g)	No	Subpart KK specifies CMS data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Initial notification submission date extended.
§ 63.9(b)(3)–(b)(5)	Yes.	
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart KK does not require opacity and visible emissions observations.
§ 63.9(g)	Yes	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5)–(h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)–(b)(3)	Yes.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(c)(4)	No	Sections reserved.
§ 63.10(c)(5)–(c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10)–(c)(15)	Yes.	
§ 63.10(d)(1)–(d)(2)	Yes.	
§ 63.10(d)(3)	No	Subpart KK does not require opacity and visible emissions observations.
§ 63.10(d)(4)–(d)(5)	Yes.	
§ 63.10(e)	Yes	Provisions for COMS are not applicable.
§ 63.10(f)	Yes.	
§ 63.11	No	Subpart KK specifies the use of solvent recovery devices or oxidizers.
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	

Appendix A to Subpart KK—Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods

1. Introduction

1.1 Alternative capture efficiency (CE) protocols and test methods that satisfy the criteria of either the data quality objective (DQO) approach or the lower confidence limit (LCL) approach are acceptable under § 63.827(f). The general criteria for alternative CE protocols and test methods to qualify under either the DQO or LCL approach are described in section 2. The DQO approach and criteria specific to the DQO approach are described in section 3. The LCL approach and criteria specific to the LCL approach are described in section 4. The recommended reporting for alternative CE protocols and test methods are presented in section 5. The recommended recordkeeping for alternative CE protocols and test methods are presented in section 6.

1.2 Although the Procedures L, G.1, G.2, F.1, and F.2 in § 52.741 of part 52 were developed for TTE and BE testing, the same procedures can also be used in an alternative CE protocol. For example, a traditional liquid/gas mass balance CE protocol could employ Procedure L to measure liquid VOC input and Procedure G.1 to measure captured VOC.

2. General Criteria for DQO and LCL Approaches

2.1 The following general criteria must be met for an alternative capture efficiency protocol and test methods to qualify under the DQO or LCL approach.

2.2 An alternative CE protocol must consist of at least three valid test runs. Each test run must be at least 20 minutes long. No test run can be longer than 24 hours.

2.3 All test runs must be separate and independent. For example, liquid VOC input and output must be determined independently for each run. The final liquid VOC sample from one run cannot be the initial sample for another run. In addition, liquid input for an entire day cannot be apportioned among test runs based on production.

2.4 Composite liquid samples cannot be used to obtain an ''average composition'' for a test run. For example, separate initial and final coating samples must be taken and analyzed for each run; initial and final samples cannot be combined prior to analysis to derive an ''average composition'' for the test run.

2.5 All individual test runs that result in a CE of greater than 105 percent are invalid and must be discarded.

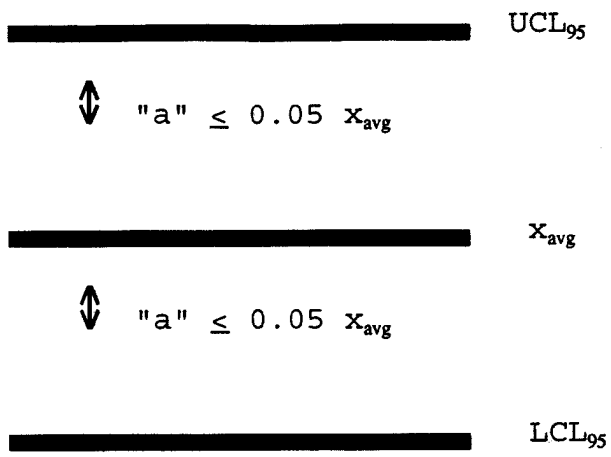
2.6 If the source can demonstrate to the regulatory agency that a test run should not be considered due to an identified testing or analysis error such as spillage of part of the sample during shipping or an upset or improper operating conditions that is not considered part of normal operation then the test result for that individual test run may be discarded. This limited exception allows sources to discard as ''outliers'' certain individual test runs without replacing them with a valid test run as long as the facility has at least three valid test runs to use when calculating its DQO or LCL. This exception is limited solely to test runs involving the types of errors identified above.

2.7 All valid test runs that are conducted must be included in the average CE determination. The individual test run CE results and average CE results cannot be truncated (i.e., 105 percent cannot be reported as 100+ percent) for purposes of meeting general or specific criteria for either the DQO or the LCL. If the DQO is satisfied and the average CE is greater than 100, then 100 percent CE must be considered the result of the test.

2.8 Alternative test methods for measuring VOC concentration must include a three-point calibration of the gas analysis instrument in the expected concentration range.

3. Data Quality Objective Approach

3.1 The purpose of the DQO is to allow sources to use alternative CE protocols and test methods while ensuring reasonable precision consistent with pertinent requirements of the Clean Air Act. In addition to the general criteria described in section 2, the specific DQO criterion is that the width of the two-sided 95 percent confidence interval of the mean measured value must be less than or equal to 10 percent of the mean measured value (see Figure 1). This ensures that 95 percent of the time, when the DQO is met, the actual CE value will be ±5 percent of the mean measured value (assuming that the test protocol is unbiased).



3.2 The DQO calculation is made as follows using Equations 1 and 2:

$$P = \frac{a}{x_{avg}} 100 \qquad \text{Eq 1}$$

$$a = \frac{t_{0.975}\, s}{\sqrt{n}} \qquad \text{Eq 2}$$

Where:

a=distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval for the measured value.

n=number of valid test runs.

P=DQO indicator statistic, distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval, expressed as a percent of the average measured CE value.

s=sample standard deviation.

$t_{0.975}$=t-value at the 95-percent confidence level (see Table 1).

x_{avg}=average measured CE value (calculated from all valid test runs).

x_i=the CE value calculated from the ith test run.

Number of valid test runs, n	$t_{0.975}$	$t_{0.90}$	Number of valid test runs, n	$t_{0.975}$	$t_{0.90}$
1 or 2	N/A	N/A	12	2.201	1.363
3	4.303	1.886	13	2.179	1.356
4	3.182	1.638	14	2.160	1.350
5	2.776	1.533	15	2.145	1.345
6	2.571	1.476	16	2.131	1.341
7	2.447	1.440	17	2.120	1.337
8	2.365	1.415	18	2.110	1.333
9	2.306	1.397	19	2.101	1.330
10	2.262	1.383	20	2.093	1.328
1	12.228	1.372	21	2.086	1.325

Table 1.—T-Values

3.3 The sample standard deviation and average CE value are calculated using Equations 3 and 4 as follows:

$$s = \left[\frac{\sum_{i=1}^{n} \left(x_i - x_{avg} \right)^2}{n-1} \right]^{0.5} \qquad \text{Eq 3}$$

$$x_{avg} = \frac{\sum_{i=1}^{n} x_i}{n} \qquad \text{Eq 4}$$

3.4 The DQO criteria are achieved when all of the general criteria in section 2 are achieved and P ≤5 percent (i.e., the specific DQO criterion is achieved). In order to meet this objective, facilities may have to conduct more than three test runs. Examples of calculating P, given a finite number of test runs, are shown below. (For purposes of this example it is assumed that all of the general criteria are met.)

3.5 Facility A conducted a CE test using a traditional liquid/gas mass balance and submitted the following results and the calculations shown in Equations 5 and 6:

Run	CE
1	96.1
2	105.0
3	101.2

Therefore:

n=3

$t_{0.975}$=4.30

x_{avg}=100.8

s=4.51

$$a = \frac{(4.30)(4.51)}{\sqrt{n}} = 11.20 \qquad \text{Eq 5}$$

$$P = \frac{11.2}{100.8}100 = 11.11 \qquad \text{Eq 6}$$

3.6 Since the facility did not meet the specific DQO criterion, they ran three more test runs.

Run	CE
4	93.2
5	96.2
6	87.6

3.7 The calculations for Runs 1–6 are made as follows using Equations 7 and 8:

n=6
$t_{0.975}$=2.57
x_{avg}=96.6
s=6.11

$$a = \frac{(2.57)(6.11)}{\sqrt{6}} = 6.41 \qquad \text{Eq 7}$$

$$P = \frac{6.41}{96.6}100 = 6.64 \qquad \text{Eq 8}$$

3.8 The facility still did not meet the specific DQO criterion. They ran three more test runs with the following results:

Run	CE
7	92.9
8	98.3
9	91.0

3.9 The calculations for Runs 1–9 are made as follows using Equations 9 and 10:

n=9
$t_{0.975}$=2.31
x_{avg}=95.7
s=5.33

$$a = \frac{(2.31)(5.33)}{\sqrt{9}} = 4.10 \qquad \text{Eq 9}$$

$$P = \frac{4.10}{95.7}100 = 4.28 \qquad \text{Eq 10}$$

3.10 Based on these results, the specific DQO criterion is satisfied. Since all of the general criteria were also satisfied, the average CE from the nine test runs can be used to determine compliance.

4. Lower Confidence Limit Approach

4.1 The purpose of the LCL approach is to provide sources, that may be performing much better than their applicable regulatory requirement, a screening option by which they can demonstrate compliance. The approach uses less precise methods and avoids additional test runs which might otherwise be needed to meet the specific DQO criterion while still being assured of correctly demonstrating compliance. It is designed to reduce ''false positive'' or so called ''Type II errors'' which may erroneously indicate compliance where more variable test methods are employed. Because it encourages CE performance greater than that required in exchange for reduced compliance demonstration burden, the sources that successfully use the LCL approach could produce emission reductions beyond allowable emissions. Thus, it could provide additional benefits to the environment as well.

4.2 The LCL approach compares the 80 percent (two-sided) LCL for the mean measured CE value to the applicable CE regulatory requirement. In addition to the general criteria described in section 2, the specific LCL criteria are that either the LCL be greater than or equal to the applicable CE regulatory requirement or that the specific DQO criterion is met. A more detailed description of the LCL approach follows:

4.3 A source conducts an initial series of at least three runs. The owner or operator may choose to conduct additional test runs during the initial test if desired.

4.4 If all of the general criteria are met and the specific DQO criterion is met, then the average CE value is used to determine compliance.

4.5 If the data meet all of the general criteria, but do not meet the specific DQO criterion; and the average CE, using all valid test runs, is above 100 percent then the test sequence cannot be used to calculate the LCL. At this point the facility has the option of (a) conducting more test runs in hopes of meeting the DQO or of bringing the average CE for all test runs below 100 percent so the LCL can be used or (b) discarding all previous test data and retesting.

4.6 The purpose of the requirement in Section 4.5 is to protect against protocols and test methods which may be inherently biased high. This is important because it is impossible to have an actual CE greater than 100 percent and the LCL approach only looks at the lower end variability of the test results. This is different from the DQO which allows average CE values up to 105 percent because the DQO sets both upper and lower limits on test variability.

4.7 If at any point during testing the results meet the DQO, the average CE can be used for demonstrating compliance with the applicable regulatory requirement. Similarly, if the average CE is below 100 percent then the LCL can be used for demonstrating compliance with the applicable regulatory requirement without regard to the DQO.

4.8 The LCL is calculated at a 80 percent (two-sided) confidence level as follows using Equation 11:

$$LC_1 = x_{avg} - \frac{t_{0.90}s}{\sqrt{n}} \qquad \text{Eq 11}$$

Where:

LC_1=LCL at a 80 percent (two-sided) confidence level.
n=number of valid test runs.
s=sample standard deviation.
$t_{0.90}$=t-value at the 80-percent (two-sided) confidence level (see Table 3–1).
x_{avg}=average measured CE value (calculated from all valid test runs).

4.9 The resulting LC_1 is compared to the applicable CE regulatory requirement. If LC_1 exceeds (i.e., is higher than) the applicable regulatory requirement, then a facility is in initial compliance. However, if the LC_1 is below the CE requirement, then the facility must conduct additional test runs. After this point the test results will be evaluated not only looking at the LCL, but also the DQO of ±5 percent of the mean at a 95 percent confidence level. If the test results with the additional test runs meet the DQO before the LCL exceeds the applicable CE regulatory requirement, then the average CE value will be compared to the applicable CE regulatory requirement for determination of compliance.

4.10 If there is no specific CE requirement in the applicable regulation, then the applicable CE regulatory requirement is determined based on the applicable regulation and an acceptable destruction efficiency test. If the applicable regulation requires daily compliance and the latest CE compliance demonstration was made using the LCL approach, then the calculated LC_1 will be the highest CE value which a facility is allowed to claim until another CE demonstration test is conducted. This last requirement is necessary to assure both sufficiently reliable test results in all circumstances and the potential environmental benefits referenced above.

4.11 An example of calculating the LCL is shown below. Facility B's applicable regulatory requirement is 85 percent CE. Facility B conducted a CE test using a traditional liquid/gas mass balance and submitted the following results and the calculation shown in Equation 12:

Run	CE
1	94.2
2	97.6
3	90.5

Therefore:

n=3
$t_{0.90}$=1.886
x_{avg}=94.1
s=3.55

$$LC_1 = 94.1 - \frac{(1.886)(3.55)}{\sqrt{3}} = 90.23 \qquad \text{Eq 12}$$

4.12 Since the LC_1 of 90.23 percent is above the applicable regulatory requirement of 85 percent then the facility is in compliance. The facility must continue to accept the LC_1 of 90.23 percent as its CE value until a new series of valid tests is conducted. (The data generated by Facility B do not meet the specific DQO criterion.)

5. Recommended Reporting for Alternative CE Protocols

5.1 If a facility chooses to use alternative CE protocols and test methods that satisfy either the DQO or LCL and the additional criteria in section 4., the following information should be submitted with each test report to the appropriate regulatory agency:

1. A copy of all alternative test methods, including any changes to the EPA reference methods, QA/QC procedures and calibration procedures.

2. A table with information on each liquid sample, including the sample identification, where and when the sample was taken, and the VOC content of the sample;

3. The coating usage for each test run (for protocols in which the liquid VOC input is to be determined);

4. The quantity of captured VOC measured for each test run;

5. The CE calculations and results for each test run;

6. The DQO or LCL calculations and results; and

7. The QA/QC results, including information on calibrations (e.g., how often the instruments were calibrated, the calibration results, and information on calibration gases, if applicable).

6. Recommended Recordkeeping for Alternative CE Protocols.

6.1 A record should be kept at the facility of all raw data recorded during the test in a suitable form for submittal to the appropriate regulatory authority upon request.

[FR Doc. 96–13084 Filed 5–29–96; 8:45 am]

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May 30, 1996

Part III

Department of Housing and Urban Development

24 CFR Parts 982 and 983

Section 8 Tenant-Based Programs: Technical Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–4055–F–01]

RIN 2577–AB64

Office of the Assistant Secretary for Public and Indian Housing; Section 8 Tenant-Based Programs: Technical Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; technical amendments.

SUMMARY: The purpose of this document is to make technical amendments to the final rule governing the tenant-based rental certificate and voucher programs. These technical amendments are necessary to add provisions that were inadvertently omitted from one section of the earlier final rule, and to clarify the original intent of certain other provisions. These amendments have the effect of clarifying the regulations for these programs.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Associate Deputy Assistant Secretary for the Office of Public and Assisted Housing Operations, Room 4204, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000, telephone (202) 708–1842 (voice) [not a toll-free telephone number]. Hearing or speech-impaired individuals may access that office by text telephone by dialing 1–800–877–8339 to use the Federal Information Relay Service. Copies of this document will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of Rule

There were two principal rules issued concerning the Section 8 Certificate and Voucher programs in the last two years: The rule governing admission requirements, establishing subparts A and E, published on July 18, 1994 (59 FR 36662) and the rule fleshing out part 982 by establishing subparts B–D and G–L, published on July 3, 1995 (60 FR 34660). Since their publication, it has come to the attention of the Department that several changes that had been intended to be included in these rules were omitted. These changes are being made in this final rule.

B. Changes to Rule

Section 982.54, dealing with the administrative plan, is modified to add provisions to the administrative plan that were inadvertently omitted in the final rule. While these policies are clearly stated in other sections of the final regulations, these are policies on matters for which the HA has discretion to establish local policies and, therefore, must be included in the administrative plan.

Language in §§ 982.158, 982.202, 982.205, 982.301, 982.307, 982.353, 982.355, 982.401, 982.451, and 982.551 is revised to clarify original intent. In addition, a new paragraph (e)(4) is added to § 982.355 to provide that the administrative fee may be reduced as a sanction for noncompliance with portability requirements, consistent with the regulatory sanction for noncompliance with other HA program responsibilities.

The only change to part 983 is to correct a typographical error found in § 983.203.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. HUD believes that it is unnecessary and contrary to the public interest to delay the effectiveness of the rule for public comment, since the rule merely makes technical and clarifying changes.

III. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities (or any other entities), since it merely makes technical amendments.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) with respect to the original Part 982 issued in 1994. This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, since it only makes technical amendments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order.

List of Subjects

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Catalog

The catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.855 (Vouchers), 14.856 (Moderate Rehabilitation), and 14.857 (Certificates).

Accordingly, parts 982 and 983 of title 24 of the Code of Federal Regulations, are amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

1–3. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 982.54 [Amended]

4. Section 982.54(d) is amended as follows:

a. By adding to paragraph (d)(1) after the word ''preferences'' the phrase ''(see §§ 982.202(b)(2) and 982.208(b)), procedures for removing applicant names from the waiting list,''.

b. By removing from paragraph (d)(15) the word ''and'' after the semicolon;

c. By removing from paragraph (d)(16) the period at the end of the sentence and adding in its place a semicolon; and

d. By adding new paragraphs (d)(17), (d)(18) and (d)(19), to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(17) Interim redeterminations of family income and composition;

(18) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c)); and

(19) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve.

* * * * *

5. In § 982.158, paragraph (d) is revised to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(d) The HA must prepare a unit inspection report.

* * * * *

§ 982.202 [Amended]

6. In § 982.202, the heading of paragraph (a) is revised to read ''*Waiting list admissions and special admissions.*''

7. In § 982.202, the second sentence of paragraph (b)(2) is revised to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(b) * * *

(2) * * * However, the HA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a HUD-approved residency preference (see § 982.208).

* * * * *

8. In § 982.205, the section heading and paragraph (a)(1) are revised to read as follows:

§ 982.205 Waiting list: Single list; area covered.

(a) * * *

(1) An HA must use a single waiting list for admissions to its tenant-based certificate and voucher programs. The HA may use a separate waiting list for such admissions for an area not smaller than a county or municipality.

* * * * *

§ 982.301 [Amended]

9. In § 982.301, paragraph (b) is amended as follows:

a. Paragraph (b)(4) is removed and the remaining paragraphs are redesignated (b)(4) through (b)(16); and

b. In redesignated paragraph (b)(10), the word ''HUD'' is removed and the word ''HUD-required'' is added in its place.

§ 982.307 [Amended]

10. In § 982.307, paragraph (b)(1)(i) is amended by adding ''and prior'' after the word ''current''.

§ 982.353 [Amended]

11. In § 982.353(b), the first sentence is amended by removing the reference to ''paragraph (c)'' and adding in its place a reference to ''paragraph (c) or (d)''.

12. Section 982.355 is amended as follows:

a. Paragraph (b)(2) is revised;

b. A new paragraph (b)(3) is added;

c. A new sentence is added at the end of paragraph (e)(3);

d. The third sentence of paragraph (e)(5) is removed; and

e. Paragraph (e)(4) is revised, to read as follows:

§ 982.355 Portability: Administration by receiving HA.

* * * * *

(b) * * *

(2) If the family was receiving assistance under the initial HA certificate program, but is ineligible for admission to the voucher program, a receiving HA must provide continued assistance under the certificate program. If the family was receiving assistance under the initial HA voucher program, but is ineligible for admission to the certificate program, a receiving HA must provide continued assistance under the voucher program.

(3) If a receiving HA is absorbing the family into its own program (i.e., providing assistance without billing the initial HA), the receiving HA has the choice of assisting the family under either the certificate or voucher program. If a receiving HA is not absorbing the family into its own program, the receiving HA must assist the family under the same program (certificate program or voucher program) as the initial HA.

* * * * *

(e) * * *

(3) * * * If both HAs agree, the HAs may negotiate a different amount of reimbursement.

(4) HUD may reduce the administrative fee to an initial or receiving HA if the HA does not comply with HUD portability requirements.

* * * * *

13. In § 982.401, paragraph (j)(3)(iv)(B) is revised to read as follows:

§ 982.401 Housing quality standards (HQS).

* * * * *

(j) * * *

(3) * * *

(iv) * * *

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

* * * * *

§ 982.451 [Amended]

14. In § 982.451, the third sentence of paragraph (c)(5) is amended by adding ''another source is'' after the word ''unless''.

15. In § 982.551, paragraph (h)(2) is amended by adding a sentence at the end to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(h) * * *

(2) * * * No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

16. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.203 [Amended]

17. In § 983.203(a)(5), the word ''Has'' is removed and the word ''HAs'' is added in its place.

Dated: May 10, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–13240 Filed 5–29–96; 8:45 am]

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federal register

Thursday
May 30, 1996

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, etc.

Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178, and 180

[Docket HM–222B; Amdt. Nos. 171–145, 172–149, 173–253, 176–40, 177–87, 178–116, and 180–9]

RIN 2137–AC76

Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR) based on its review of the HMR and on written and oral comments received from the public concerning regulatory reform. The intended effect of this rulemaking is to reduce unnecessary regulatory burdens on industry and make the regulations shorter and easier to use without compromising public safety. In particular, RSPA is reducing the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers. This action is in response to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

DATES: *Effective date.* October 1, 1996.

Compliance date. Immediate compliance is authorized.

Incorporation by reference. The incorporation by reference of a publication listed in this amendment is approved by the Director of the Federal Register as of October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–8553; Office of Hazardous Materials Standards, or Karin V. Christian, (202) 366–4400, Office of the Chief Counsel, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106 and 107).

The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations. On April 4, 1995, RSPA published in the Federal Register (60 FR 17049) a notice announcing seven public meetings and requesting comments on its hazardous materials safety program. RSPA requested comments on ways to improve the HMR and the kind and quality of services its customers want. RSPA received over 50 written comments in response to the notice. On July 28, 1995, RSPA published a second notice (60 FR 38888) announcing five more public meetings that were held between September 1995 and January 1996.

On February 20, 1996, RSPA published a Notice of Proposed Rulemaking (NPRM) (61 FR 6478) under Docket HM–222B that proposed to amend various sections of the HMR based on agency initiative and on written and oral comments received from the public on regulatory reform. In particular, RSPA proposed to reduce the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers.

II. Summary of Amendments

RSPA received approximately 90 comments to the NPRM. Most of the comments supported the proposals and requested that RSPA adopt them as soon as possible. The commenters, including many small businesses, stated that they would benefit directly from the adoption of the proposal in Docket HM–222B without any reduction of safety. Several commenters commended RSPA's commitment to effecting meaningful regulatory reform. Some commenters, however, did raise concerns about the impact on safety if these proposals were adopted. Commenters also raised issues that were beyond the scope of the proposed rule; however, these issues may be considered in future rulemakings.

RSPA believes that the amendments adopted in this final rule strike a balance between safety and costs imposed on the regulated community. RSPA does not believe that the result of the amendments in this final rule will be a decrease in safety to the public or the environment.

Part 171

Section 171.16. In the NPRM, RSPA proposed, except for materials transported by aircraft, to except limited quantities of Packing Group II and III materials from the incident reporting requirements in § 171.16. RSPA stated in the NPRM that continued reporting of certain incidents involving limited quantities would be of minimal value when weighed against the burden on the carriers required to prepare incident reports.

RSPA received a number of comments on the proposal to revise the incident reporting requirements. Most of the commenters supported the proposal and cited the cost savings to the regulated community without any decrease in safety. Some commenters did not agree with the proposal and stated that large numbers of limited quantity packages could cause a serious incident to occur. Others requested that the proposal be modified to except only that material which can be controlled in the immediate release area. RSPA believes that the continued reporting of incidents involving these materials is of minimal value when weighed against the burden placed on carriers who are required to prepare and submit incident reports. In addition, if a large number of limited quantity packages causes a serious incident to occur that meets a criterion in § 171.15, a written report is still required. Therefore, RSPA is adopting this amendment as proposed.

Part 172

Section 172.101. As proposed, RSPA is amending the § 172.101 Table for the entries ''Cartridges for weapons, blank, *or* Cartridges, small arms, blank, UN 0014''; ''Cartridges for weapons, inert projectile, *or* Cartridges, small arms, UN0012''; ''Cartridges, power device, UN0323''; and ''Cartridges, small arms'', in Column (7), by removing the reference ''112''. Also for these entries, in Column (8A) of the § 172.101 Table, the word ''None'' or ''230'', as appropriate, is removed and replaced with ''63''. The provisions to reclass an explosive as an ORM-D material, currently contained in Special Provision 112 and in § 173.230(b), are relocated to § 173.63(b) to minimize confusion.

RSPA is also amending, as proposed, Column (7) of the § 172.101 Table for the entry ''Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions'' by adding Special Provision ''24'' to allow ethanol the same packing group criteria as alcoholic beverages.

In this final rule, RSPA is also making some minor changes to the headings of some of the columns of the Hazardous Materials Table. The headings for columns (8), (8B) and (8C) are revised to read ''Packaging (§ 173.***)'', ''Nonbulk'', and ''Bulk'', respectively. The headings for column (9A), (10), (10A) and (10B) are revised to read ''Passenger aircraft/rail'', ''Vessel; Stowage'', ''Location'', and ''Other'', respectively. These changes will make

the headings more descriptive of the referenced requirements therein and will also decrease the size of the Hazardous Materials Table.

Section 172.102. As proposed, RSPA is removing Special Provision 112.

Section 172.201. As proposed, RSPA is amending § 172.201(d) by adding a cross-reference to § 172.604(c).

Sections 171.11, 172.203 and 172.324. Currently, all constituents in a mixture or solution that meet the definition of ''hazardous substance'' in § 171.8 must be identified on shipping papers and package markings. In the NPRM, RSPA proposed to require that at least two hazardous substances be identified on shipping papers and package markings for hazardous materials containing two or more hazardous substances. This proposal is consistent with the technical name requirements in § 172.203(k).

RSPA received several comments in support of this proposed change. Commenters stated these changes would facilitate overall compliance. Some commenters who supported the proposal requested that RSPA provide guidance on which hazardous substances should be identified. A commenter opposed to the change stated that the Environmental Protection Agency (EPA) requires that persons who have custody of hazardous substances report the release of every constituent hazardous substance for these materials.

RSPA does not believe that requiring only two constituent hazardous substances to be identified on shipping papers and package markings will cause persons to be in violation of the EPA's reporting requirements in 40 CFR 302.6. However, in response to the comments, RSPA is not adopting the rule as proposed but is modifying the proposal to require identification of those hazardous substances with the lowest reportable quantities (RQ). For release of mixtures or solutions, including hazardous wastes, where the amount of the mixture or solution is unknown, a person is required under 40 CFR 302.6, to report to the National Response Center (NRC) when the amount of the mixture or solution equals or exceeds the lowest RQ. Therefore, if the two materials with the lowest RQs are identified, a carrier will have sufficient information to satisfy the reporting requirements of the EPA under 40 CFR 302.6. In addition, RSPA is revising § 171.11(d)(1) to be consistent with the changes in §§ 172.203 and 172.324.

RSPA also proposed to remove paragraph (e)(3) to eliminate the requirement to include the statement ''RESIDUE: Last Contained * * *'' on shipping papers for a shipping description of packages containing only the residue of a hazardous substance. Many commenters misunderstood the proposal as also removing the requirement to enter the statement ''RESIDUE: Last Contained * * *'' before the shipping description for a tank car which contains the residue of a hazardous substance. This is not the case. The shipping description for a tank car that contains the residue of a hazardous material, including a hazardous substance, is required by § 172.203(e)(2) to be prefaced with the statement ''RESIDUE: Last Contained * * *''. The removal of § 172.203(e)(3) eliminates the requirement to preface the shipping description of a residue of a hazardous substance in a package other than a tank car (e.g., drum or cargo tank) with the statement ''RESIDUE: Last Contained * * *.''

Section 172.316. Based on a comment received under Docket HM–222, RSPA proposed to modify § 172.316 to allow the CLASS 9 label in place of the ORM–D marking on packages of consumer commodities. RSPA received only two comments on this proposal, both opposing it. One of the comments was submitted by the commenter who had suggested the revision. Since the commenter originally requesting the revision believes the change would cause unnecessary confusion and would require the retraining of numerous employees with minimal benefit, RSPA is not adopting the proposal to allow the CLASS 9 label in place of the ORM–D marking.

Section 172.402. As proposed, RSPA is revising § 172.402 by adding an exception from the requirement for subsidiary hazard labeling for certain packages of Class 7 (radioactive) materials that also meet the definition of another hazard class, except Class 9. These Class 7 materials conform to all requirements in § 173.4, except for their specific activity level, which exceeds permissible limits for a limited quantity radioactive material.

Section 172.500. As proposed, RSPA is amending this section by adding a new paragraph (b)(4) to clarify that small quantities of hazardous materials prepared in accordance with § 173.13 are excepted from the placarding requirements of Subpart F of Part 172.

Section 172.600. As proposed, RSPA is excepting all ORM–D material from the emergency response information and telephone number requirements of Subpart G of Part 172, even when offered for transportation or transported by aircraft.

Section 172.604. Based on its own initiative and petitions for rulemaking, and because of the belief that the costs to implement these requirements outweigh the benefits, RSPA proposed to except the following materials from emergency response telephone number requirements: (1) Liquid petroleum distillate fuels (e.g., gasoline, propane, and diesel fuel); (2) limited quantities of hazardous materials; and (3) materials described under the shipping names ''Engines, internal combustion''; ''Battery powered equipment''; ''Battery powered vehicle''; ''Wheelchair, electric''; ''Carbon dioxide, solid''; ''Dry ice''; ''Fish meal, stabilized''; ''Fish scrap, stabilized''; ''Castor bean''; ''Castor meal''; ''Castor flake''; ''Castor pomace''; and ''Refrigerating machine''.

RSPA received numerous comments opposing the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement. Commenters opposing the proposed exception included: emergency responders, petroleum transporters, trade associations, State and local agencies, environmental contractors and consultants, and a railroad association. These commenters stated that the benefits of retaining the 24-hour telephone number for liquid petroleum distillate fuels outweigh the costs. Commenters stated that the 24-hour telephone number enables emergency responders to immediately contact the parties involved to arrange for clean-up of a spill. A commenter stated that information on the composition of a particular gasoline may be available only from the shipper through the emergency response telephone number. Other commenters stated that many gasolines contain ethyl alcohol, methyl alcohol or other oxygenating components that traditional firefighting foams are considerably less effective on than are alcohol foams. Commenters also stated that many small fire departments have never handled a major spill involving large volumes of gasoline or propane. The commenters stated that responders need every resource available to them in the event of a hazardous materials spill.

RSPA received several comments from businesses and trade organizations in favor of the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement. The commenters agreed with RSPA's statement in the NPRM that emergency responders routinely handle incidents involving liquid petroleum distillate fuels and that it is questionable whether the 24-hour emergency response telephone number could provide emergency responders with any additional information of value beyond that which is required to be carried in the vehicle.

RSPA received few comments on the proposal to except limited quantities, and other miscellaneous materials, from the 24-hour telephone number requirement. Those in favor of the proposal cited the high costs associated with providing an emergency response telephone number against the minimal hazards associated with such small quantities of material. One commenter stated that the exception for the emergency response telephone number for hazardous materials in limited quantities will provide the regulated community with significant relief while not sacrificing safety. Those opposing the proposal stated that since limited quantities of materials are already excepted from other hazard communication requirements, e.g., labeling, that emergency responders are already hampered when responding to an incident involving these materials and that excepting them from the emergency response telephone number would only create more problems for responders.

RSPA believes that providing emergency response information to emergency responders is an important aspect of its hazardous materials safety program. Emergency response information enhances communication pertaining to the safe handling and identification of hazardous materials involved in transportation incidents. The intent of the NPRM was to relax the emergency response information requirements for those materials where the costs to maintain the information were believed to outweigh the benefits derived from providing the information. Based on the comments received opposing the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement, RSPA has decided not to adopt the proposed exception for liquid petroleum distillate fuels. Commenters stated that the costs to maintain the 24-hour emergency response telephone number for liquid petroleum distillate fuels do not outweigh the benefits and, therefore, the requirement should be retained. As expressed by one commenter, a propane distributor who would have directly benefited from the exception, the cost to maintain a 24-hour emergency telephone number is minimal and the cost poses no real financial burden, especially considering the safety of emergency response personnel, the public, and the environment.

With regard to the proposed exception for limited quantities, consumer commodities transported by aircraft, and other miscellaneous materials, RSPA continues to believe that the costs to maintain a 24-hour emergency response telephone number outweigh the benefits of providing the information for millions of small shipments. However, RSPA believes that the impact on air transportation safety of excepting ''Mercury contained in manufactured articles'' from the 24-hour emergency response telephone number requirement requires further study. Therefore, except for ''Mercury contained in manufactured articles'', RSPA is adopting an exception from the emergency response telephone number requirements of § 172.604 for limited quantities, consumer commodities transported by aircraft, and other miscellaneous materials.

Based on its own initiative, RSPA proposed to clarify that more than one emergency response telephone number with different hours of operation may be used to satisfy the requirements of § 172.604. RSPA received numerous comments both in support of and against the proposed clarification. RSPA believes that the issues raised by the commenters need further review and will finalize its decision on this proposal in a future rulemaking. Therefore, in the interim, multiple emergency response phone numbers are authorized on a shipping paper if the requirements of § 172.604 are met.

Sections 172.702 and 172.704. RSPA stated in the notice of public meetings under Docket HM–222 (60 FR 17049) that it would consider extending the requirement for recurrent training from every two years to every three or four years. RSPA received numerous written and oral comments in support of decreasing the frequency specified to retrain hazmat employees in accordance with Subpart H of Part 172. In the NPRM, RSPA proposed to decrease the frequency of recurrent hazmat training from two years to three years. RSPA stated that this frequency is consistent with other training programs, such as the training required under the Transportation of Dangerous Goods Regulations issued by the government of Canada.

RSPA received numerous comments in support of this proposal and many comments in opposition. Commenters supporting the proposal included: shippers, carriers, safety and trade associations, oil and petrochemical companies and associations, a railroad association. Some commenters requested that RSPA extend the training to every four years. The commenters stated that the amendment would significantly reduce costs to the regulated community without any decrease in safety. Commenters who supported the proposal to extend the training frequency requirements to every three years stated that the change would allow hazmat employers to provide for more cost-effective training of hazmat employees, since training times could be better coordinated to accommodate employee work schedules and varying business cycles. Some commenters who supported the proposal stated that extending the training frequency is consistent with other regulatory requirements (e.g., Canadian regulations). One commenter noted that, although international regulations require training on a two-year cycle, inclusion of the phrase ''at least'' enables persons involved in international transportation to comply with both requirements without any conflict or confusion. Commenters also stated that if RSPA adopts a change to the training frequency requirements, then a corresponding change to the recordkeeping requirements is also necessary.

Those commenters who opposed the proposed change in training frequency included: trade and service associations, training and consulting organizations, shippers and carriers, and emergency response organizations. These commenters stated that the proposal to increase the training frequency would have a detrimental impact on safety. Some commenters also stated that the proposal will diminish the apparent importance of the DOT program in the eyes of employees and supervisors.

RSPA believes that one of the most important regulatory requirements in the HMR is its training requirement. Proper training increases a hazmat employee's awareness of safety considerations involved in the loading, unloading, handling, storing, and transportation of hazardous materials. An effective training program reduces hazardous materials incidents resulting from human error and mitigates the effects of incidents when they occur. The importance of RSPA's training requirements is not diminished by a decrease in the frequency of training from two to three years. However, RSPA is not adopting commenter suggestions to extend the training frequency to every four years. The adoption of a three-year interval for training frequency strikes a balance between an effective training program and the costs that are imposed on the regulated community. Therefore, RSPA is revising the training frequency for hazmat employees from every two years to every three years. In addition, as requested by commenters, RSPA is adjusting the recordkeeping requirements for training records to specify that training records be retained for three years.

In the preamble to the NPRM, RSPA stated: ''Except as provided in § 172.704(c), hazmat employees must be trained whenever their hazmat functions change or the requirements are revised, regardless of the minimally required training frequency.'' A number of commenters were concerned with this statement because they did not see any corresponding proposed change to the HMR. Some commenters also expressed concern with the statement that hazmat employees must be retrained every time a change to the HMR is adopted because it could require retraining several times a year.

Section 172.702 (Subpart H) states that any person who performs a function subject to the HMR may not perform that function unless trained in accordance with the requirements prescribed in the subpart. In addition, a hazmat employer must insure that each hazmat employee is thoroughly instructed in the requirements that apply to functions performed by that employee. If a new regulation is adopted, or an existing regulation is changed, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function specific requirements without regard to the timing of the three year training cycle. It is not necessary to completely retrain the employee sooner than the required three year cycle. The only instruction required is that necessary to assure knowledge of the new or revised regulatory requirement. For example, if a new requirement is added to the shipping paper requirements, a hazmat employee must be instructed regarding the new requirement prior to performance of a function affected by the new or revised rule. It is not necessary to test the hazmat employee, or retain records of the instruction provided in the new or revised requirements until the next scheduled retraining at or within the three year cycle. In order to clarify the training requirements of the HMR, RSPA is revising § 172.702(b) to state that an employee must be instructed in the requirements of the HMR that apply to each function performed by the employee without a reference to the requirements of subpart H (e.g., the training, testing and recordkeeping requirements of § 172.704). This amendment makes it clear that RSPA does not intend that millions of detailed records be created and retained and associated testing be conducted each time a hazmat employee is instructed in regard to a change in the regulations within the three year cycle. Consistent with this amendment, RSPA is also revising § 172.704(d) to clarify that only records of the training required by § 172.704, and not the subpart, are required to be maintained. In addition, as proposed, RSPA is adding a reference in § 172.702(b) to the exception provided in § 172.704 for employees employed less than 90-days.

RSPA proposed to revise § 172.704(c) to clarify its position concerning the ''direct'' supervision of a hazmat employee who has not received initial training. RSPA is adopting the amendment, as proposed in the NPRM, to add the word ''direct'' preceding the word ''supervision'' in § 172.704(c)(1). RSPA requires that the person providing direct supervision must be able to instruct the employee on how to properly perform the hazmat function, must observe performance of the hazmat function, and must be able to take immediate corrective actions in regard to any function not performed in conformance with the HMR.

Part 173

Section 173.4. As proposed, RSPA is revising the HMR to permit Division 4.2 and 4.3 materials and hazardous materials identified in paragraph (a)(11) to be shipped under the small quantity provisions. RSPA is also adding a new paragraph (c) to allow small quantities of certain categories of hazardous materials not authorized under this exception to be shipped in accordance with this section if specifically approved by the Associate Administrator for Hazardous Materials Safety. RSPA is also revising the marking requirements in paragraph (a)(10). These changes to § 173.4 are intended to ease burdens on industry and facilitate international transportation of hazardous materials in very small quantities. RSPA received several comments in support of these amendments. One commenter requested that RSPA continue to authorize the previously required marking. RSPA agrees and has modified the amendment to authorize the previously required marking for an additional five years.

Section 173.13. In the NPRM, RSPA proposed to add a new § 173.13 that incorporates, for highway and rail transport only, the provisions of DOT exemptions E–7891 and E–9168 into the HMR. These exemptions, and others commonly referred to as the ''poison pack'' exemptions, allow small quantities of hazardous materials in special packagings of high integrity to be transported without their primary or subsidiary labels. In addition, RSPA proposed to except these materials from the placarding and segregation requirements of the HMR.

RSPA received several comments on this issue in support of adopting these exemptions into the HMR, but the commenters also requested further clarification. Two commenters noted that one of the inner packagings required by the exemptions was not included in the proposed new section. Commenters also requested that the section be broadened to include air transport and materials poisonous by inhalation, as presently authorized in the exemptions. Commenters also requested that the term ''rigid can'' be clarified and that all affected exemptions be identified.

Commenters who opposed adoption of this new section were concerned about the loss of controls that are provided under an exemption. In addition, commenters were concerned that there would be no clear identification on the package that the package is being offered for transportation or transported under the provisions of § 173.13.

RSPA believes that the safety record of the ''poison pack'' exemption packagings over the years has shown that they are acceptable for inclusion in the HMR. However, several points of clarification and revision to the proposal are necessary. First, RSPA is extending the application of § 173.13 to permit transportation by cargo aircraft. RSPA will continue to monitor the transportation of these packages with materials poisonous by inhalation and by passenger carrying aircraft under the terms of the exemption, and therefore, is not extending the application of the new section to cover these operations. These operations can continue under the applicable exemptions. RSPA is also requiring another level of inner packaging to be consistent with the exemptions. In order to clarify the term ''rigid can'', RSPA is changing the term to ''metal can.''

RSPA agrees with commenters who were concerned that packages prepared in accordance with § 173.13 would not be readily identifiable in transportation. Therefore, RSPA is adopting in this final rule a marking requirement similar to that required for small quantities prepared in accordance with § 173.4. Packages prepared in accordance with § 173.13 must be marked, in association with the proper shipping name, with the following statement: ''This package conforms to 49 CFR 173.13.''

One commenter was concerned that no specific exception from the segregation requirements was proposed in the section, as is provided in the exemptions. RSPA notes that the

segregation requirements of the HMR are based on package labels. Therefore, materials that are excepted from the labeling requirements of the HMR are also excepted from the segregation requirements of the HMR. For clarification, RSPA is revising §§ 172.500 and 173.13 to note that packages conforming to the requirements in § 173.13 are excepted from the placarding requirements of the HMR.

Commenters requested that RSPA identify all of the exemptions potentially affected by the adoption of § 173.13. Those exemptions are DOT E–7891, 7909, 8249, 9168, 10672, 10755, 10891, 10962, and 10977.

Section 173.21. In the NPRM, RSPA proposed to incorporate into § 173.21 the provisions of a competent authority approval for temperature-controlled shipments. RSPA received several comments in support of the proposal, but commenters also requested changes to the section. One commenter noted that no specific reference to cargo tanks or portable tanks was made in the proposed section and questioned whether they were included. Section 173.21(f)(3) does not authorize packagings, but provides methods of stabilization that are authorized by the Associate Administrator for Hazardous Materials Safety. Therefore, cargo tanks or portable tanks are not excluded from the provisions of § 173.21(f)(3).

Several commenters requested that § 173.21(f)(3)(i)(B), which requires the temperature of the material to be measured and entered on a written record at the time the material is filled, only apply to bulk packagings and not to all packagings. The commenters stated that measuring and recording the temperature of every small, individual package as it is filled is an unnecessary burden that would do nothing to enhance transportation safety. RSPA believes that measuring and recording the temperature of the packaging prior to transport is an important part of the approved stabilization process. However, RSPA is revising § 173.21(f)(3)(i)(B) to require determination of the temperature of the package, by appropriate means, at the time it is loaded into the transport vehicle, not when the package is filled. This should eliminate the unnecessary measurement of packages that are in storage and not in transportation.

Section 173.32a. As proposed, RSPA is removing the requirement that an approval agency submit an approval certificate to the Associate Administrator for Hazardous Materials Safety.

Section 173.155. RSPA is amending this section as proposed.

Section 173.171. Sections 173.171 and 177.838(g) prescribe requirements for smokeless powder for small arms. However, § 177.838(g) provides additional relief by allowing inside packages of smokeless powder to be overpacked in UN 4G boxes, provided the net weight of smokeless powder in any one box does not exceed 7.26 kg (16 pounds). This provision is not contained in § 173.171. Therefore, as proposed, RSPA is removing the § 177.838(g) provisions pertaining to classification and packaging, and adding the provision concerning smokeless powder in overpacks to § 173.171. In addition, as proposed, RSPA is broadening the exception for reclassification of smokeless powder to Division 4.1 to include transportation by vessel and cargo aircraft. RSPA received two comments on this proposal. One commenter agreed with the proposal but requested that there be no limit on the amount of material authorized per transport vehicle. In the NPRM, RSPA proposed to extend the application of an existing section, i.e., § 173.171, to other modes of transport, but the amount of material authorized per transport vehicle was not proposed for amendment. RSPA believes that the § 173.171 100-pound limitation on smokeless powder, reclassed as a Division 4.1 material, per transport vehicle is necessary to retain the level of safety that has been maintained for the last several years in the highway and rail modes. One of the major arguments submitted in support of the original regulatory provision was that the 100-pound limit would preclude a major conflagration should these materials become involved in cargo fires. Therefore, RSPA has not adopted the commenter's request to eliminate the 100-pound weight limitation. Another commenter objected to RSPA extending this reclassification to transportation by aircraft because of its potential explosive hazards. This provision is consistent with an exemption (DOT E–9997) that was issued in 1988. Based on the successful experience under this exemption, RSPA believes there is no basis for the suggestion that the reclassification of smokeless powder for small arms to Division 4.1, under special testing and approval procedures would provide an unacceptable level of safety in air transportation. Therefore, RSPA is extending the applicability of § 173.171 to transportation by cargo aircraft.

Section 173.220. RSPA is amending this section as proposed.

Section 173.230. RSPA is amending this section as proposed.

Section 173.435. In § 173.435, RSPA is amending the Table of A_1 and A_2 values by adding an entry for MFP (mixed fission products). This entry was inadvertently left off the table under Docket HM–169A (61 FR 20747).

Part 176

Section 176.104. RSPA is amending this section as proposed.

Part 177

Section 177.801. RSPA is amending this section as proposed.

Section 177.818. RSPA is removing this section as proposed.

Section 177.821. RSPA is removing this section as proposed.

Section 177.822. RSPA is removing this section as proposed.

Sections 177.824, 177.834, and 180.407. In the NPRM, RSPA proposed to remove §§ 177.824 and 177.834(j) because they duplicate other HMR provisions. RSPA proposed removing § 177.834(b) because RSPA is not aware of any hazardous material that is transported on pole trailers. RSPA also proposed to add a new § 177.834(j) consolidating the provisions of §§ 177.837(d), 177.839(d), and 177.841(d) that require manholes and valves on cargo tanks to be closed prior to transportation.

RSPA received several comments in support of these proposals. One commenter requested that RSPA not delete § 177.824 because it would eliminate the responsibility of a motor carrier who is transporting another party's cargo tank from satisfying the inspection and retesting requirements of Part 180. RSPA agrees with the commenter; however, rather than retaining § 177.824, RSPA is removing it and revising § 180.407 to make it clear that a cargo tank may not be transported unless it conforms to the retest requirements of Part 180. Otherwise, RSPA is adopting these amendments as proposed.

Section 177.835. RSPA is removing paragraphs (k), (l), and (m) as proposed.

Section 177.838. RSPA is amending this section as proposed.

Section 177.839. In the NPRM, RSPA proposed to revise paragraph (a) by limiting the applicability of the paragraph to nitric acid in concentrations of 50 percent or greater. In addition, RSPA proposed removing the paragraph (a) restriction on stacking containers of nitric acid higher than two tiers and all of paragraph (b) because they are outdated and unnecessary. RSPA received one comment that supported the proposed amendments to

§ 177.839 but requested clarification of the term ''other material'' as used in the section. The term ''other material'' refers to any other kind of material, including nonhazardous materials. Therefore, RSPA has adopted the amendments as proposed.

Section 177.841. As proposed, RSPA is amending § 177.841, consistent with § 175.630, to authorize the transport of foodstuffs and poisons in the same motor vehicle when loaded into separate closed unit load devices. In addition, RSPA is removing the provision allowing use of the container identified as package ''4000'' in the National Motor Freight Classification 100–1, for the transport of foodstuffs and poisons on the same motor vehicle. RSPA believes that this container has not been used for some time and, therefore, reference to it is unnecessary. RSPA received several comments in support of this proposal. In addition, one commenter requested that RSPA authorize any Division 6.1 material, except materials poisonous by inhalation, to be transported with food grade material provided both materials are appropriately packaged in performance-oriented containers. RSPA believes this request to be beyond the scope of this rulemaking and has not adopted this commenter's request.

Section 177.848. RSPA is amending this section as proposed.

Part 178

Section 178.315. In the NPRM, RSPA proposed removing the Specification MC200 requirements from the HMR because RSPA believes that this container is no longer utilized in hazardous materials service. RSPA received one comment on this proposal stating that the commenter was unaware of any person using the DOT Specification MC200. Therefore, as proposed, RSPA is removing the Specification MC200 requirements from the HMR.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is so minimal that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This final rule clarifies and provides relief from certain regulations governing the transportation of hazardous materials. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

Information collection requirements subject to approval by the Office of Management and Budget (OMB) are addressed in this final rule in § 171.16 for incident reporting (OMB control number 2137–0039) and subpart C of part 172 and § 172.604 for shipping papers (OMB control number 2137–0034). Provisions in this final rule will result in minor reduction in information collection burdens under both approvals. RSPA is requesting reinstatement and revision of OMB control number 2137–0039 from OMB and will display, through publication in the Federal Register, the control number when it is approved by OMB. Public comment on this request was invited through publication of a Federal Register notice on March 5, 1996 (61 FR 8706). OMB control number 2173–0034 is currently approved and the change in burden is not sufficient to warrant revision of the approval. Under the Paperwork Reduction Act of 1995, no person generally is required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 176, 177, 178, and 180 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

1a. In § 171.7(a)(3), in the table, the entry ''International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 27 (1994) (English edition)'', in column 2, the reference ''173.21;'' is added in appropriate numerical order.

1b. In § 171.11, paragraph (d)(1) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(1) For a material that meets the definition of a hazardous substance as defined in this subchapter, the shipping paper and package markings must conform to the provisions in § 172.203(c) and 172.324, respectively, of this subchapter.

* * * * *

2. In § 171.16, paragraph (c) is revised, paragraph (d)(2) is amended by removing the word ''nor'' at the end of the paragraph, paragraph (d)(3) is redesignated as paragraph (d)(4), and a new paragraph (d)(3) is added to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

(i) Consumer commodity.

(ii) Battery, *electric storage*, wet, filled with acid *or* alkali.

(iii) Paint and paint related material when shipped in a packaging of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) * * *

(3) Except for consumer commodities, materials in Packing Group I; or

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In the § 172.101 Hazardous Materials Table, the following amendments are made:

a. The headings for columns (8), (8B),(8C), (9A), (10), (10A), and (10B) are revised to read ''Packaging (§ 173. * * *)'', ''Nonbulk'', ''Bulk'', ''Passenger aircraft/rail'', ''Vessel Stowage'', ''Location'', and ''Other'', respectively.

b. For the entries ''Cartridges for weapons, blank *or* Cartridges, small arms, blank, UN 0014'', ''Cartridges for weapons, inert projectile *or* Cartridges, small arms, UN0012'', ''Cartridges, power device, UN0323'', and ''Cartridges, small arms'', in Column (7), special provision ''112'' is removed.

c. For the entries ''Cartridges for weapons, blank *or* Cartridges, small arms, blank, UN 0014'', ''Cartridges for weapons, inert projectile *or* Cartridges, small arms, UN0012'', and ''Cartridges, power device, UN0323'', in Column (8A), the word ''None'' is revised to read ''63''.

d. For the entry ''Cartridges, small arms'', in Column (8A), the number ''230'' is revised to read ''63''.

e. For the entry ''Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions'', in Column (7), the number ''24,'' is added immediately preceding ''T1'', in Packing Group II, and the number ''24,'' is added immediately preceding ''B1'' in Packing Group III.

f. For the entry ''Smokeless powder for small arms (*100 pounds or less*), NA3178'', in Column (9B), the word ''Forbidden'' is revised to read ''7.3 kg''.

§ 172.102 [Amended]

5. In § 172.102, in paragraph (c)(1), special provision ''112'' is removed.

6. In § 172.201, paragraph (d) is revised to read as follows:

§ 172.201 General entries.

* * * * *

(d) *Emergency response telephone number.* Except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number, as prescribed in subpart G of this part.

7. In § 172.203, paragraph (c)(1) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(c) *Hazardous substances.* (1) Except for Class 7 (radioactive) materials described in accordance with paragraph (d) of this section, if the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be entered in parentheses in association with the basic description. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

* * * * *

§ 172.203 [Amended]

8. In addition, in § 172.203, the following amendments are made:

a. In paragraph (e)(2), the phrase ''and paragraph (e)(3) of this section'' is removed.

b. Paragraph (e)(3) is removed.

9. In § 172.324, paragraph (a) is revised to read as follows:

§ 172.324 Hazardous substances in non-bulk packagings.

* * * * *

(a) Except for packages of radioactive material labeled in accordance with § 172.403, if the proper shipping name of a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be marked on the package, in parentheses, in association with the proper shipping name. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

* * * * *

10. In § 172.402, paragraph (d) is revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(d) *Class 7 (Radioactive) Materials.* Except as otherwise provided in this paragraph, each package containing a Class 7 material that also meets the definition of one or more additional hazard classes must be labeled as a Class 7 material as required by § 172.403 of this subpart and for each additional hazard. A subsidiary hazard label is not required on a package containing a Class 7 material that conforms to criteria specified in § 173.4 of this subchapter, except § 173.4(a)(1)(iv) of this subchapter.

* * * * *

11. In § 172.500, paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(5) and (b)(6), respectively, and a new paragraph (b)(4) is added to read as follows:

§ 172.500 Applicability of placarding requirements.

* * * * *

(b) * * *

(4) Hazardous materials prepared in accordance with § 173.13 of this subchapter;

* * * * *

12. In § 172.600, paragraph (d) is revised to read as follows:

§ 172.600 Applicability and general requirements.

* * * * *

(d) *Exceptions.* The requirements of this subpart do not apply to hazardous material which is excepted from the shipping paper requirements of this subchapter or a material properly classified as an ORM–D.

13. In § 172.604, new paragraph (c) is added to read as follows:

§ 172.604 Emergency response telephone number.

* * * * *

(c) The requirements of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities; and

(2) Materials properly described under the shipping names ''Engines, internal combustion'', ''Battery powered equipment'', ''Battery powered vehicle'', Wheelchair, electric'', ''Carbon dioxide, solid'', ''Dry ice'', ''Fish meal, stabilized'', ''Fish scrap, stabilized'', ''Castor bean'', ''Castor meal'', ''Castor flake'', ''Castor pomace'', or ''Refrigerating machine''.

14. In § 172.702, paragraph (b) is revised to read as follows:

§ 172.702 Applicability and responsibility for training and testing.

* * * * *

(b) Except as provided in § 172.704(c)(1), a hazmat employee who performs any function subject to the requirements of this subchapter may not perform that function unless instructed in the requirements of this subchapter that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of this subchapter and to thoroughly instruct each hazmat employee in relation thereto.

* * * * *

15. In § 172.704, paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (d) are revised to read as follows:

§ 172.704 Training requirements.

* * * * *

(c) * * * (1) *Initial training.* A new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided—

(i) The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and

(ii) The training is completed within 90 days after employment or a change in job function.

(2) *Recurrent training.* A hazmat employee shall receive the training required by this subpart at least once every three years.

* * * * *

(d) *Recordkeeping.* A record of current training, inclusive of the preceding three years, in accordance with this section shall be created and retained by each hazmat employer for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. The record shall include:

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

16. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

17. In § 173.4, the section heading is revised, paragraph (a)(11) is removed, paragraph (a) introductory text, paragraphs (a)(9) and (a)(10) are revised, and a new paragraph (c) is added to read as follows:

§ 173.4 Small quantity exceptions.

(a) Small quantities of Class 3, Division 4.1, Division 4.2 (PG II and III), Division 4.3 (PG II and III), Division 5.1, Division 5.2, Division 6.1, Class 7, Class 8, and Class 9 materials that also meet the definition of one or more of these hazard classes, are not subject to any other requirements of this subchapter when—

* * * * *

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) The shipper certifies conformance with this section by marking the outside of the package with the statement ''This package conforms to 49 CFR 173.4'' or, alternatively, until October 1, 2001, with the statement ''This package conforms to the conditions and limitations specified in 49 CFR 173.4.''

* * * * *

(c) Packages which contain a Class 2, Division 4.2 (PG I), or Division 4.3 (PG I) material conforming to paragraphs (a)(1) through (a)(10) of this section may be offered for transportation or transported if specifically approved by the Associate Administrator for Hazardous Materials Safety.

18. Section 173.13 is added to Subpart A to read as follows:

§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

(a) A Class 3, 8 or 9, or Division 4.1, 4.2, 4.3, 5.1, or 6.1 material is excepted from the labeling and placarding requirements of this subchapter if prepared for transportation in accordance with the requirements of this section. A material that meets the definition of a material poisonous by inhalation may not be offered for transportation or transported under provisions of this section.

(b) A hazardous material conforming to requirements of this section may be transported by motor vehicle, rail car, or cargo-only aircraft. Only hazardous materials permitted to be transported aboard a cargo-only aircraft by column (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized for transport aboard cargo-only aircraft pursuant to the provisions of this section.

(c) A hazardous material permitted by paragraph (a) of this section must be packaged as follows:

(1) For liquids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging with a maximum capacity not exceeding 1.2 liters. Sufficient outage must be provided such that the inner packaging will not become liquid full at 55 °C (130 °F). The net quantity (measured at 20 °C

(68 °F)) of liquid in any inner packaging may not exceed one liter.

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging, and placed in a snugly fitting, metal can.

(iii) The metal can must be securely closed. For liquids that are in Division 4.2 or 4.3, the metal can must be hermetically sealed. For Division 4.2 materials in Packing Group I, the metal can must be tested in accordance with part 178 of this subchapter at the Packing Group I performance level.

(iv) The metal can must be placed in a fiberboard box that is placed in a hermetically-sealed barrier bag which is impervious to the lading.

(v) The intermediate packaging must be placed inside a securely closed, outer packaging conforming to § 173.201.

(vi) Not more than four intermediate packagings are permitted in an outer packaging.

(2) For solids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging. The net quantity of material in any inner packaging may not exceed 2.85 kg (6.25 pounds).

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iii) The barrier bag and its contents must be placed in a fiberboard box that is placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iv) The intermediate packaging must be placed inside an outer packaging conforming to § 173.211.

(v) Not more than four intermediate packagings are permitted in an outer packaging.

(d) The outside of the package must be marked, in association with the proper shipping name, with the statement: ''This package conforms to 49 CFR 173.13.''

19. In § 173.21, paragraph (f)(3) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) Refrigeration may be used as a means of stabilization only when approved by the Associate Administrator for Hazardous Materials Safety. For status of approvals previously issued by the Bureau of Explosives, see § 171.19 of this subchapter. Methods of stabilization approved by the Associate Administrator for Hazardous Materials Safety are as follows:

(i) For highway transportation:

(A) A material meeting the criteria of this paragraph (f) may be transported only in a transport vehicle, freight container, or motor vehicle equipped with a mechanical refrigeration unit, or loaded with a consumable refrigerant, capable of maintaining the inside temperature of the hazardous material at or below the control temperature required for the material during transportation.

(B) Each package containing a material meeting the criteria of this paragraph (f) must be loaded and maintained at or below the control temperature required for the material. The temperature of the material must be determined by appropriate means and entered on a written record at the time the packaging is loaded.

(C) The vehicle operator shall monitor the inside temperature of the transport vehicle, freight container, or motor vehicle and enter that temperature on a written record at the time the package is loaded and thereafter at intervals not exceeding two hours. Alternatively, a transport vehicle, freight container, or motor vehicle may be equipped with a visible or audible warning device that activates when the inside temperature of the transport vehicle, freight container, or motor vehicle exceeds the control temperature required for the material. The warning device must be readily visible or audible, as appropriate, from the vehicle operator's seat in the vehicle.

(D) The carrier shall advise the vehicle operator of the emergency temperature for the material, and provide the vehicle operator with written procedures that must be followed to assure maintenance of the control temperature inside the transport vehicle, freight container, or motor vehicle. The written procedures must include instructions for the vehicle operator on actions to take if the inside temperature exceeds the control temperature and approaches or reaches the emergency temperature for the material. In addition, the written temperature-control procedures must identify enroute points where the consumable refrigerant may be procured, or where repairs to, or replacement of, the mechanical refrigeration unit may be accomplished.

(E) The vehicle operator shall maintain the written temperature-control procedures, and the written record of temperature measurements specified in paragraph (f)(3)(i)(C) of this section, if applicable, in the same manner as specified in § 177.817 of this subchapter for shipping papers.

(F) If the control temperature is maintained by use of a consumable refrigerant (e.g., dry ice or liquid nitrogen), the quantity of consumable refrigerant must be sufficient to maintain the control temperature for twice the average transit time under normal conditions of transportation.

(G) A material that has a control temperature of 40 °C (104 °F) or higher may be transported by common carrier. A material that has a control temperature below 40 °C (104 °F) must be transported by a private or contract carrier.

(ii) For transportation by vessel, shipments are authorized in accordance with the control-temperature requirements of Section 21 of the General Introduction of the International Maritime Dangerous Goods Code (IMDG Code).

* * * * *

20. In § 173.32a, paragraph (c) is revised to read as follows:

§ 173.32a Approval of Specification IM portable tanks.

* * * * *

(c) *Disposition of approval certificates*. A copy of each approval certificate must be retained by the approval agency and by the owner of each IM portable tank.

* * * * *

§ 173.155 [Amended]

21. In § 173.155, in paragraph (b)(1), the wording ''4.0 L (1 gallon)'' is revised to read ''5.0 L (1.3 gallons)''.

22. In § 173.171, at the end of paragraph (a) the semicolon is removed and a period is added in its place, the introductory text and paragraph (b) are revised and a new paragraph (d) is added to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3 may be reclassed in Division 4.1, for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

* * * * *

(b) The total quantity of smokeless powder may not exceed 45.4 kg (100 pounds) net mass in:

(1) One rail car, motor vehicle, or cargo-only aircraft; or

(2) One freight container on a vessel, not to exceed four freight containers per vessel.

* * * * *

(d) Inside packages that have been examined and approved by the

Associate Administrator for Hazardous Materials Safety may be packaged in UN 4G fiberboard boxes meeting the Packing Group I performance level, provided all inside containers are packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 7.3 kg (16 pounds).

23. In § 173.220, paragraph (g)(2) is revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

* * * * *

(g) * * *

(2) Are not subject to the requirements of subparts D, E, and F (marking, labeling, and placarding, respectively) of part 172 or § 172.604 (emergency response telephone number) of this subchapter for transportation by vessel or aircraft.

§ 173.63 [Amended]

§ 173.230 [Removed]

24. Paragraph (b) of § 173.230 is redesignated as paragraph (b) of § 173.63 and § 173.230 is removed.

24a. In § 173.435, in the Table of A_1 and A_2 values for radionuclides, the following entry is added, in appropriate alphabetical order, to read as follows:

§ 173.435 Table of A_1 and A_2 values for radionuclides.

* * * * *

Symbol of radionuclide	Element and atomic No.	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
*	*	*	*	*	*		*
MFP		(see § 173.433)		(see § 173.433)			
*	*	*	*	*	*		*

PART 176—CARRIAGE BY VESSEL

25. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

26. In § 176.104, the first sentence of paragraph (i) is revised to read as follows:

§ 176.104 Loading and unloading Class 1 (explosive) materials.

* * * * *

(i) A landing mat must be used when a draft of nonpalletized Division 1.1 or 1.2 (Class A and B explosive materials) is deposited on deck. * * *

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

27. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

28. Section 177.801 is revised to read as follows:

§ 177.801 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by motor vehicle a forbidden material or hazardous material that is not prepared in accordance with the requirements of this subchapter.

§§ 177.818, 177.821, 177.822, and 177.824 [Removed]

29. Sections 177.818, 177.821, 177.822, and 177.824 are removed.

30. In § 177.834, paragraph (b) is removed and reserved, and paragraph (j) is revised to read as follows:

§ 177.834 General requirements.

* * * * *

(j) *Manholes and valves closed.* A person may not drive a cargo tank and a motor carrier may not permit a person to drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

(1) All manhole closures are closed and secured; and

(2) All valves and other closures in liquid discharge systems are closed and free of leaks.

* * * * *

§ 177.835 [Amended]

31. In § 177.835, paragraphs (k), (l), and (m) are removed.

§ 177.837 [Amended]

32. In § 177.837, paragraph (d) is removed.

33. In § 177.838, paragraph (g) is revised to read as follows:

§ 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyroforic liquid) materials.

* * * * *

(g) A motor vehicle may only contain 45.4 kg (100 pounds) or less net mass of material described as ''Smokeless powder for small arms, Division 4.1''.

* * * * *

34. Section 177.839 is revised to read as follows:

§ 177.839 Class 8 (corrosive) materials.

(See also § 177.834(a) through (j).)

(a) *Nitric acid.* No packaging of nitric acid of 50 percent or greater concentration may be loaded above any packaging containing any other kind of material.

(b) *Storage batteries.* All storage batteries containing any electrolyte must be so loaded, if loaded with other lading, that all such batteries will be protected against other lading falling onto or against them, and adequate means must be provided in all cases for the protection and insulation of battery terminals against short circuits.

35. In § 177.841, paragraph (d) is removed and reserved, and paragraph (e)(1) is revised to read as follows:

§ 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.

* * * * *

(e) * * *

(1) Bearing a POISON label in the same motor vehicle with material that is marked as or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

(i) Overpacked in a metal drum as specified in § 173.25(c) of this subchapter; or

(ii) Loaded into a closed unit load device and the foodstuffs, feed, or other edible material are loaded into another closed unit load device;

* * * * *

§ 177.848 [Amended]

36. In § 177.848, paragraph (e)(5), is amended by removing the phrase ''ammonium nitrate fertilizer'' and adding in its place the phrase ''ammonium nitrate (UN 1942) and ammonium nitrate fertilizer''.

PART 178—SPECIFICATIONS FOR PACKAGINGS

37. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 178.315, 178.315–1, 178.315–2, 178.315–3, 178.315–4, 178.315–5 [Removed]

38. Sections 178.315, 178.315–1, 178.315–2, 178.315–3, 178.315–4, and 178.315–5 are removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

39. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.407 [Amended]

40. In § 180.407, in paragraph (a)(1), the words ''filled and offered for shipment'' are removed and ''filled and offered for transportation or transported'' are added in their place.

Issued in Washington, DC, on May 17, 1996, under authority delegated in 49 CFR Part 1.

Rose McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–12955 Filed 5–29–96; 8:45 am]

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May 30, 1996

Part V

Federal Trade Commission

16 CFR Parts 19 and 23

Guides for the Metallic Watch Band Industry and the Jewelry Industry, Final Rules; and Guides for the Jewelry, Precious Metals, and Pewter Industries, Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Metallic Watch Band Industry and Guides for the Jewelry Industry

AGENCY: Federal Trade Commission.

ACTION: Final guides.

SUMMARY: The Federal Trade Commission (''Commission'') announces that it has concluded a review of its Guides for the Metallic Watch Band Industry (''Watch Band Guides'') and Guides for the Jewelry Industry (''Jewelry Guides''). The Commission rescinds the Watch Band Guides in a document published elsewhere in this issue of the Federal Register. The Commission is consolidating certain provisions of the Watch Band Guides with the Jewelry Guides. The Commission is renaming the Guides for the Jewelry Industry the Guides for the Jewelry, Precious Metals and Pewter Industries. The Commission also revises the Jewelry Guides by defining the scope and application of the Guides and adding new provisions regarding the use of the terms ''vermeil'' and ''pewter.'' The Commission is also making substantive changes to the existing provisions of the Jewelry Guides, as discussed in detail herein. The Commission is not making any changes to the provisions regarding the use of the word ''platinum'' at this time and will request additional comment on possible revisions to this section in a separate Federal Register notice.

EFFECTIVE DATE: May 30, 1996.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, 202–326–2966, or Laura J. DeMartino, Attorney, 202–326–3030, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission revises the Guides for the Jewelry Industry and the Guides for the Metallic Watch Band Industry (''Guides''), 16 CFR Parts 23 and 19, respectively, as described in detail below. The Commission will announce the results of its review of the Guides for the Watch Industry, 16 CFR Part 245, which was conducted at the same time as the review of the other Guides, in a separate notice. The Commission published a Federal Register Notice (''FRN'') soliciting public comment on amendments to the Guides on June 12, 1992, in response to a petition from the Jewelers Vigilance Committee, Inc. (''JVC'').[1] The comment period, as extended, ended on September 25, 1992.[2]

The FRN solicited comment on the JVC's proposal to revise the Guides.[3] The FRN summarized the major amendments proposed by the JVC, as well as revisions that Commission staff was proposing. In addition to requesting comment on the proposed revisions generally, the FRN asked for comment on 34 questions.

The Commission received 263 comments. In the remainder of this notice, the comments are cited to by an abbreviation of the commenter's name and the document number assigned to the comment on the public record. A list of the commenters, including the abbreviations and document numbers used to identify each commenter, is attached as an Appendix.[4]

The revisions are discussed section-by-section by category.[5] Below, Part II addresses the standard regulatory review questions that were included in the FRN. Part III discusses general issues regarding the proposed revisions to the Guides. Part IV analyzes the proposed revisions to the Jewelry Guides section-by-section (including the Watch Band Guides, now consolidated with the Jewelry Guides).

II. Regulatory Review and Related Questions

As part of the Commission's ongoing program to review all of its rules and guides periodically, the FRN included questions about the Guides' economic impact and continuing relevance, any compliance burdens, changes needed to minimize their economic impact, their relation to other federal or state laws or regulations, and the effect of any changed conditions since the Guides were issued. The Commission also solicited comment on general issues regarding the Guides, such as whether the JVC's proposed provisions accurately reflect accepted practices, technology or nomenclature used in the trade; whether proposed changes would result in a lessening of competition or increased prices; and whether the JVC's petition to revise should be rejected and the current Guides retained. Because these questions concern fundamental issues about whether the Guides should be retained, deleted or revised, the Commission addresses them first.

A. Summary of the Comments

All but one of the 37 comments specifically addressing the economic impact of the Guides stated that any compliance costs are far outweighed by the benefits to the industry and to consumers.[6] None of the comments provided any figures or estimates of the monetary costs incurred in complying with the Guides.

Thirty-eight comments specifically addressed the continuing need for the Guides and all agreed that there is a continuing need, with most stating that the Guides protect consumers and industry.[7] One comment stated,

[1] 57 FR 24996 (June 12, 1992). The JVC, located at 401 East 34th Street, NY, NY 10016, is a trade association that was formed in 1912 to promote ethical practices in the jewelry industry. Its initial petition is dated April 15, 1986; additional proposed revisions were submitted on February 20, 1989.

[2] 57 FR 34532 (Aug. 5, 1992).

[3] Because of its 71-page length, the JVC proposal was not published. But, the proposal, and a document showing how the current Guides would be changed by the JVC proposal, was placed on the public record for inspection and is available in the Public Reference Room of the Commission.

[4] In summary, the comments are from 19 trade associations, 85 diamond dealers, 53 colored stone dealers, 37 retail jewelers, 10 synthetic gemstone manufacturers, 12 pewter manufacturers, 10 watch manufacturers, 9 general manufacturers, 5 gemologist/appraisers, 7 precious metals firms, 3 catalog houses, 2 manufacturer representatives, 2 writing implement manufacturers, 3 pearl dealers, and one each from: The Canadian Government, the U.S. Postal Service, the National Association of Consumer Agency Administrators, a scientist who works with laser technology and crystal growth, an economics professor, an importer, a retired trade association executive, and an editor of Jewelers Circular-Keystone, and a trade magazine.

[5] Various sections of the Guides that pertain to particular subject areas are referred to as ''categories,'' in the Appendix to the current Guides, *i.e.*, Category I: Jewelry industry products in general; Category II: precious metals; Category III: diamonds, genuine and imitation; Category IV: pearls, genuine, cultured and imitation; Category V: gemstones, genuine, synthetic and imitation.

[6] *E.g.*, Fasnacht (4) p.1 (the Guides have a positive economic impact by creating a level playing field); Schwartz (52) (the Guides have a positive impact on the industry by establishing standards that offer consumers protection without undue cost); JMC (1); Thorpe (7); King (11); Gold Institute (13); Honora (15); Argo (17); AGS (18); AGTA (49); Estate (23); G&B (30); Jabel (47); Skalet (61); Handy (62); Lannyte (65); Newhouse (76); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); JVC (212); Matthey (213); Bruce (218); Service (222); MJSA (226); Preston (229); Timex (239); and Sheaffer (249).

Service (222) agreed with regard to the current Guides, but thought that the compliance costs associated with the proposed revisions outweighed the benefits.

[7] The commenters are the same as in footnote 6 *supra*, with the addition of Eisen (91). With regard to the current Guides, Best (225) stated, at p.2, that the Guides ''are well developed and provide protection to consumers and to reputable jewelers against otherwise false and deceptive practices. The Guides offer a great measure of certainty to jewelers'

''Without the guides to serve as a reference manual, every manufacturer or producer would have their own interpretation [of what constitutes fair industry practices].'' [8]

Twenty-nine comments specifically addressed the burdens of complying with the Guides. Seven comments stated there are no compliance burdens.[9] Three also stated that, if everyone complies, the burdens of compliance are evenly distributed and will not benefit one business at the expense of another.[10] Ten comments stated that the burdens are minimal [11] and six thought the burdens were ''worth it.'' [12] The seven comments that itemized the burdens (''testing and planning,'' ''monitoring suppliers,'' ''controls,'' ''measurements,'' ''record keeping,'' ''time,'' and ''personnel''), concluded that the costs are acceptable because of the benefits received.[13] None of the comments identified the extent of the costs in money or in time.

Although 29 comments responded to the question regarding changes needed to minimize the economic effect of the Guides, they did not offer detailed explanations or suggestions. Fifteen comments stated that no changes are necessary.[14] Six comments stated that the changes proposed by the JVC are sufficient to minimize their economic effects.[15] Two comments recommended simplifying the Guides to avoid misunderstandings (*e.g.*, about the proper use of terminology).[16] Canada stated that harmonizing standards with Canada would minimize the economic effect on entities subject to the Guides' requirements, reduce costs and promote international trade, by not requiring manufacturers to mark products for domestic use differently than those made for foreign use.[17]

Twenty-seven comments addressed the relation of the Guides to federal, state or local laws or regulations. Twenty-one comments specifically stated either that there is no conflict or overlapping or that they are unaware of any.[18] Six stated that if there was any duplication, it should not deter the Commission from approving comprehensive guidelines.[19] (No examples of duplication were provided.) However, the Postal Service stated that the Guides ''overlap with Postal authority, sometimes undermining our position in false representation and fraud actions.'' [20] The Postal Service stated that the Guides do not adequately address the situation where the consumer purchases jewelry before actually seeing it. The Postal Service proposed changes to the Guides to help remedy this problem.[21] As discussed below, the Commission has revised the Guides to mitigate this problem.

Thirty-one comments discussed economic or technological changes since the Guides were issued and the effect on the Guides. Three comments [22] stated that economic and technological changes have had no effect on the Guides and 28 comments stated that such changes have had an effect on the Guides.[23] The changes the commenters specified, which they thought should be reflected in the Guides, are new gemstone enhancement techniques,[24] laser treatment of diamonds,[25] fracture-filling of diamonds,[26] new methods of metal plating,[27] diffusion-treated sapphires,[28] advanced testing techniques,[29] new synthetic gemstones,[30] and possible new platinum products.[31]

On the economic side, Richard C. Mark commented on the dramatic increase in the price of gold since the Guides were most recently revised, which, he stated, increases the significance of any rules dealing with gold.[32] Another comment stated that greater economic advantage to the trade would occur if national and international standards are uniform.[33]

Twenty-four comments addressed whether proposed provisions accurately reflect accepted practices, technology or nomenclature used in the trade. Fourteen comments stated that there are no requirements in the JVC proposal that do not fairly and accurately reflect trade practices.[34] Some comments, however, identified parts of the proposed Guides that they contended are contrary to accepted industry practices. Specifically, Best and Service Merchandise stated that the JVC's proposed diamond weight tolerances, restrictions on the use of the term ''point,'' and proposed disclosures regarding gemstone enhancement do not conform with accepted trade practices.[35] Other responses to this question were not directly responsive because they did not contend the JVC's proposals were out of step with current trade practices, but instead proposed adding new terms and standards to the Guides.[36]

Thirty-one comments directly responded to the question regarding

business practices as historical application and interpretation have better defined the parameters of acceptable conduct. This certainty has value because it contributes to an efficient and free flow of information to consumers in the marketplace.'' AGTA (49), at p.2, stated: ''If consumers cannot be confident that what they are paying for is what they have been told it is, our trade cannot survive. The FTC guides provide a structure upon which our industry has built regulations for the consumer's protection, which is ultimately our own as a trade. Therefore, AGTA endorses their continued existence, timely revision, and a strong enforcement.''

[8] Skalet (61) p.1.

[9] Fasnacht (4); Honora (15); G&B (30); Lannyte (65); Newhouse (76); CPAA (193); and Bedford (210).

[10] Honora (15); G&B (30); and Newhouse (76).

[11] JMC (1); King (11); AGS (18); Estate (23); Schwartz (52); Handy (62); Nowlin (109); Bridge (163); MJSA (226); and Preston (229).

[12] Argo (17); AGTA (49); Bales (156); LaPrad (181); Mark (207); and Matthey (213).

[13] Jabel (47); Skalet (61); McGee (112); ArtCarved (155); IJA (192); Canada (209); and MJSA (226).

[14] JMC (1); Fasnacht (4); Thorpe (7); Honora (15); Argo (17); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Handy (62); McGee (112); LaPrad (181); IJA (192); and Mark (207).

[15] AGTA (49); GIA (81); Bridge (163); Bedford (210); JVC (212); and Preston (229).

[16] ArtCarved (155) and Matthey (213).

[17] Comment 209, p.1.

[18] JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); Handy (62); Lannyte (65); GIA (81); NACAA (90); McGee (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (213); Best (225); MJSA (226); and Preston (229).

[19] Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and CPAA (193).

[20] Comment 244, p.1. The Postal Service enforces 39 U.S.C. 3005, which prohibits persons from obtaining mail or property through the mail by means of false representation. The Postal Service also brings actions under the criminal mail and wire fraud statutes, 18 U.S.C. 1341, 1342 & 1345. *Id*.

[21] Comment 244, pp.1–3.

[22] JMC (1); Handy (62); and McGee (112).

[23] JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Estate (23); AGTA (49); Lannyte (65); Newhouse (76); GIA (81); Eisen (91); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); Matthey (213); MJSA (226); Preston (229); Timex (239); and Sheaffer (249).

[24] AGS (18); AGTA (49); GIA (81); Eisen (91); ArtCarved (155); LaPrad (181); and IJA (192).

[25] Fasnacht (4); Thorpe (7); Honora (15); ArtCarved (155); and Preston (229).

[26] Thorpe (7); Estate (23); ArtCarved (155); IJA (192); and Preston (229).

[27] Newhouse (76); ArtCarved (155); Canada (209); and Preston (229).

[28] Thorpe (7); Honora (15); and Preston (229).

[29] ArtCarved (155); LaPrad (181); and Preston (229).

[30] Honora (15) and ArtCarved (155).

[31] ArtCarved (155).

[32] Comment 207, p.2. In 1957, when the Guides were last revised, gold cost $35 an ounce. The current price fluctuates between $350 and $400 per ounce.

[33] Matthey (213) p.1 (stating that ''Competition on a global as well as a national basis make the establishment of standards and clear definitions of terminology even more critical'').

[34] JMC (1); Fasnacht (4); Argo (17); Capital (19); Estate (23); Jabel (47); Skalet (61); Handy (62); Newhouse (76); GIA (81); McGee (112); ArtCarved (155); IJA (192); and Bedford (210).

[35] Best (225) p.4 and pp.7–8 and Service (222) p.1 and 5 of letter and p.3 of comment. *See also* MJSA (226) p.7 (opposing proposed diamond weight tolerances as contrary to industry practice).

[36] For example, AGTA (49) suggested banning certain terms in use that relate to synthetic gemstones and plated gold jewelry. *See also* Lannyte (65); Eisen (91); CPAA (193); and Matthey (213). (Their proposals are discussed under the appropriate categories *infra*.)

whether any proposed changes to the Guides would result in a lessening of competition, barriers to entering the industry or increased prices to consumers. Twenty-five answered ''no'' or ''probably not.''[37] But, numerous comments regarding the JVC's proposed weight tolerances for diamonds believed a narrow tolerance requirement (as the JVC proposed) would increase costs to consumers.[38] Jabel stated that paperwork and the printing of definitions and descriptions the JVC proposed as new requirements may increase consumer prices.[39]

Preston commented that, although he was not specifically aware of any proposals that would lessen competition, produce barriers to entry or increase prices to consumers, he thought these results could occur on a modest scale.[40] Thorpe stated, on the other hand, but without giving any reasons, that the JVC proposal would increase competition based on quality, value and service, and that the proposal would lower prices to consumers by allowing them to shop and compare ''on a level playing field.''[41] Bales recommended that the Guides allow products of less than 10 karat gold to be sold as a karat gold product because it would increase competition in the industry.[42] Other comments, while not specifically responding to this question, stated that the JVC's proposal to prohibit the use of the term ''gemstone'' to describe synthetic or imitation products would be anticompetitive.[43]

One hundred eighty-one comments responded to the question of whether the JVC's petition to revise should be rejected and the current Guides retained. Many comments stated that the petition to revise should not be rejected.[44] For example, AGTA affirmatively favored revising the Guides and 56 AGTA members filed individual comments endorsing the AGTA position. Twenty three other comments did not respond specifically to Question 34, but endorsed revision of the Guides.[45]

Service Merchandise and Best recommended rejecting the petition to revise in favor of retaining the current Guides.[46] Service Merchandise stated that the proposed revisions are anti-competitive and offer insufficient benefit to the affected industries or their consumers to justify the additional efforts and costs that they allege will result.[47] Additionally, 72 comments recommended rejecting the JVC proposal and retaining the current Guides, apparently because of their objection to the JVC's proposal regarding diamond weight tolerances.[48]

B. Conclusion

The comments largely favor retention of the Guides and state that there is a continuing need for the Guides. The comments indicate that the benefits of the Guides outweigh the costs, and present no persuasive evidence that the Guides have outlived their usefulness or impose substantial economic burdens. Accordingly, the Commission is retaining the Guides.

Many comments recommended that the Guides be revised to reflect changed technologies, and the Commission has considered these comments in amending the specific provisions of the Guides, discussed below. The comments that favored rejecting the JVC proposal and retaining the Guides as they exist now usually did so because of a particular JVC recommendation. The objections to those proposals also are addressed as they occur in the different Guide categories.

III. Changes to the Form of the Guides

A. Legal Language Used in the Guides

The legal language in the Guides has been revised to conform to the Commission's view on deception and unfairness as expressed in its Policy Statements on Deception and Unfairness.[49] Specifically, the phrase ''it is an unfair trade practice,'' generally has been revised to state ''it is unfair or deceptive to * * *.''

B. Consolidation of the Guides

Detachable metallic watch bands are the subject of the Guides for the Metallic Watch Band Industry (''Watch Band Guides''), 16 CFR Part 19. Metallic watch bands that are permanently attached to the watch are included in the Guides for the Watch Industry, 16 CFR Part 245. The JVC proposed combining the Watch and Metallic Watch Band Guides with the Jewelry Guides and the FRN solicited comment on this proposal. Thirty comments addressed this issue, and 22 stated the Guides should be consolidated.[50] Most

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[37] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Estate (23); G&B (30); AGTA (49); Schwartz (52); Skalet (61); Handy (62); Lannyte (65); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); and Matthey (213). In addition, most of the 72 comments supporting a different tolerance for diamond weights indicated that requiring the merchant to state more accurately the weight or weights of diamonds would result in increased costs to consumers.

[38] *E.g.*, Service (222) and Best (225) (implementation of the JVC proposal would result in lessened competition and higher prices, particularly for low margin jewelry retailers, which would be passed on to consumers). The comments opposing the proposed diamond weight tolerance and alleging consequential costs are listed and examined in detail in the discussion of diamonds below.

[39] Comment 47, p.2.

[40] Comment 229.

[41] Comment 7, p.2.

[42] Bales (156) suggested that a quality mark be permitted on a product called Balesium that is 4½ karat gold. See discussion below regarding the 10 karat minimum standard for karat gold.

[43] Service (222) p.1 and p.4; Best (225) p.3; AGL (230) p.3; NRF (238) pp.1–2; Kyocera (242) p.1; River (254) p.1. Dealers in synthetics, which are materials made in a laboratory that have the same chemical, physical and optical properties as a natural gemstone, contend they should be able to describe their products as gemstones with appropriate qualification to indicate that they are laboratory made.

[44] *E.g.*, JMC (1); Fasnacht (4); Thorpe (7); King (11); Gold Institute (13); Argo (17); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); AGTA (49); Schwartz (52); Skalet (61); Handy (62); GIA (81); Nowlin (105); McGee (112); ArtCarved (155); Bales (156); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); Matthey (213); and Preston (229).

[45] JMC (1); Littman (2); JA (3); Overstreet (8); Kennedy (9); Collins (12); Von's (16); Jeffery (21); Stanley (83); General (88); APG (89); NACAA (90); Eisen (91); Alie (106); AWI (116); USWC (118); Krementz (208); JVC (212); WGC (223); MJSA (226); Swiss Federation (232); AWA (236); and ISA (237A).

[46] Comment 222 and Comment 225.

[47] Comment 222, p.1.

[48] These 72 comments, mostly using one of four form letters, also urged that all proposed changes be rejected. One writer from this group indicated that he had a change he would like to suggest but stated ''my understanding is that it [the JVC proposal] must be accepted in whole or rejected in total.'' Comment 60, p.1. Staff contacted this commenter, Richard Goldman, president of Frederick Goldman, Inc., who indicated that the group to which he belongs was advised, by a person he did not identify, that the JVC proposal had to be accepted or rejected in its entirety. Thus, this group's opposition to all other proposed revisions appears to be based on a false premise.

These 72 commenters are: London Star (20); Luria (28); Armel (32); Mendelson (33); Fashion (35); Courtship (36); MAR (37); NY Gold (39); Aviv (40) and (41); TransAmerican (43); Saturn (46); Faleck (50); Alarama (51); Fabrikant (53); Light Touch (54); Disons (55); Astoria (56); PanAmerican (57) and (101); Odi-Famor (58); Black Hills (59); Goldman (60); Almond (63); Brilliance (68); Oroco (69); Fargotstein (70); Simmons (71); Mikimoto (72); Evvco (73); Renaissance (74); Harvey (75); JGL (77); Raphael (78); AMG (79); Vijaydimon (80); Philnor (93); Orion (94); Flyer (95); Classique (96); Vardi (97); K's (98); Diastar (99); Foster (100); Fame (102); Cheviot (104); M&L (105); Kurgan (107); Rosy Blue (108); NEI (110); Leer (114); Majestic (115); Imperial (117); Schneider (119); Precision (121); New Castle (122); Stern (157); Consumers (158); Ultra Blue (160); DeMarco (161); Little (164); Golden West (179); Stanley (180); Mastro (190); Capitol Ring (191); Bogo (201); Schaeffer (211); Suberi (214); Impex (220); Landstrom's (241); Ultimate (243); and Murrays (264).

[49] Statement on Deception, appendix to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 1734–84 (1984) and Statement on Unfairness, appendix to *International Harvester Co.*, 104 F.T.C. 949, 1072 (1984).

[50] JMC (1); Fasnacht (4); Gold Institute (13); Benrus (22); Estate (23); G&B (30); Jabel (47); Skalet (61); Lannyte (65); Newhouse (76); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bedford (210); Bridge (163); IJA (192); Canada (209); Matthey (213); Bedford (210); MJSA (226); and Leach (258).

of those who gave reasons for favoring consolidation mentioned the Watch Band Guides rather than the Watch Guides.[51]

Six of the eight comments opposing consolidating the Guides were from watch manufacturers or trade associations.[52] The reasons given for opposition were primarily related to the consolidation of the Watch Guides, not the Watch Band Guides. The American Watch Association stated that the Guides correctly reflect the fact that watches and jewelry are different products, ''by imposing substantially different definitions and standards for watches and jewelry.'' [53] For example, the minimum thickness in the Watch Guides for gold electroplated watches is about 100 times thicker than the minimum thickness for gold electroplated jewelry in the Jewelry Guides.[54]

Based on the comments, the Commission has determined not to combine the Guides for the Watch Industry with the other two Guides. The Guides for the Watch Industry will remain as separate Guides and are discussed in another Federal Register notice. However, the Commission has determined to consolidate the Guides for the Metallic Watch Band Industry with the Jewelry Guides.[55] The Watch Band Guides primarily concern ''fineness'' standards for precious metals, which are the same as those contained in the Jewelry Guides.[56] Thus, unlike the Guides for the Watch Industry, the Watch Band Guides share many common elements with the Jewelry Guides.[57] Therefore, consolidation of these two Guides eliminates unnecessary duplication.[58]

IV. Category-By-Category Explanation of Revisions

This section discusses specific proposed revisions on which the Commission sought comment in the FRN and additional issues raised by the comments. This discussion includes a summary and analysis of the comments on each issue and a discussion of the revisions that the Commission has made. (In some instances there were no comments on particular proposals.)

A. Pre-Category I—Scope and Application: § 23.0

Section 23.0 in the current Guides is captioned ''Definitions,'' and gives definitions for: ''diamond,'' ''pearl,'' ''cultured pearl'' and ''imitation pearl.'' In the JVC proposal, section 23.0 is titled ''Scope and Application,'' and the definitions appear in the sections that specifically address these products. The Commission has determined that this organizes the Guides in a more helpful fashion and adopts these changes.

Part (a) of section 23.0, as proposed by the JVC, lists industry products to which the Guides apply and part (b) defines industry members. The term ''industry products'' is used throughout the Guides, but it is not explicitly defined. To avoid any uncertainty about their intended coverage, the revised Guides include a definition of ''industry products.''

The JVC petition specifically suggested that the term ''industry products'' include pens, pencils and optical frames containing gold or silver. The FRN sought comment on whether provisions applying to the gold or silver content of pens, pencils and optical products should be included in the Guides, and whether they should be the same as the current provisions for jewelry. Thirty-one comments addressed this issue, and 25 favored including these products, including two major manufacturers of writing implements, Sheaffer and A.T. Cross.[59] The six commenters that opposed the inclusion of these products simply stated that they saw no need for the inclusion of these products or that they were not ''really'' jewelry products.[60]

The comments generally indicate that pens, pencils, and opticals made of precious metals are viewed by consumers as similar to jewelry because of their metallic content and where they are sold. Thus, consumers would tend to expect that claims about such products would be guided by the same standards that apply to other industry products. Because consumers' expectations about the meaning of terms such as ''gold'' are likely to be the same for any product, the Commission is including these items in the Guides. These products and detachable metallic watch bands are now specifically listed in § 23.0(a) of the revised Guides. The title of the Guides is now the Guides for the Jewelry, Precious Metals, and Pewter Industries to reflect the coverage of the Guides.[61]

Although the JVC petition did not list hollowware or flatware as ''covered products,'' section 23.6A of the JVC petition addresses sterling hollowware and flatware. The Franklin Mint objected to this because these items are not jewelry.[62] However, these items are commonly sold in jewelry stores, and at least one of the commenters simply presumed that these items were covered

[51] *E.g.*, Bedford (210) commented, at p.3, that ''as watch bands are mostly sold and fitted by jewelers, it would seem appropriate * * * that they be combined with the jewelry guidelines.'' However, no commenters identified themselves as watchband manufacturers.

[52] USWC (118); JCWA (216); NACSM (219); Best (225); Citizen (228); Swiss Federation (232); AWA (236); and Timex (239). Only one comment from the affected industry, Benrus (22), favored consolidation of the Watch Guides.

[53] Comment 236, p.1. *See also* Swiss Federation (232) p.1 (the industries are separate and consolidating the Guides would make use of the Guides difficult) and Citizen (228) p.5 (watches and jewelry are dissimilar and should not be combined).

[54] *See also* JCWA (216) p.4 (favoring separate Guides because the application of materials and quality demands differ for watches and jewelry); Timex (239) pp.9–10 (opposing consolidation if doing so would create any additional compliance obligations); Swiss Federation (232) p.38 (stating that jewelry, watch and watch band companies are separate industries, with separate trade associations).

[55] JCWA (216), Citizen (228), and AWA (236) stated that all three Guides should be kept separate, but none of these provide reasons for keeping the Watch Band Guides separate.

[56] ''Fineness'' refers to the amount of precious metal in an article.

[57] For example, the provisions for gold electroplated metal watch bands in the Watch Band Guides are the same as those for gold electroplated metal products included in the Guides for the Jewelry Industry.

[58] More than half of the material in the Metallic Watch Band Guides duplicates material in the Jewelry Guides.

[59] Fasnacht (4); Gold Institute (13); Estate (23); Korbelak (27); G&B (30); Jabel (47); Schwartz (52); Skalet (61) p.3 (stating that the items are typically sold in jewelry, department and gift stores, and thus should be subject to the same standards as jewelry sold in the same store); Handy (62); Lannyte (65); Newhouse (76); McGee (112); Bales (156); Bridge (163) p.2 (stating that the metallic content of the items is more likely to be misrepresented if they are not included in the Guides); Cross (165) p.1 (favoring inclusion, because the mislabeling of these products, ''especially by counterfeiters, has caused confusion by customers and harmed the business of legitimate manufacturers''); IJA (192); Tru-Kay (196) p.1 (stating that the public would find different standards for the metal content of these items as opposed to jewelry confusing); Mark (207) p.3 (same as Tru-Kay); Canada (209); Bedford (210); MJSA (226) p.3 (stating that without inclusion in the Guides, there may be more misrepresentation of metallic content); Preston (229); Sheaffer (249) p.2 (favoring inclusion, but objecting to ''unnecessary and arbitrary limitations'' on the use of the term 'Plate' to describe gold electroplated articles); Franklin (250); and Knight (256).

Although no current manufacturers of eyeglass frames commented, Knight (256) stated, at p.2, that ''We at one time owned the largest manufacturer of gold filled and rolled gold plate frames in the U.S.A. and they followed the jewelry guides.''

[60] LaPrad (181); Nowlin (109); ArtCarved (155); Service (222); Franklin (250); and NACSM (219).

[61] See *infra* for a discussion of the inclusion of items made from pewter.

[62] Comment 250, p.3. The Franklin Mint stated that ''industry products'' should be limited to jewelry, which it defined as an ornamental item worn on or about one's person for personal adornment. (The Franklin Mint primarily markets objects that are not used for personal adornment, but which incorporate or are made of precious metals or gemstones, so that its proposal would exempt most of the products it carries from the application of the Guides.)

by the Guides.[63] As with pens and pencils made of precious metal, the Commission believes that consumers would tend to expect that claims about silver or gold hollowware or flatware would be guided by the same standards that apply to other industry products. Therefore, these products also are included in the list of industry products covered by the Guides.

The Guides also refer to ''industry members,'' but do not define this term or give examples. The JVC proposed that the Guides state they apply to ''every firm (a person, group of persons, or corporation) engaged in the business of selling'' industry products. One commenter noted that the Guides need to clarify that purchasers at all levels of the industry are protected by the Guides, since it is commonly assumed by courts that merchants are experts who should know better than to rely on suppliers' representations as being accurate.[64]

The Commission agrees that it would be useful to clarify that retailers, as well as consumers, are meant to be protected from deceptive practices addressed by the Guides. Therefore, the revised Guides state that they apply to persons, partnerships, or corporations at every level of the trade.

The JVC also proposed, in section 23.0(b), including in the description of industry members (in addition to sellers) those who are engaged in ''identifying, grading, appraising, promoting the sale of or counseling the purchase or barter of industry products.'' The FRN specifically requested comment on whether the Guides should be expanded to include appraisals of jewelry in addition to sales and offers to sell jewelry.

Thirty-five comments addressed this question.[65] The comments generally favored including appraisers of jewelry industry products among those subject to the Guides. The main effect of including appraisers (or those ''identifying'' and ''grading'' industry products) among those covered by the Guides would be to ensure that they would be guided by the same definitions and standards as those selling the products. To confirm the value of an intended purchase, consumers often seek an appraisal because they rarely independently have the knowledge to determine the quality or value of jewelry.[66] The Commission has concluded that it would be unfair or deceptive for appraisers to ascribe meanings to standard terms that are used in the jewelry industry that are different from the meanings attached to those terms by the sellers of the products. Thus, appraisers and those ''identifying'' and ''grading'' industry products are advised to follow the admonitions of the Guides.[67]

However, 29 of the comments also recommended that the content of appraisals be covered by the Guides. Fifteen of these stated this change should be effective with this revision.[68]

However, if the Guides were to regulate the content of appraisals, standards for establishing a value would be needed.[69] Fourteen comments, including those of the American Gem Society, the American Gem Trade Association, and the Gemological Institute of America, recommended including appraisals in the Guides when there is adequate agreement on what the standards for appraisals should be.[70]

Although the Commission has determined that for the sake of consistency for consumers purchasing industry products, the Guides will state that those who appraise, identify or grade industry products should follow the Guides, they do not otherwise purport to guide these industries.[71]

The JVC proposal included, in section 23.0(c), a description of the behavior (claims and representations) to which the Guides apply. It is similar to § 23.1(b) of the current Guides, but does not list the specific forms of advertising (periodicals, radio, television) that are described in § 23.1(b). The Commission's authority, however, is broader than the items currently listed as advertising in the Guides, and therefore the specific list unnecessarily limits the scope of the Guides. The National Retail Federation comment stated that such specifically enumerated limitations are helpful as they may prevent other representations, such as in-store signs or flyers, from being treated as advertising.[72] However, that is not the intent of that section. Accordingly, § 23.0(c) of the revised Guides encompasses express and implied claims in all types of advertising and promotion.

B. Category I: §§ 23.1–23.4

Guides in this part apply to all industry products regardless of their composition.

Section 23.1(a) of the current Guides contains a list of attributes, such as origin and durability, which industry members are advised not to misrepresent. The JVC proposal omits ''manufacture'' from the list (possibly in error). The Commission has found no basis in the record for deleting ''manufacture'' from the list of items not to be misrepresented.

The JVC proposed adding the following attributes to the list of

[63] *See* Gold Institute (13).

[64] ISA (237) p.12 (stating further that the Guides should ''address all issues of intended disclosure to resellers of jewelry products so that this information can accurately and completely be passed on to the ultimate consumer'').

[65] *E.g.,* AGS (18); AGTA (49); GIA (81); IJA (192); and ISA (237 and 237A).

[66] An ''independent'' appraisal is one done by a person who has no commercial relationship to the seller and does not sell competitive merchandise. In other words, the person who does the appraisal does not stand to benefit beyond his appraisal fee.

[67] The Commission is omitting from the list those who promote the sale, or counsel the purchase or barter, of industry products, because this language is unnecessarily specific, and because such persons are already covered by the language of the Guides (*e.g.,* persons who sell or offer for sale industry products).

[68] JMC (1); Sibbing (5); Thorpe (7) p.2 (stating that appraisals are sometimes used to make a sale by showing the consumer ''a signed document stating an inflated value''); King (11); Estate (23); G&B (30) p.7 (noting that ''you are going to have to understand appraisals are subjective''); Jabel (47); Skalet (61) p.3 (suggesting that ''appraisers should be certified or licensed and should have no connection with those who are making the sale''); Lannyte (65) p.4 (proposing that the Guides state that ''an appraisal has to be qualified as to the purpose of appraisal and the market level of the value quoted''); Eisen (91) p.1 (suggesting that the Guides should provide for ''a statement on no conflict of interest, disallowance of a percentage fee, and a resume with the appraiser's qualifications''); McGee (112); ArtCarved (155); LaPrad (181); AGL (230) pp.4–6 (proposing that the Guides state that it is unfair for a seller to provide an appraisal to a consumer when the appraiser is also the supplier of the item being appraised, and recommending that the Guides specify certain required content of appraisals of diamonds or colored stones (*e.g.,* ''appropriate tolerance information for each element that impacts on the value of the gemstone''); and ISA (237) and (237A) p.5 (stating that important problems are misrepresentation of qualifications and overstating of value to justify the selling price). Only one comment, LaPrad (181), proposed standards to use (those of the Appraisal Foundation).

[69] ISA (237A) noted, at p.18, that a New York City ordinance requires that appraisals state that ''the opinions of appraisers can vary up to 25%.'' ISA stated that the opinions of appraisers, ''depending on marketplace, variances in grading, and geographical market locations, as well as various purposes and functions and the method of value conclusion can cause appraisers to vary in their opinions of value for amounts potentially greater than 25%.'' *Id.*

[70] AGS (18); AGTA (49); GIA (81); IJA (192); Fasnacht (4); Honora (15); Bridge (163); Mark (207); Bedford (210); Matthey (213); MJSA (226); and Preston (229) p.6 (stating that there are different formats and standards used for jewelry appraisals and that ''[t]here is no overall agreement within the industry on precisely what does or does not constitute the ultimate desirable appraisal'').

[71] ISA (237) noted, at p.2, that its members are appraisers in more than ''130 subspecialty areas of the major personal property disciplines * * *.'' It stated, at p.7, that while it prefers to have its own industry guide, it favors the inclusion of appraisals in the Guides, because ''many times we serve as expert witnesses in court and rely on the content of the guides to inform the court as to what is or is not acceptable.'' The Commission believes ISA's concerns will be satisfied by the language added to the Guides.

[72] Comment 238, p.1.

characteristics that should not be misrepresented: ''clarity,'' ''enhancement,'' ''future value,'' and ''prospects of resale.'' The Commission believes that the term ''clarity'' is unnecessarily specific, as it is already covered by the current Guides under ''grade'' and ''quality.'' Therefore, this term has not been included. ''Enhancement'' is the term used by the trade to describe the treatment of gemstones to improve their color or otherwise improve their appearance. However, the Commission has determined that a more accurate term is ''treatment'' and has added this term, in lieu of ''enhancement,'' to the list of attributes that should not be misrepresented. The Commission has determined that the third term, ''future value'' should not be added to the Guides, because the Guides already list ''value,'' and ''future value'' is subsumed in value. The Commission also has determined that ''prospects of resale'' should not be added to the Guides. Representations regarding the prospects of resale go to the investment of gems, and the Commission has concluded that the sale of investment gems is unsuitable for treatment in guides.

The JVC proposed adding five additional parts to § 23.1, which would be designated as follows: Misrepresentation of the character or identity of business; Misuse of the term ''certified,'' etc.; Deception (as to gemstone investments); Misuse of the term ''investment quality''; and Deception as to warranties on gemstone investments. Discussion of each of these proposed additions follows.

Misrepresentation of the character or identity of business was the caption of a section of the Jewelry Guides that was in effect from 1957 to 1979. This section admonished sellers from, for example, misrepresenting themselves as wholesalers or as offering wholesale prices.[73] NACAA commented that it is important to prohibit such a misrepresentation, noting that ''retailers use phrases such as 'factory direct' to imply that items are less expensive, when in fact they obtain their merchandise through jobbers and other outside sources.'' [74] However, § 23.1 warns against misrepresentation as to the ''manufacture'' or ''distribution'' of industry products and this provision would encompass misrepresentations about the nature of the seller's business.

Misuse of the term ''certified,'' etc. was the caption of a section in the Guides that were in effect between 1957 and 1979 and which the JVC proposed reinstating. This section stated that it was an unfair trade practice to refer to an industry product as ''certified'' unless the identity of the certifier and the specific matter to be certified is disclosed; the certifier examines the product, makes the certification, and is qualified to certify; and the certifier makes available a certificate that includes certain information about the certifier and the certification.[75]

Thirty-two comments favored requiring the seller to make available to the purchaser a certificate disclosing the name of the certifier and the matters and qualities certified.[76] The term ''certified'' or certificates of authenticity are likely to be used as a way of giving credence to a quality claim. If, in fact, the product is not ''certified'' in a valid manner or a certificate misrepresents the qualities of the item, the seller is not complying with the Guides' admonition in § 23.1 not to misrepresent important qualities or otherwise deceive purchasers. For this reason, the Commission is not including a provision relating to certificates in the Guides.[77]

However, some commenters suggested that the Guides address misrepresentation of the system of grading that was used in any certificate or grading report.[78] There are several different diamond color grading systems in general use, each having its own standards and terminology, and several grading systems for colored stones.[79]

The Commission is persuaded that a representation that a stone is a specific grade could be deceptive if the identity of the grading system used is not disclosed. Section 23.1 states that it is unfair or deceptive to misrepresent the grade of an industry product. The Commission has added a Note to § 23.1 that states that, if any representation is made regarding the grade assigned to an industry product, the identity of the grading system used should be disclosed.

The FRN solicited comment on the JVC's proposed subsections 23.1(d) through (f), which address deception involving gemstone investments. Section 23.1(d) would require, in the sale of gemstones as investments, a disclosure that profit or appreciation cannot be assured, that no organized market exists for the resale of gemstones by private owners, and that the seller is in compliance with all applicable laws and regulations governing securities dealers. In general, the comments favored these disclosures.[80]

[73] The JVC also proposed expanding this section by adding ''investment broker'' and ''independent testing laboratory'' to the list of examples of trade designations that firms are not to use falsely. ISA (237) recommended adding ''gemological laboratory'' and ''appraisal facility'' to the list.

[74] Comment 90, p.2.

[75] The JVC also proposed requiring the disclosure of any business relationship between the certifier and the seller.

[76] JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); AGTA (49); Schwartz (52); Skalet (61); Lannyte (65); Newhouse (76); GIA (81); NACAA (90); Nowlin (109); McGee (112); ArtCarved (155); Bridge (163); LaPrad (181); IJA (192); Matlins (205); Bedford (210); Matthey (213); Bruce (218); MJSA (226); Preston (229); ISA (237A); and Leach (257).

Opposed to this provision are: Bales (156) p.5 (stating that it would raise costs and eliminate many smaller jewelers); NACSM (219); Service (222); and Franklin (250).

With respect to the issue of whether there should be a disclosure that there is subjectivity in the grading and appraising of diamonds and colored stones, a comment form AGTA (49) and 56 individual AGTA members opposed disclosure, stating at p.6, that the degree of subjectivity is ''better addressed by those in the business of operating laboratories for certificates * * * and to those associations governing appraisers.'' However, ISA (237A) stated at p.21, that appraisal reports should disclose that diamond and colored stone gradings are subjective in nature. Thorpe (7), AGS (18), Schwartz (52), Skalet (61), NACAA (90), Bruce (218), and Preston (229) were also in favor of the disclosure of the degree of subjectivity in grading.

[77] Certificates have no accepted meaning in the industry and are not defined in the standard dictionary for the industry [''Jewelers' Dictionary'' (3d ed. 1976)]. *See* AGTA (49) p.5 (favoring the proposal, but stating that since ''there are no nationally accepted standards for certification,'' the requirement that a certificate state the name of the certifier ''is no assurance of either expertise or quality''); NACSM (219) p.24 (stating that the proposed section was ''vague and broad in that it could be construed to make any sales slip identifying the product a certification''); Service (222) p.2 (stating that the current Guides ''are sufficient to prevent deception with certifications and appraisals'').

[78] Rapaport (233) p.1 (stating that misuse of GIA color and clarity terminology by sellers (as opposed to appraisers or graders) is a major problem and suggesting that the Guides state that it is unfair to misuse GIA grading terminology); Thorpe (7) p.2 (stating that an identification of the grading system used ''is necessary to make accurate quality comparisons''); Shor (257) p.1 (suggesting that the Guides state that it is unfair to describe diamonds by color and clarity grades developed by GIA or other recognized gem labs ''unless they conform exactly to the standards set forth by those institutions'').

[79] Richard T. Liddicoat, Jr. & Lawrence L. Copeland, ''The Jewelers' Manual'' 29–32 (1967); AGL (230); Rapaport (233) p.1. The Gemological Institute of America (GIA) and the American Gem Society (AGS) employ different grading systems, and some diamond graders have their own ''in-house'' grading systems. The letter ''D'' designates the best color in the GIA grading system. Some in-house grading systems have grades that start with ''A,'' ''AA,'' or ''AAA'' and consequently ''D'' in their systems stands for a much poorer color grade.

[80] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Lannyte (65); GIA (81); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); IJA (192); Bedford (210); Matthey (213); Bruce (218); Shire (221); MJSA (226); Preston (229); Limon (235); ISA (237A); Leach (257); and AGTA (49)

Continued

The comments favoring these disclosures also generally favored the proposed sections 23.1(e) and (f). Proposed part (e) would prohibit the seller from implying that a gemstone sold for investment purposes is more desirable or different than gemstones marketed for use in jewelry.[81] Proposed part (f) states that it is an unfair practice to limit a purchaser's opportunity for an independent examination of an industry product by delivering a product in a sealed container with a warranty that becomes void if the seal is broken.[82] This practice makes it impossible for the consumer to examine the product or retain an independent expert to examine or appraise the product to determine whether the seller has fairly represented it. On the other hand, a consumer can refuse to buy a product sold under these conditions.

The FRN asked if there would be voluntary compliance with the proposed guidelines for sellers of investment gemstones. Thirteen comments stated that voluntary compliance could not be expected.[83] Six comments stated that compliance could be expected only from legitimate operators.[84] Five comments anticipated voluntary compliance by all concerned.[85]

An industry guide is not appropriate if there is an indication that the violations are willful or wanton and will not be voluntarily abandoned. The experience of the Commission in bringing cases against sellers of investment gemstones indicates that most of the sellers have been engaged in fraud. Thus, they are unlikely to comply with practices that would be likely to put them out of business. The Commission has concluded that a case-by-case approach is a more appropriate way to address the problem of gemstone investment claims than inclusion in the Guides.

The JVC did not propose any substantive changes in the last three sections in Category I (23.2, 23.3, 23.4), and there were no comments pertaining to these sections. The Commission has decided to retain sections 23.2 and 23.4. Section 23.2 states that it would be deceptive to use depictions that would materially mislead consumers about the product shown.[86] Section 23.4 states that it would be deceptive to use the term ''handmade'' unless the item is entirely handmade or made by manually controlled methods consistent with consumer expectations.

However, the Commission has determined to delete section 23.3. The admonition in section 23.3(a) against misrepresenting the origin of a product repeats the general guidance provided in section 23.1 (which provides a list of characteristics, including origin, which should not be misrepresented). Section 23.3(b) states that a disclosure of foreign origin should be made only when it is deceptive not to do so. A Note following this section explains that it is not necessary to disclose the foreign origin of small and functional parts, or other items (such as diamonds) which are primarily obtained from sources outside the United States. U.S. Customs requires products being imported into the U.S. to be marked with the country of origin unless they will be substantially transformed in the United States.[87] Thus, the Commission has concluded that this section of the Guides is unnecessary.

The Commission also has deleted § 19.4(b) of the Watch Band Guides, which states that it is unfair to fail to disclose that a metallic watchband, or a substantial part thereof, is of foreign origin.[88] No commenters identified themselves as watchband manufacturers or marketers, and very few commenters even addressed the existence of the Watch Band Guides. It is unclear whether the fact that a watchband is made abroad is material to consumers, or whether consumers currently expect that any unmarked metallic watchband was made in the U.S.A. However, as noted, U.S. Customs requires imported watchbands (and other items of commerce) to be marked with the country of origin. Therefore, the Commission has concluded that this section is unnecessary.[89]

C. Metals (Category II): §§ 23.5–23.8

Guides in Category II, in both the current Guides and the JVC petition, apply to industry products composed in whole or in part of precious metal. In the JVC petition, this category also includes a proposed standard for pewter.

1. Inclusion of Metallic Watchbands

As noted previously, the Guides for the Metallic Watchband Industry have been combined with the Jewelry Guides. The Commission believes that, in most respects in which the Watch Band Guides differ from the Jewelry Guides, the Watch Band Guides are unnecessarily restrictive or no longer represent the Commission's views of how the law should be applied. For example, unlike the Jewelry Guides, the Watch Band Guides state that it is unfair to fail to disclose the metallic composition of a product which has the appearance of gold but is not gold (§ 19.2(A)(2)). There is no evidence that suggests that consumers today will infer that a gold-colored metal watch band is gold. The prices for gold-colored

(favoring the proposal for sales to consumers but opposing the proposal for inter-trade transactions (*e.g.*, a sale by a dealer to a retailer).

Opposed to this provision: Onyx (162) and Rapaport (233) p.4 (stating that ''there are regular ongoing markets for the resale of diamonds and colored stones by private owners'' such as auction houses, jewelry stores, estate jewelry shows, and pawnshops). *But see* Shire (221) p.3 (stating that these examples do not constitute a ready market, since auction houses, for example, only want specific items and do not take everything for sale). The Commission believes that most consumers know that they, as individuals, would not have access to a market comparable to the stock market; hence, a disclosure would not be necessary to prevent deception in the absence of an affirmative misrepresentation as to the nature of the market.

There is no evidence indicating that consumers believe that sellers of investment gemstones are governed by laws and regulations covering securities dealers.

[81] *See* comments cited in note 80, and NACAA (90) and LaPrad (181). These comments are mostly from retail jewelers who would not usually sell gemstones as investments. Ethical sellers of gemstones for investment purposes may provide gemstones that are a higher grade then those commonly sold as jewelry.

[82] *See* comments cited in note 80. Rapaport (233) stated, at p.4, that it would be acceptable to deliver the product in a sealed container with a warranty that becomes void if the seal is broken, if the sealing agency allows the re-sealing of the product at a reasonable cost and discloses this at the time of sale.

[83] King (11); Argo (17); Jabel (47); Schwartz (52); Skalet (61); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); IJA (192); Matthey (213); Shire (221); and Leach (257).

[84] Fasnacht (4); AGTA (49); Bales (156); LaPrad (181); Bedford (210); and ISA (237A).

[85] Sibbing (5); Thorpe (7); Honora (15); Bridge (163); and MJSA (226).

[86] The Postal Service (244) stated that mail order purveyors of jewelry sometimes use deceptive photographs to sell their wares. This section notes that such a practice is unfair or deceptive, and a following Note specifically states diamonds should not be depicted in greater than actual size without a disclosure that the depiction is an enlargement. The JVC proposed expanding the Note to include depictions of gemstones other than diamonds, and the Commission has made this change. In addition, because television shopping programs or computer images also may contain misleading images of jewelry, the Commission has added ''televised or computer image'' to the list of covered ''visual depictions'' in this section.

[87] See The Tariff Act of 1930, as amended, 19 U.S.C. 1304, and Customs' implementing regulations, 19 CFR 134.11.

[88] The Watch Band Guides contain very detailed instructions as to the labeling of watchbands assembled in the U.S. of foreign components. 16 CFR 19.4(b), note 2. Several Commission orders, from the 1960's or earlier, require similar detailed disclosures. However, the Commission recently issued a ''Sunset Rule'' that terminates administrative orders automatically after 20 years. 60 FR 58514 (Nov. 28, 1995).

[89] More specific guidance on when industry products can be marked ''Made in the U.S.A.'' is likely to be addressed further by the Commission later this year.

metallic watch bands compared to what gold watch bands (or other gold jewelry) would sell for is at least one way consumers are alerted that a gold-colored band is not gold.[90] Thus, the Commission has omitted this provision from the Guides.

Other differences between the Watch Band Guides and the Jewelry Guides are noted at appropriate portions below.

2. Misrepresentation as to Gold Content: § 23.5

Section 23.5(a) of the current Guides states that it is an unfair trade practice to sell or offer for sale any industry product by means of any representation that would deceive purchasers as to the gold content. Section 23.5(b) identifies specific practices that may be misleading and section 23.5(c) lists markings and descriptions that are consistent with the principles described in the section. These latter provisions are ''safe harbors'' (*i.e.*, examples of ways of avoiding misrepresentations).

a. *General provision as to misrepresentation: § 23.5(a).* As noted, § 23.5(a) of the current Guides contains a general provision admonishing against misrepresenting the gold content of industry products. The JVC proposed adding definitions of ''karat,'' ''gold,'' ''karat gold,'' ''fine gold,'' ''mark,'' and ''apply or applied'' to this section.[91] No evidence indicating confusion as to the meaning of the terms was presented. In some cases, the terms are already defined very succinctly in the current Guides.[92] For these reasons, the Commission has not included the proposed definitions in the Guides.

The JVC also proposed including a statement that no mark other than the quality mark (*e.g.*, 14 K) shall be applied to an article indicating that it contains gold or as to the quality, fineness, quantity, weight, or kind of gold in an article. The Commission found no justification or need for such a broad statement. Section 23.5(a) already states that misrepresentations about the gold content of an article are unfair or deceptive.

b. *Specific provisions and ''safe harbors'': § 23.5(b)-(c).* Section 23.5(b) in the current Guides identifies specific practices that may be misleading. Subsection (1) states that the unqualified use of the word ''gold'' is limited to 24 karat gold. The JVC proposed adding that the unqualified use of ''solid gold'' is limited to 24 karat gold. There were two comments on this issue, one favoring the JVC proposal because ''solid gold should mean that the product is 100% gold,'' and one against the proposal, since fineness must be disclosed for all gold other than 24 karat gold.[93] The Commission believes that the term ''solid gold'' is not inherently deceptive or unfair.[94] Accordingly, the Commission has rejected this proposal.

Subsection (2) in the current Guides advise that (except for 24 karat gold), the karat fineness be stated when the word ''gold'' is used. The JVC did not suggest any changes in this section, and only suggested minor changes in the corresponding ''safe harbor'' provision in § 23.5(c)(1).[95] However, Finlay argued that the word ''gold'' should be allowed in product advertising without a designation as to karat fineness.[96] Including karat fineness in advertising, however, helps consumers make basic comparisons among competing products offered by different retailers. Therefore, the Commission has not changed this provision.

A Note following the first ''safe harbor'' provision, § 23.5(c)(1) in the current Guides, deals with hollow products and advises that there be a disclosure that these products, whatever their gold content, have hollow centers, when the failure to make such a disclosure would be deceptive. It also states that these products should not be referred to as *solid* gold. The JVC proposed revising the note to drop the guidance that there be a disclosure that the product is hollow. However, the Commission has determined that this disclosure is useful because, otherwise, consumers would be unaware that the product is only hollow. Thus, the Commission has not deleted this provision. The JVC also suggested that the note be changed to state that products that are filled with cement or some other filler may not bear a quality mark. However, such products are essentially ''gold plated'' products, and as long as they conform with the Guides' provisions about how to mark such products, consumers are not likely to be deceived. Thus, the Commission has decided not to adopt this proposal.

Subsections (3)–(5) advise against particular uses of the word ''gold'' (*e.g.*, plated, filled, rolled, overlay) unless they are so qualified as to be non-deceptive. Subsection (6) advises against representing that one gold product is superior to another unless the representation is true.[97]

Subsection (7) advises against the use of the word ''gold'' on any product of less than 10 karat fineness. Bales proposed in its comment that the Guides be amended to permit gold alloys containing less than 10 karats of gold (less than .416 percent gold) to be marketed as containing gold. Bales has a patent on a product in which the gold content varies from four to six karats and which is alleged to have good corrosion resistance.[98] This issue was addressed comprehensively by the Commission in 1977.[99] Thus, the

[90] To the extent that sellers purposely inflate the price of their gold-colored products to lead consumers to believe they are purchasing a gold item, they are probably engaging in fraud and are likely to misrepresent the item as gold when it is not, which would be a deceptive practice under § 23.5(a).

[91] Only one comment specifically addressed the proposed definitions. Finlay (253) stated at p.1 that it did not object to the proposed definitions of ''gold.''

[92] For example, the JVC proposed defining ''fine gold'' as ''gold of 24 karat quality.'' However, § 23.5(b)(1) of the current Guides simply refers to ''fine (24 karat) gold.'' Similarly, although the JVC proposed a new definition for ''quality mark'' specifically for gold, the more general definition in § 23.8 of the current Guides (defining the term ''mark'' in conjunction with precious metals generally) is clearer and more accurate. *See* discussion regarding quality marks below.

[93] Lee (153); NRF (238) p.1.

[94] For example, the phrase ''solid 10 karat gold'' is not likely to lead consumers to believe the item is 24 karat gold. *See* Advisory Opinion, *''Solid'' and ''karat'' used together,* 71 F.T.C. 1739 (1967).

[95] This safe harbor provision simply states that an industry product composed throughout of an alloy of gold of not less than 10 karat fineness, may be described as ''Gold'' when the word ''Gold'' is immediately preceded by a correct designation of the karat fineness. The JVC suggested following the words ''an alloy of gold of not less than 10 karat fineness'' with ''less tolerance set out in 15 U.S.C. 294, *et seq.*'' [the National Stamping Act] and footnoting that statement with a detailed explanation of the tolerance. The tolerances are set forth in § 23.5(d) of the current Guides and are more easily understood in the current format.

[96] Comment 253, p.1 (stating that this ''will not mislead consumers where all other requirements of the guidelines have been met and where information as to karat fineness is given at the point of sale''). *See* NRF (238) p.1 and discussion *infra*, regarding the scope and application of the Guides.

[97] A Note following this section provides guidance for the use of the word ''gold'' as applied to certain words (Duragold, Diragold, Noblegold, Goldine). The JVC proposed adding ''Layered Gold'' to this list, and the Commission has done so.

[98] Comment 156, pp.5–8. LaPrad (181) stated at p.2 that ''gold plated items should include any item that is not at least 10 karat solid gold in fineness throughout the item.'' This suggests that an alloy that contained less than 10 karat gold could be described as ''plated.'' However, ''plated'' has been used for many years to refer to a base metal product with a coating of gold. Extending the meaning of the term to low-karat alloys would be confusing.

[99] The 10 karat minimum standard has been used at least since 1933, when it first appeared in Commercial Standard CS 67–38, promulgated by the then Bureau of Standards of the U.S. Department of Commerce. It was incorporated into the Trade Practice Rules for the Jewelry Industry, 16 CFR Part 23, in 1957. In 1977, the Commission proposed permitting sellers to market gold of less than 10 karat and silver of less than 92.5% if the quality was accurately disclosed. This proposal was published for public comment. Over 1200 comments were received, many from consumers, and over 98% of the comments opposed lowering the 10K standard. The Commission found, based on articles and test reports, that articles of less than 10

Continued

Commission has not changed this provision.

The JVC petition also included an admonition against applying a quality mark (*e.g.*, 9 karats) to any article of less than 10 karat fineness regardless of whether the word ''gold'' is used. Because the word ''karat'' is so clearly associated with gold content (even without the use of the word ''gold''), the use of the term ''9 karat'' is likely to represent that the item is 9 karat gold. The Commission has determined that advising against this use is consistent with and clarifies the Guides.

On the basis of comments received in response to questions in the FRN, the Commission has revised current §§ 23.5(b)(3), (4), and (5). These changes are explained in detail below, along with the changes to the corresponding ''safe harbor'' provisions in subsection 23.5(c) of the current Guides.

i. Mechanically or electrolytically ''plated'' products. There are two basic kinds of ''plated'' gold. Mechanically plated gold has a layer of gold alloy bonded to a base metal by heat and pressure. Gold electroplate has a layer of gold alloy electrolytically deposited on a base metal. Section 23.5(b)(3) of the current Guides states that a surface-plated or coated article can only be referred to as ''gold'' when the term is adequately qualified so as to disclose that the product or part is only surface-plated or coated with an alloy of gold. However, for mechanically plated articles, it adds that the word ''gold'' should be preceded by a designation of the karat fineness.[100]

Section 23.5(b)(4) states that certain terms (''gold-filled,'' ''rolled gold plate,'' ''rolled gold plated,'' ''gold overlay,'' ''gold plated,'' or ''gold plate'') should only be used for mechanically-plated items (*i.e.*, not gold electroplate) and that the gold on these items should be of ''such thickness and extent of coverage that the terms will not be deceptive.'' It also states that the karat fineness should be included with these terms. The safe harbor provision in § 23.5(c)(2) states that these terms are not deceptive when used for mechanically-plated items if the karat fineness is stated and the gold is of ''substantial thickness'' and constitutes 5% of the weight of the item. Section 23.5(c)(2) also creates a safe harbor for all these terms except ''gold filled'' when the gold weight is *less* than 5% if they are preceded by a fraction indicating the gold weight (*e.g.*, 1/40 12 Kt. Rolled Gold Plate). ''Gold filled'' is reserved for items with a gold weight of 5% or more.[101]

The JVC proposed adding a note to § 23.5(c)(2) of the current Guides, stating ''The actual gold content of gold-filled and rolled gold plate articles shall not be less than the gold content indicated by the quality mark by more than ten percent.'' Only three comments addressed this issue, all opposing the provision.[102] Section 23.5(d) of the current Guides provide that ''the requirements of this section relating to markings and descriptions of industry products and parts thereof are subject to the tolerances applicable thereto under the National Stamping Act (15 U.S.C. 294, et seq.) * * *.'' The National Stamping Act provides that, for articles made of gold, ''the actual fineness * * * shall not be less by more than three one-thousandths parts than the fineness indicated by the mark * * *.'' 15 U.S.C. 295 (1993). No reason was offered for the much larger, proposed tolerance. Accordingly, the Commission has not adopted this change.[103]

Section 23.5(b)(5) states that the terms ''gold electroplate'' or ''gold electroplated'' can only be used when the plating ''is of such karat fineness, thickness, and extent of surface coverage that the use of the term will not be deceptive.'' The safe harbor provision in § 23.5(c)(3) states that these terms are not unfair or deceptive when used for items with a coating of seven millionths of an inch of fine (24 karat) gold, or the equivalent. [If the gold coating is, for example, 12K (half as fine), the coating should be 14 millionths of an inch thick (twice as thick).] ''Heavy gold electroplate'' may be used for a coating equivalent to 100 millionths of an inch of fine gold. This subsection also states that the terms ''gold flashed'' or ''gold washed'' may be used to describe an electroplated coating that is thinner than seven millionths of an inch of fine gold or its equivalent (the minimum thickness for the use of the term ''gold electroplate'').[104]

The FRN sought comment on how ''gold plate'' should be defined in the Guides. (As noted, current § 23.5(b)(4) allows ''gold plate'' to be used to describe only mechanically plated items.) Six comments opposed allowing

karat fineness tend to tarnish and corrode. The Commission ultimately retained the 10 karat minimum fineness for gold and the 92.5% standard for silver. 42 FR 29916, 29917 (1977).

[100] Canada (209) suggested, at p.4, that gold plated articles ''be prohibited from using the quality mark 'karat'* * *'' because such use confuses the consumer as to the value of the article. In fact, the current Guides (in §§ 23.5(b)(5) and (c)(3)) appear to prohibit a quality mark on gold *electroplated* items. However, a designation of karat fineness has been recommended in the Guides for *mechanically* plated articles for many years, and Commission staff is not aware of complaints from consumers who were deceived by this representation. No other commenters suggested that the Guides advise against the use of a quality mark on mechanically plated items. Hence, the revised Guides, in §§ 23.4(b)(5) and (c)(3), continue to recommend that items identified as mechanically plated contain quality marks.

[101] The Watch Band Guides contain almost identical provisions for mechanically plated watch bands, but they contain a section (§ 19.2(e)(2)) entitled ''Examples of Proper Markings for Expansion Bands of Specified Composition and Construction.'' The main point made by the ''Examples'' is that quality marks on gold-filled portions of a watchband should not imply that base metal portions of the band are gold. The Commission believes the section of the current Jewelry Guides dealing with quality marks (§ 23.8) adequately addresses this issue. *See* discussion of quality marks, *infra.* Therefore, the Commission is not including the ''Examples'' in the revised Guides.

[102] NACSM (219) p.24; Leach (258) p.9 (stating that the tolerance is ''by far too liberal''); Korbelak (27) p.4 of attached letter of April 23, 1982 to Susanne S. Patch (stating that the proposal is ''unsupportable'' and ''contrary to the spirit of the recent amendment of the Marking Act which tightened tolerances on karat goods''). [The National Stamping Act was amended in 1976.]

[103] A ten percent tolerance is found in Voluntary Product Standard PS 67–76, ''Marking of Gold Filled and Rolled Gold Plate Articles Other than Watchcases.'' The tolerance is apparently meant to apply to weight claims, such as ''10% 14 karat gold''.

This standard is referred to in the current Guides [§§ 23.5(d) and 23.5(f) (as ''Commercial Standard CS 47–34'')] with respect to the *exemptions* applicable to the tolerance when a test for metal content is being performed (*e.g.*, excluding ''joints, catches, screws'' etc.) Other Voluntary Product Standards are also referred to in the current Guides for the same reason (*i.e.*, a list of parts of jewelry exempt from assay.) The JVC recommended including in the Guides the full text of all five Voluntary Product Standards for precious metals that are referred to in the current Guides as ''Commercial Standards.'' Commercial Standards were promulgated by the U.S. Department of Commerce and administered by the National Bureau of Standards (''NBS''). Later renamed by the NBS as Voluntary Product Standards (''VPS''), they had the same legal significance as FTC guides. The Department of Commerce and the NBS, which is now called the National Institute of Standards and Technology (''NIST''), withdrew these and all other VPS, as an economy measure, on January 20, 1984. The JVC proposed preserving the material in the VPS by incorporating it into the Jewelry Guides.

Only one comment addressed the issue of whether to include the VPS in the Guides. The Gold Institute (13) agreed that the VPS should be incorporated, but gave no reasons. The Commission has included the material pertaining to exemptions from assay (with some changes, discussed *infra*) in the Appendix. However, the Commission has concluded that it is not necessary to include other portions of the VPS. The VPS state the standards that must be met for each product, if the product is represented to be in compliance with the VPS. However, the VPS have been withdrawn so such a representation is obsolete.

[104] The Postal Service (244) p.2, commented that the use of ''gold flashed'' or ''gold washed'' is misleading to consumers, particularly where items are ordered by mail and not seen by the consumer until after purchase. However, the terms ''gold flashed'' and ''gold washed'' have been in common use for many years. The Commission does not have sufficient evidence at this time to advise against the use of these terms in all circumstances.

electroplated items to be described as ''gold plate.'' [105] Most gave no reason other than stating that there should be a distinction between products that are mechanically plated and those that are electroplated.

Twelve commenters favored letting electroplated items be designated as ''plate.'' [106] Sheaffer noted that ''gold electroplate,'' the designation currently advised by the Guides, is too lengthy for many of its products and is unknown to consumers in foreign countries, who are familiar with the term ''plate.'' [107] Sheaffer stated that most foreign countries permit ''plate'' or ''plated'' to be used to describe an article coated with gold, regardless of the method of application, and that a change in U.S. requirements would allow them to stock inventory of items marked as ''gold plate.'' Further, one commenter interviewed by Commission staff stated that some manufacturers would like to market items that are the product of both mechanical plating and electrolytic plating, that could be labeled ''gold plate.'' [108]

Some comments stated that the relevant issue for consumers is durability, and not the method of plating. Sheaffer stated that ''[t]he normal consumer is totally unconcerned about the process which a manufacturer might use to apply gold or silver plate to an article so long as the precious metal plate meets all appropriate required standards.'' [109] Canada commented that ''gold plate'' is ''simply a layer of gold placed over a base substance'' and that the ''important reference should inform the consumer of the thickness of the plate.'' [110]

Although the comments indicate that there are differences of opinion in the industry regarding industry custom and usage of the term ''plate,'' under the current Guides the term ''gold plate'' can only be used for mechanically plated gold. Historically, mechanically plated gold has contained a thicker coating of gold and has been more durable than gold electroplate, both because it was thicker and because it was less porous.

However, the comments indicate that electroplating has been significantly improved in recent years.[111] Other comments indicate that gold electroplate could now be as desirable, or more desirable, than mechanically plated gold.[112] Commission staff conducted telephone interviews of seven commenters, who, with one exception, indicated that gold electroplate can be made as thick and as durable as mechanically plated gold.[113] Furthermore, all of the commenters whom Commission staff interviewed stated that mechanically plated gold has usually been marketed as ''filled gold,'' ''rolled gold,'' or ''gold overlay'' (instead of ''gold plate'').

Based on the comments, the Commission has determined that the current Guides reflect the now-outdated belief that gold electroplate is inherently inferior to mechanically plated gold. The Guides may thus unfairly give mechanical plating a competitive advantage and may make international trade more difficult. Further, the comments indicate that the term ''gold plate'' has not been used extensively for mechanically plated items, and therefore, consumers may not expect an item labeled as ''gold plate'' to have been mechanically plated. Moreover, the Commission agrees with the comments that state that consumers are unlikely to distinguish between products on the basis of the method of plating used and are more concerned with the durability.[114] Thus, the distinction between mechanically plated and electroplated products no longer serves a useful purpose. Therefore, the Commission has concluded that the term ''gold plate'' would not be inherently deceptive when applied to electroplated items with a sufficient layer of gold that assures reasonable durability. This will allow products composed of a combination of types of plating, or newer methods of plating that are developed, to be called ''gold plate.''

For these reasons, the Commission has created a safe harbor that would allow ''gold plate'' to be used for gold applied by any process so long as the coating is sufficiently durable to satisfy consumer expectations that the plated product would retain its appearance for a reasonable period of time.[115] The Commission believes that a standard based on thickness, rather than weight of the gold coating, is more relevant to

[105] Gold Institute (13) p.2 (defining ''gold plate'' as an optional term to describe a mechanically plated article); Handy (62); Newhouse (76); Mark (207); MJSA (226) p.4 (limiting ''gold plate'' to mechanically plated articles is ''generally consistent with terminology used in the trade''); and Knight (256) p.2 (stating that consumers know electroplate is inferior to mechanically plated gold).

[106] Fasnacht (4) p.1 (stating that ''gold plate'' has historically been used in the trade ''for any application of a karat gold to a base''); Benrus (22); Estate (23); Korbelak (27) p.3 (stating that the trade now uses ''gold plate'' to mean gold applied electrolytically); G&B (30); ArtCarved (155); LaPrad (181); Matthey (213); Bruce (218) p.7 (stating that the trade now uses the term ''gold plate'' to mean gold applied electrolytically); Citizen (228) p.3 (stating that the term should not ''be restricted to any particular method of applying the gold covering'' and noting that ''the vast majority of gold coverings are applied electrolytically''); Sheaffer (249); and Leach (257). Four of these (Fasnacht, G&B, Matthey, and Estate) stated that the method should be disclosed.

[107] Comment 249, p.2. Section 23.5(c)(2) states that ''adequate abbreviations'' are not unfair or deceptive for mechanically plated gold, which is also referred to as ''gold filled'' and abbreviated as G. F. Section 23.5(c)(3) makes no such provision for electrolytically plated gold. Moreover, in an advisory opinion issued in 1971, the Commission stated that ''gold electroplate'' could not be abbreviated. Advisory Opinion, *Designation of gold content on ball point pens,* 79 F.T.C. 1052 (1971). However, the Commission currently has no information that consumers would understand abbreviations for mechanically plated gold but not for electrolytically plated gold. Thus, the Commission has revised the Guides to state that adequate abbreviations are not unfair or deceptive for electrolytically plated gold (*e.g.,* 12 Kt. G. E. P.). Therefore, the advisory opinion is withdrawn.

[108] Matthew Runci from MJSA.

[109] Comment 249, p.3 (noting that ''silverplate'' is allowed under the current Guides regardless of the method of application and that this has not misled consumers).

[110] Comment 209, p.4.

[111] Benrus (22) p.2 (stating that ''The science of gold plating has improved greatly in the past 15 years and the requirements in the current Guides . . . are simply not in tune with today's technology or market practices''); Alan Foster, ''Electrodeposited and Rolled Gold,'' Gold Bulletin 64 (1982), attached to comment 27 (indicating that the electroplating of gold was greatly improved about 30 years ago). Korbelak (27) (attached letter of April 23, 1982 to Susanne S. Patch) states that the current Guides ''perpetuate an economic advantage to one method of manufacturing [mechanical] over another.''

[112] Catholyte (34) p.1 (stating that when corrosion is the quality criterion, ''mechanically cladded material is not the present day choice because machining processes which produce the desired designs will destroy the starting clad stock and yield 'raw' or cut edges which will have little or no clad matter present. (This procedure necessitates the use of electroplate to 'cover' those edges which are exposed.)''). Other comments indicate that mechanically plated gold normally has a surface coating of electroplate. Korbelak (27) (see articles attached to comment); Tru-Kay (196) p.1 (stating that its major product was mechanically-plated jewelry, and noting the existence of ''the surface coating of gold electroplate'' on gold filled items); Mark (207) p.3 (owned and operated a gold-filled manufacturer and distributor for 25 years and referred to the ''surface coating of gold electroplate'' on gold filled (*i.e.,* mechanically-plated) items).

[113] Matthew Runci, Executive Director, MJSA (226); George Knight, former president of the Gold Filled Manufacturers Association (256); Irving Ornstein, Vice President, Leach & Garner (258); Howard Solomon, Vice President, Donald Bruce & Co. (218); I.L. Wein, President, Benrus (22); Barry Sullivan, President, ArtCarved (155); Kenneth Genender, U.S. Watch Council (118). Only Mr. Knight stated that gold electroplate is inherently inferior to mechanically plated gold.

[114] Consumers can determine for themselves whether they like the appearance of the product, but the consumer has no way of determining durability.

[115] Although the evidence indicates that the term ''gold plate'' has not been frequently used, because plating generally has been in use for many years, consumers reasonably would expect a certain minimum level of durability from an item so labeled. The Commission believes it is appropriate to create a safe harbor with a numerical standard for a specific term such as ''gold plate'' when consumers would expect certain qualities from products described by the term and products at or above the standard would have such qualities.

consumer expectations.[116] For the reasons discussed below, the Commission has established a safe harbor for products with a minimum thickness of one half micron of gold coating.

In developing this safe harbor, the Commission has considered the standard for gold plated jewelry established by the International Organization for Standardization (''ISO''): ''ISO International Standard 10713 Jewellery [sic]—Gold alloy coatings.'' [117] This standard sets a minimum thickness of half a micron of fine gold (or its equivalent) for both mechanically plated and electrolytically plated gold jewelry.

The Commission also considered the ISO standard for gold plated watches, which sets a minimum thickness standard of 5 microns, and comments submitted as to the current standard in the Watch Guides, to determine a sufficiently durable coating of gold for plated jewelry. Watches have historically been assumed to be subjected to more wear than other articles of jewelry.[118] The comments that address gold-plated watches indicate that a one micron thickness may be durable. Benrus commented that thicknesses of up to ½ micron ''are unsubstantial and wear very quickly'' but that there is ''a new industry 'standard' of a minimum of 1 micron of gold plating (40 millionths of an inch) which has substantial durability and reliability and gives years of satisfactory service.'' [119] The U.S. Watch Council also noted that the watch industry has adopted 1 micron of thickness (described as 40 millionths of an inch of 23 karat gold) as a standard for gold plating.[120] Two commenters interviewed by Commission staff, Benrus and U.S. Watch Council, stated that watches with a one micron coating of gold, if worn every day, could be expected to last between two and four years.

Because most jewelry gets less wear than watches, the Commission believes that the ISO standard of half a micron of fine (24 karat) gold plating for jewelry constitutes a ''floor'' of sufficient durability, so that consumers are unlikely to be misled about the durability of an item marked ''gold plate.'' However, the Commission recognizes that some commenters indicated that half a micron is not very durable. Also, certain items of jewelry receive more wear than others, and some items, such as rings, might actually receive more wear (and more friction with skin) than watches.[121]

Therefore, to ensure that consumers are not deceived by the implied claims of durability arising from the term ''gold plate,'' the ''safe harbor'' in the revised Guides (§ 23.4(c)(2)) reflects the Commission's view that the term ''gold plate'' is not inherently deceptive or unfair when used for gold applied to an industry product (excluding watches) by any process so long as the following two conditions are met: (1) The product contains a coating of half a micron, or 20 millionths of an inch, of fine gold or the equivalent; and (2) The coating is ''of substantial thickness,'' [122] which for items that are subject to a great amount of wear, such as rings, should be more than half a micron of fine gold or the equivalent. This second provision ensures that products that are subject to greater wear should have a coating of greater thickness than the minimum half micron. Moreover, it ensures that products that are subject to a great amount of wear in certain areas would have a more substantial coating in those areas.

The Commission has indicated that the thickness of the gold plating may be marked in microns on the item itself if it is followed in close proximity by a gold quality mark (*e.g.*, 2 microns 12 K. G. P.). A note following this section recommends that if a product has a thicker coating in some areas than others, the area of least thickness should be marked. This allows manufacturers to inform consumers of the minimum thickness of the plating, and consumers may therefore shop for items with more or less plating depending on their needs and budget.

The ISO standard, in section 5.4, prohibits quality marks on gold plated items. However, the Commission does not believe it is appropriate to include this portion of the international standard in the revised Guides. The quality mark in combination with an indication of the thickness of the gold plate, can communicate important information to consumers. The ISO standard also sets up a system whereby gold plated products can be labeled ''A,'' ''B,'' or ''C,'' with A indicating products that have a minimum of 5 microns of 14 karat gold (or the equivalent), B indicating a minimum of 3 microns of 14 karat gold (or the equivalent), and C indicating a half micron of 24 karat gold (or the equivalent). However, American

[116] Sheaffer (249) p.4 (stating that a standard based on a weight ratio (*e.g.*, 1/20th) can ''encourage the production of inferior articles lacking strength and rigidity as the thickness, and thus, the cost of the plate can readily be reduced by use of a very thin base material''). *But cf.* AWA (236) p.2 (in discussing ''gold flashed'' watches, stating that thickness ''is only one factor in determining the esthetic qualities and durability of the electroplating process,'' that different technologies produce varying thicknesses, all of which provide durable coverage, and that establishing a threshold standard for ''gold flashed'' or other similar terms creates an arbitrary standard that distorts the marketplace); and NAW (251). However, because of the other comments discussed in the text, the Commission believes that identifying a minimum thickness and fineness is appropriate for a safe harbor for ''gold plate'' claims for jewelry.

[117] The Trade Agreements Act of 1979 states that federal agencies must, in developing standards, ''take into consideration international standards and shall, if appropriate, base the standards on international standards.'' 19 U.S.C. 2532(2)(A) (1980). A ''standard'' is defined as ''a document approved by a recognized body that provides, for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory.'' 19 U.S.C. 2571(13) (1995). An international standard is defined as a standard promulgated by an organization engaged in international standards-related activities, the membership of which is open to representatives, whether public or private, of the United States and all members of the World Trade Organization (''WTO''). 19 U.S.C. 2571(5), (6), and (8) (1995). A WTO member is ''a state or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement. 19 U.S.C. 3501(10) (1995).

ISO is, according to the ''foreword'' sections in several ISO standards attached to the Swiss Federation comment (232), ''a worldwide federation of national standards bodies. The work of preparing International Standards is normally carried out through ISO technical committees.'' ISO is open to representatives from the United States and to representatives from members of the WTO, and qualifies as an international standards organization.

However, the Trade Agreements Act also explicitly states several reasons why basing a standard on an international standard may not be appropriate, including the prevention of deceptive practices and fundamental technological problems. 19 U.S.C. 2532(2)(B)(i).

[118] This is reflected in the current Guides. Watches marked ''gold electroplate'' should be plated with at least three-fourths one thousandths of an inch of 10 karat gold (or 750 millionths of an inch) whereas jewelry should be plated with at least 7 millionths of an inch of 24 karat gold or the equivalent.

The American Watch Association (236) stated at p.1, that standards for gold plating should be similar for watches and jewelry because ''consumers can be confused when faced with jewelry and watch products subject to entirely different definitions and standards.'' However, watches may be subjected to more wear than most jewelry (because they are usually worn daily), and, based on past practice, consumers may expect watches to have a thicker coating of gold plate than jewelry. Moreover, there are different ISO standards for plated jewelry and plated watches.

[119] Other commenters interviewed by Commission staff stated that ½ micron was not very durable [Irving Ornstein from Leach (257); Kenneth Genender from U.S.W.C. (118)]. Catholyte, (34) p.1 (a ''quality'' product would contain 5 microns).

[120] Benrus (22); USWC (118).

[121] Telephone interview with I. L. Wein, President, Benrus. Bruce (218), in discussing vermeil (which is gold plate over sterling silver), stated that one micron of plating would be sufficient for some items such as earrings, two microns for other such as necklaces, but that an item like a ring would require three microns.

[122] ''Substantial thickness'' is defined in a footnote which is similar to the present footnote 1 in the current Guides.

consumers are not familiar with this system, and the Commission does not believe it is appropriate to include it in the Guides at this time.[123]

The safe harbor for ''gold plate'' (§§ 23.4 (b)(4) and (c)(2)) will be in addition to those already contained in the Guides. Thus, §§ 23.4 (b)(5) and (c)(3) of the revised Guides indicate that mechanically plated gold can be called ''gold filled,'' ''rolled gold plate,'' or ''gold overlay.'' However, items mechanically plated with gold also can be referred to as ''gold plate,'' in accordance with the guidance of § 23.4 (c)(2) of the revised Guides. Electroplated items can be marked as ''gold electroplate'' or ''GEP,'' in accordance with the guidance of §§ 23.4(b)() and (c)(4) of the revised Guides,[124] or as ''gold plate,'' in accordance with § 23.4(c)(2).

c. *New methods of plating.* The FRN solicited comment on whether newer methods of plating should be included in the guides and how they should be addressed. Nineteen comments addressed this issue, and of this group, only one commenter stated that he was unaware of new techniques.[125] The most frequently mentioned new method was ''electroforming,'' a process in which gold is deposited over materials that are removed, leaving a hollow item.[126] (If all of the foreign material is removed, the product is not actually plated.) Citizen Watch (228) described a process called ''ion plating,'' and Sheaffer (249) described ''vapor deposition,'' ''sputtering,'' and ''electroless immersion.'' However, Sheaffer stated that these processes could be handled in the same basic manner as mechanical plating and electroplating and noted that the terms ''plate'' or ''plated'' should be available to describe products coated by any of these methods.[127] As discussed *supra,* the Commission has revised the Guides to indicate that it is not misleading to describe an item as gold plate, whatever method is used to apply the gold, so long as it meets the suggested minimum thickness and fineness standards. The Commission does not have enough information at this time to provide more detailed guidance regarding the newer methods of plating.

d. *Nickel in gold-filled jewelry.* The FRN solicited comment on whether the Guides should advise against the use of the term ''gold-filled'' to describe a product in which nickel is inserted between the gold-filled item and a surface coating of gold electroplate. The FRN also asked if it would be acceptable to permit the insertion of nickel so long as the lessened durability of such an item is disclosed, and asked what type of disclosure should be made.[128]

Most of those who commented believed that jewelry made in this way should not be called ''gold-filled.''[129] Tru-Kay (which stated that gold-filled jewelry is its major product line) noted that the insertion of nickel would adversely affect durability and quality.[130] Three comments contended that nickel should not lessen durability.[131]

Mark stated that if a layer of nickel ''has covered the basic material, it will show up as soon as any gold surface coloration has worn through* * *.''[132] This is particularly important since the metal color would change from yellow to white. Mark also stated that ''[t]o cover the mechanically bonded layer of gold [with nickel] which is the essence of the gold-filled product defeats the purpose of the gold-filled standard to the consumer.''[133]

The Commission agrees with the argument of the majority of the commenters that a thin wash of gold could wear away and reveal the nickel. Thus, the use of the term ''gold-filled'' to describe such a product does not comport with § 23.4(b)(5) of the revised Guides, which states that the product should contain ''a surface-plating of gold alloy applied by a mechanical process which is of such thickness and extent of surface coverage that reasonable durability is assured.'' The Commission has concluded that the use of ''gold-filled'' or other terms to describe mechanically plated gold covered with nickel that is washed with gold involves a misleading use of the word ''gold'' because it does not disclose that this product has only a thin wash of gold over a surface layer of nickel.[134] To clarify this point in the revised Guides, the Commission has added a provision, § 23.4(b)(6), that states that such a product should not be described as ''gold plate'' or ''gold-filled'' unless it contains a disclosure that the primary gold coating is covered with a base metal, which is gold washed. Such a product comports with the guidance in the current and revised Guides for ''gold washed'' or ''gold flashed'' and, if the seller wished to do so, the seller could so describe it.[135]

[123] ISO standard 17013 also provides a similar system of marking mechanically plated gold items (*e.g.,* ''A'' indicates a thickness of 5 microns), based on the thickness of the gold plate. However, the Guides allow marking of mechanically plated items (*e.g.,* gold-filled or rolled gold plate), based on the weight of the gold in the item. The current system in the Guides has been used for many years and the ISO system of marking may be confusing to consumers. Thus, the Commission has not included the ISO system in the revised Guides. The Commission believes that omitting the ISO system of marking mechanically plated gold from the Guides will not pose a barrier to international trade, because manufacturers can mark the product ''gold plate'' according to the new provisions for gold plated items, discussed above.

[124] The JVC petition suggests revising the sections pertaining to electroplate by substituting the word ''electroplate'' for the word ''plate'' and ''electroplating'' for ''plating.'' This revision clarifies that products coated with gold by a process other than electroplating should not be sold as ''gold electroplate.''

[125] Gold Institute (13); Estate (23); Korbelak (27); G&B (30); Handy (62); Newhouse (76); Eisen (91); ArtCarved (155); Bales (156); LaPrad (181); Mark (207); Canada (209); Matthey (213); Bruce (218); WGC (223); MJSA (226); Citizen (228); Sheaffer (249); and Leach (257). Leon Newhouse (76), a former executive in the watch industry who stated that he has been retired since 1971, said he was not aware of any new techniques. Handy, Mark, Matthey and MJSA stated the techniques can be adequately dealt with by the existing provisions in the Guides.

[126] Bruce (218) (stating that it produces this type of jewelry); Bales (156) p.8 (stating that such jewelry is often sold by weight and that ''[m]any times, the manufacturer leaves a measurable amount of residue inside the shell and weighs it, and actually sells [it] as gold or silver''); Canada (209) (stating that the problem of foreign substances left inside plated articles deserves review). Section 23.5(a) of the Guides makes clear that overstatement of the quantity of gold in a product is unfair and deceptive.

[127] Comment 249, p.3; ArtCarved (155) (stating that ''gold plate'' should be allowed for all methods). Two comments, Estate (23) and G&B (30), stated that the method of application should be revealed, but gave no reasons.

[128] The JVC proposed this provision to prevent ''the occasional expediency, in the manufacturing of finished products, to 'hot nickel' or use some other non-precious electroplating over the mechanical precious metal surface and then merely to apply a flash of precious metal electroplating.'' Petition Section 23.5 C(2), Footnote 2. ArtCarved (155) suggested, at p.3, that ''on some surfaces nickel serves as a leveling agent.'' Korbelak (27) stated, at p.4, that ''nickel is apparently used to prevent corrosion of the unavoidably exposed copper alloy base of the mechanically coated stock.''

[129] Fasnacht (4); Gold Institute (13); Estate (23); Korbelak (27); Newhouse (76); Tru-Kay (196); Phillips (204); Mark (207); Matthey (213); Bruce (218); WGC (223); MJSA (226); and Leach (257). Two commenters, G&B (30) and Jabel (47), favored allowing the insertion of nickel with a disclosure, but G&B noted that there may be a need to ''have a new term.''

[130] Tru-Kay (196) p.1.

[131] Handy (62); ArtCarved (155); and Sheaffer (249).

[132] Mark (207) p.4.

[133] *Id.*

[134] The Commission rendered an advisory opinion on this issue in 1966, stating that ''a purchaser of such an article would not get the type of performance expected from gold filled articles because points of wear would expose the coating of white nickel at a very early stage and the ornamental value would be seriously reduced.'' Advisory Opinion, *Improper Use of terms such as ''gold filled'' or ''rolled gold plate''*, 69 F.T.C. 1234 (1966).

[135] The Gold Institute stated, that ''Nickel is a recognized skin irritant,'' and urged that the use of nickel in gold jewelry be prohibited. Comment 13, p.2. Several other commenters took this position. However, the fact that nickel is a skin irritant would

Continued

e. *Provisions relating to vermeil.* Vermeil, a product made of sterling silver with a coating of gold, is a special form of gold plate.[136] The JVC proposed including provisions for vermeil in the Guides and the FRN solicited comment on whether a recommended minimum plating of 120 millionths of an inch of fine gold, or its equivalent, over sterling, was appropriate.

Eighteen comments addressed this issue.[137] Two comments stated the proposed standard was not appropriate; one offered no reason and the other stated that the standard should be up to the manufacturers.[138] Three comments stated that the proposed standard was thicker than necessary.[139] Other commenters offered various opinions on the proposed standard.[140] Most of the other comments simply said the proposed standard was appropriate but offered no reasons.

MJSA supported the proposed standard stating that it ''assures an extremely high level of durability and low porosity.'' However, MJSA stated that ''it is possible to establish a highly durable coating of gold over silver at substantially lesser thicknesses,'' and noted that many manufacturers currently produce such a product.[141] In the Jeweler's Dictionary, modern usage of ''vermeil'' is defined as ''Heavy gold electroplate over sterling silver * * * or a substantial layer of karat gold mechanically applied over sterling silver.'' [142] The current Guides identify the minimum thickness for heavy gold electroplate as the equivalent to 100/1,000,000ths of an inch of fine gold.

The JVC petition indicates that vermeil is susceptible to discoloration, presumably because the silver might tarnish.[143] Because gold itself deters tarnishing, the thicker the coating of gold, the less likely the underlying silver will tarnish. However, Korbelak (27) p.4, stated that ''gold coatings are permeated by sulfides in the average atmosphere up to thicknesses of 10 microns (0.0004 inch).'' Thus, even a gold coating of 120 millionths of an inch (or 0.00012 inch), or about 3 microns would not completely solve this problem.

The Commission believes it is appropriate to reference a numerical thickness in the Guides when consumers have come to expect certain qualities from products described by the term and products below the standard would not have such qualities. The comments indicate that there are items sold as ''vermeil'' that have the qualities consumers associate with ''vermeil,'' and that have a gold coating of less than 120 millionths of an inch. Furthermore, the definition of vermeil in the Jeweler's Dictionary is consistent with Korbelak's comment (27) that many years ago, the trade established a floor of 100 millionths of an inch for vermeil. Therefore, the Commission has concluded that a thickness of 100 millionths of an inch, or 2.5 microns, of fine gold is an appropriate thickness ''floor'' for vermeil.

Because there may be items currently sold as ''vermeil'' that do not comport with the generally accepted meaning (*i.e.*, gold over silver), the Commission has added a general provision stating that it would be unfair or deceptive to describe an article as ''vermeil'' if it misrepresents the product's true composition. The Commission has also added a section, 23.5(b), which provides guidance on when a product may be described as ''vermeil.'' This section states that a product may be described as ''vermeil,'' ''if it consists of a base of sterling silver,[144] coated or plated on all significant surfaces, with gold or gold alloy of not less than 10 karat fineness, which is of substantial thickness and a minimum thickness throughout which is equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold.'' As with other gold-plated items (covered in § 23.4 of the revised Guides), ''substantial thickness'' is defined in a footnote which is similar to the present footnote 1 in the current Guides.

With respect to the problem of the tarnishing of the silver base, the JVC recommended the addition of a note allowing a nickel barrier. However, the nickel is placed over the silver base, and it is the silver that distinguishes vermeil from other gold plated items. Moreover, vermeil is by definition composed completely of precious metal alloys.[145] Although the note indicates that the purpose of the ''diffusion barrier'' is to prevent premature discoloration, there was no discussion of the effect a ''diffusion barrier'' over the silver would have on the unique coloration of vermeil. Moreover, no explanation was offered for limiting the thickness of the barrier to 50/1,000,000ths of an inch.[146] Although there may be a need for such a barrier, in the absence of adequate information on this issue (including whether it changes the appearance of the product in a manner that would be objectionable to consumers), the Commission has determined not to add this note to the Guides. Instead, the Commission has added a Note which states that such a product should not be described as vermeil unless there is a disclosure that the sterling silver is covered with a base metal, which is gold-plated.

The JVC petition suggested several other qualifications of the use of ''vermeil'' that the Commission has not included in the revised Guides. The petition suggested that the application of the gold must be either by mechanical bonding or electroplating. However, comments have indicated that some new methods of application have been developed, and no reasons were offered

require the disclosure of its presence in all jewelry, not just rolled gold jewelry. This was not proposed in the FRN and there is not an adequate basis at this time for adding such a provision.

[136] ''Tiffany's Sterling: History and Status,'' National Jeweler (undated) (attached to Korbelak (22)) (stating that vermeil is a unique product with a ''silver-gold'' glow, which has been on the market for a long time). However, no provisions pertaining to vermeil have ever been included in the Jewelry Guides.

[137] Fasnacht (4); Gold Institute (13); Korbelak (27); G&B (30); Jabel (47); Handy (62); Newhouse (76); ArtCarved (155); IJA (192); Tru-Kay (196); Mark (207); Canada (209); Bruce (218); Impex (219); MJSA (226); Sheaffer (249); Knight (256) and Leach (257).

[138] Newhouse (76) and Impex (219).

[139] Korbelak (27) p.4 (stating that ''a floor of 100 millionths of an inch was established by the trade many years ago''); Tru-Kay (196) p.2 (stating that the proposed standard was ''quite excessive'' and not necessary ''in order to give the consumer a quality product''); Bruce (218) p.8 (stating that the proposed standard was ''very heavy'' and noted that ''the nature of the product and the wear it is subjected to would be a more appropriate guide for plating thickness''). Bruce (218) suggested that the proposed standard was appropriate for items such as rings (which receive a lot of wear) but suggested 40 millionths of an inch for earrings and pendants and 80 millionths of an inch for bracelets and neck chains.

[140] MJSA (226) pp.4–5 (stating that the JVC recommended 120 millionths of an inch simply because it is higher than the 100 millionths of an inch required for heavy gold electroplate); G&B (30) p.8 (indicating that the point was simply to set some standard); ArtCarved (155) p.4 (stating that ''if vermeil is the standard word used for 120 millionths of an inch, this would be okay''); Canada (209) p.4 (noting that it has a quality mark for vermeil but has yet to establish a minimum standard for plating).

[141] Comment 226, pp.4–5.

[142] ''Jewelers' Dictionary'' 253 (3d ed. 1976).

[143] The JVC recommended the addition of a note that states that a diffusion barrier (typically of nickel) may be electrolytically applied, in a thickness of no more than 50/1,000,000ths of an inch, under the layer of gold.

[144] The comments indicate that the sterling silver base is part of the common understanding of the term ''vermeil.''

[145] *See also* Advisory Opinion, *Impropriety of description ''14K'' for item not entirely gold*, 69 F.T.C. 1212 (1966) (stating that an earring post with a 14K gold base, electroplated with copper, nickel and then karat gold, could not be described as 14 karat gold, because it would ''contains substantial electroplatings of base metals'').

[146] Franklin Mint (250) p.4 (objecting to the proposal and stating that their own tarnish testing indicates the need for a barrier of 150/1,000,000ths of an inch).

for excluding those methods. (*See infra* for a discussion of these comments.) The JVC also proposed that a vermeil industry product only be represented by the word 'Vermeil' standing alone,[147] and proposed prohibiting use of the words ''gold'' or ''silver'' to modify ''vermeil.'' However, no reasons were offered as to why the terms ''gold vermeil'' or ''silver vermeil'' would be deceptive. The use of the terms ''gold'' and ''silver'' are covered by other sections of the revised Guides, and the Commission believes these sections are adequate to prevent the deceptive use of these terms in connection with vermeil.

Finally, the JVC suggested including a requirement that when ''vermeil'' is used as a quality mark, it must be accompanied by the name or trademark of the manufacturer or importer according to the provisions of the National Stamping Act. The National Stamping Act creates such a requirement for any quality mark indicating the presence of gold or silver. Thus, the requirements of the Act may apply to a ''vermeil'' quality mark. However, there is currently a Note in the Guides, following the section dealing with quality marks, referring to the requirements of the National Stamping Act. Instead of creating a second note, the Commission has added ''vermeil'' to the list of quality marks in that Note (and in § 23.9 of the revised Guides).

3. Misrepresentation as to Silver Content: § 23.6

Section 23.6(a) of the current Guides cautions against misrepresenting the silver content in any industry product. The JVC proposed adding the abbreviation ''Ster.'' to § 23.6(b) of the Guides, which states that the use of the terms ''silver,'' ''solid silver,'' ''Sterling,'' or ''Sterling Silver'' is deceptive unless the product is 925/1000ths pure silver. Because consumers are likely to believe this term stands for ''Sterling,'' the Commission has added the abbreviation ''Ster.'' to this section.

The JVC proposed stating that abbreviating the term ''Sterling'' was not allowed when used to describe hollowware or flatware. No reason was offered for prohibiting this practice, and the Commission has no reason to conclude that this practice is inherently unfair or deceptive.[148] The JVC also proposed stating that ''Sterling'' or ''Ster.'' was not allowed to be applied to a silverplated article. This proposed addition to § 23.6(b) essentially restates § 23.6(d) of the current Guides, which states that it is unfair to apply the terms ''Sterling'' or ''Coin'' to any silver-plated article or the plating thereon. In fact, the National Stamping Act states that silverplated articles shall not ''be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks.'' 15 U.S.C. 297(a). However, the Commission has determined that § 23.6(d) of the current Guides may unnecessarily inhibit the use in advertising of phrases such as ''sterling silver plated'' or ''coin silver plated.'' Thus, the Commission has deleted § 23.6(d) and has added a Note referring to the requirements of the National Stamping Act.

Section 23.6(c) states that the use of ''coin'' is deceptive unless the product is at least 900/1000ths pure silver. The JVC proposed adding a prohibition against abbreviating the term ''coin.'' There is no evidence that ''coin'' is being abbreviated or, if it were, that it would be misleading to consumers. Accordingly, the Commission has not adopted this proposal.

a. *Silverplate.* Section 23.6(e) of the current Guides state that it is an unfair trade practice to represent an industry product as plated with silver unless all significant surfaces are coated with silver ''which is of substantial thickness.'' [149] The JVC proposed continuing the use of the ''substantial thickness'' standard but adding a footnote stating this means thickness sufficient to assure durable coverage of the base metal. (The current Guides contain such a footnote in § 23.5(c)(2) with respect to gold-filled items.) The FRN solicited comment on whether this addition should be made or whether the thickness should be defined numerically.

All but one of the 16 pertinent comments indicated that giving a numerical value to ''substantial thickness'' would be desirable.[150] However, four of these suggested that additional data were needed.[151] Moreover, only a few made specific recommendations. Sheaffer noted that it was ''not aware of any problems resulting from the current definition of 'substantial thickness'' but nevertheless proposed a coating five microns (200 millionths of an inch) thick. Mr. Korbelak suggested 500 millionths of an inch where it is functionally necessary.[152]

The Gold Institute made detailed recommendations, but only for silver plated flatware and hollowware.[153] However, without more evidence of the need for, and desirability of, these particular standards, the Commission does not believe it is appropriate to adopt specific standards for flatware and hollowware. Moreover, the amount of wear received by jewelry is different from the amount of wear received by flatware and hollowware. Therefore, the proposed standards for flatware may not be appropriate for jewelry. Indeed, the amount of wear received by different kinds of jewelry varies greatly (*e.g.*, earrings as compared to bracelets) and manufacturers may need flexibility in any silver plate standard for jewelry.

Based on the comments, the Commission does not believe that there is currently a consensus in the industry as to what would constitute an appropriate minimum numerical thickness for the purpose of identifying a safe harbor for the term silverplate.[154] However, the Commission has added a note to § 23.6(e) to provide some guidance to the industry regarding ''substantial thickness'' in connection

[147] Franklin (250), at p.4, objected to the exclusion of ''alternative descriptions and markings . . . such as 'sterling silver electroplated with 24 kt. gold'' and noted that ''no evidence has been produced that such designations would mislead the public.'' The Commission believes that alternative truthful descriptions of a vermeil product (*e.g.*, sterling silver electroplated with 24 kt. gold) are acceptable.

[148] Franklin (250) commented at p.5, that the presumption implicit in allowing sterling to be abbreviated on other products ''is that buyers of the other products named therein for which 'ster.' is an acceptable usage understand its meaning; it defies logic to assume that the term 'ster.' is not recognized and understood by the hollowware and flatware buying public.''

[149] The Watch Band Guides differ from the Jewelry Guides in that they state that when an industry product is marked as ''silver plate'' all significant surfaces ''shall have a plating or coating of *silver of a high degree of fineness* and such plating or coating shall be of substantial thickness.'' 16 CFR 19.2(b) (emphasis added). The Jewelry Guides simply state that such a product should contain a ''plating or coating of silver which is of substantial thickness.'' The Jewelry Guides state that ''silver'' means sterling silver (*i.e.*, unless qualified by the word ''coin''). Thus, the Jewelry Guides appear to limit the use of ''silver plate'' to *sterling* silver plate, whereas the Watch Band Guides appear to allow *coin* silver to be used on an item marked ''silver plate.'' Because no one objected to the current provision in the Jewelry Guides, the Commission has retained the provision as it appears in the Jewelry Guides for both jewelry and detachable watch bands.

[150] Gold Institute (13); Korbelak (27); G&B (30); Handy (62); Newhouse (76); ArtCarved (155); Bales (156); Phillips (204); Canada (209); Bruce (218); MJSA (226); Sheaffer (249); and Leach (257). The one dissenter was the JCWA (216), which stated at p.3 that ''there is insufficient data to determine an 'acceptable' thickness of silver plating, and because related ISO standards have not been established, it is difficult to determine the durability of specific levels of silver plating. Therefore, it is not practical to define 'durability' in numerical terms. The existing definition is appropriate.''

[151] G&B (30); Handy (62); Canada (209); and MJSA (226).

[152] Sheaffer (249) p.4; Korbelak (27) p.4.

[153] Comment 13, pp.2–3.

[154] There is no ISO standard for silverplate.

with the use of the term silverplate. This note is similar to footnote 1 in the current Guides, which annotates the use of the phrase ''substantial thickness'' in connection with ''gold plate.''

Finally, the JVC recommended adding a section to the Guides that would allow items with an inner core of base metal to be referred to as sterling or coin (instead of silverplate) as long as the item as a whole contained 925 or 900 parts silver per thousand. A literal reading of the sections of the current Guides pertaining to sterling and coin [§§ 23.6 (b) and (c)] indicates that this practice is not currently perceived as misleading. However, the actual practice in most of the industry is only to label an item sterling if it is a uniform mixture throughout of 92.5% silver and a base metal (or, for coin, 90% silver and the rest base metal). Without more information as to consumer beliefs, the Commission is not adopting this specific provision at this time.

b. *Diffusion barrier on sterling silver.* The JVC recommended adding a note to the Guides that states that a diffusion barrier (typically of nickel) may be electrolytically applied, in a thickness of no more than 50/1,000,000ths of an inch, under a layer of rhodium, to deter premature tarnishing on sterling silver products.[155]

Although this note refers to ''sterling silver products,'' it follows the section on silver plate, and it is unclear whether this note is meant to apply to sterling silver products or silver plated products or both. In either event, the described product would have no silver on the surface, and thus, strictly speaking, it would not fall within the definitions in the Guides of either sterling silver or silver plate. John Lutley, Executive Director of the Silver Institute and President of the Gold Institute, stated, ''[s]ome jewelry manufacturers plate pure silver over a nickel flash on sterling silver to achieve a mirror finish and reduce the rate of tarnishing.'' [156] This may be the practice the note was designed to address. However, in the absence of adequate information on this issue (*e.g.,* how such products are described to consumers), the Commission has not included this Note in the revised Guides.

c. *Quality marks.* The JVC proposed adding three subsections dealing with quality marks. Two subsections [23.6 Section I(g) and I(h) in the JVC petition] reiterate the general provisions concerning the use of the terms ''Sterling,'' ''Ster,'' ''Sterling Silver,'' ''Silver,'' or ''Solid Silver'' and ''Coin'' or ''Coin Silver,'' set out in subsections (a), (b), and (c) of the silver section. Therefore, the Commission is not restating these provisions in another section.

The third proposed section dealing with quality marks [section 23.6 Section I (i) of the JVC petition] states that no quality marks shall be used ''other than those herein specified.'' The Franklin Mint commented that this ''inexplicably prohibits use of such universally recognized numerical terms as '.925' in conjunction with other applicable quality marks such as 'ster.' or 'sterling.' '' [157] The Commission does not believe that a marking such as ''.925 ster.'' is inherently deceptive, and is not including this proposal in the Guides.

d. *Tolerances and exemptions for testing purposes.* Footnote 2 of the current Guides notes that the tolerances of the National Stamping Act are applicable to claims made with respect to silver content. The JVC suggested reorganizing this information, and the Commission believes that this change will be helpful to industry members who are using the Guides. Footnote 2 of the current Guides also refers to the exemptions recognized in an assay for quality (to determine the amount of fine silver in the item which is assayed), which are taken from Commercial Standard CS 118–44 [Marking of Jewelry and Novelties of Silver] and Commercial Standard CS 51–35 [Marking Articles Made of Silver in Combination with Gold]. The JVC suggested identifying these exemptions in an additional subsection. Because the exemptions apply to both silver and gold, and because the lists of exemptions distract from the main points of the text of the Guides, the Commission has included this information as an appendix to the Guides. A Note following the silver section refers to the Appendix. 4. Marking of Articles Made of Silver in Combination With Gold

The current Guides do not contain a separate section addressing how products which are a combination of silver and gold can be nondeceptively described. The JVC proposed including in the Guides most of the text of Voluntary Product Standard PS 68–76, ''Marking of Articles Made of Silver in Combination with Gold.'' [158] The proposed section defines the covered products as sterling silver in combination with gold.[159]

The JVC's proposals, at least in the case of products with distinguishable components, result in markings that the Commission has already identified as deceptive.[160] However, claims as to silver content are covered by the silver section and claims as to gold content are covered by the gold section. Furthermore, the marking of articles which are a combination of silver and gold is adequately addressed by § 23.8(a) of the current Guides. That section provides that it is unfair to place a quality mark on a product when the mark would deceive purchasers as to the metallic composition of the product or any part thereof. Moreover, subsection (a)(2) notes that, when a quality mark applies to one part of a product but not another part of a similar appearance, it should be accompanied by an identification of the part to which it applies. The JVC offered no evidence regarding why additional guidance on these issues was needed or that any combination gold and silver products

[155] Rhodium, a member of the platinum group metals, is very hard.

[156] Comment 13, p.2.

[157] Comment 250, p.5.

[158] Footnote 2 in the current Guides references former Commercial Standard CS 51–35 (''Marking of Articles Made of Silver in Combination with Gold'') but only to note that it sets out exemptions from an assay in quality. *See* discussion, infra, regarding Commercial Standards generally.

[159] The VPS provides that articles where the gold and silver are visually indistinguishable (*e.g.,* where the gold covers the entire article, or where white gold is combined with silver) may be marked, *e.g.,* ''Sterling and ⅕ 10 K,'' where the fraction represents the proportion of the weight of the alloyed gold to the weight of the entire metal in the article. It also provides that the karat mark can only be used if the gold alloy is 1/20 of the weight of the entire metal in the article. For articles where the gold and silver are visually distinguishable, the karat mark must always follow the Sterling mark, *e.g.,* ''Sterling and 10 K,'' and there is no requirement that the proportion of the weight of the alloyed gold to the weight of the entire metal in the article be disclosed. The JVC also proposed that articles so marked must not contain any metal other than Sterling silver and 10 karat or better gold.

[160] In an advisory opinion, *Marking of jewelry produced from a 14 karat gold sheet laminated upon sterling,* 89 F.T.C. 651 (1977), the Commission stated that the mark ''Sterling and 14K'' was deceptive as applied to an article in which a 14K gold sheet was laminated on sterling, and the gold constituted at least 5% of the weight of the article. The Commission noted that the different metals were visually distinguishable ''but casual inspection cannot determine the relative thickness of the gold layer and the silver.'' *Id.* at 651. The Commission stated that the suggested markings ''could suggest to consumers that the amount of gold and silver. . . are approximately equal or, at least, would suggest more than five percent 14K gold.'' *Id.*

In an advisory opinion involving two visually indistinguishable metals, *Marking of 18 karat white gold ring with platinum baguette prongs,* 74 F.T.C. 1686 (1968), the Commission stated that a white gold ring with platinum baguettes could not be marked ''18K—10% Plat.'' The Commission reasoned that ''the consumer might conclude that all of the prongs, including those for the center stone, are of platinum composition. Under these circumstances, it is not enough to merely say that the ring contains 10% platinum and 90% gold without disclosing the true composition of the various parts of the ring.'' *Id.* The Commission suggested that the ring could be marked ''18K-baguette prongs Plat.''

were being marketed in a manner that deceived consumers as to their metallic content.[161]

Finally, the JVC's proposal to permit quality marks only for sterling and gold items is unduly restrictive. For example, an article made of coin silver combined with gold could not contain a quality mark under the JVC proposal, nor could an article which contains any metal other than sterling silver or gold. For all these reasons, the Commission has not included in the Guides, the proposed provisions relating to articles made of silver in combination with gold.

5. Platinum: § 23.7

Section 23.7 of the current Guides states that it is an unfair trade practice to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviations thereof, in a way likely to deceive purchasers as to the true composition of the product. The JVC and a number of commenters proposed changes to this section. However, the Commission recently received a request for an advisory opinion from the JVC and Platinum Guild International for markings of platinum products. This request indicated that members of the platinum industry are interested in simplifying current Commission guidance regarding platinum descriptions and bringing this guidance into closer accord with international standards. The comments submitted in response to the FRN do not address some of these issues. Therefore, the Commission has decided that it would be beneficial to solicit additional comment from the entire industry on markings and descriptions of platinum products before making any changes in this section. A request for comment on these issues will be published in a separate Federal Register notice.

6. Pewter

The current Guides do not pertain to products made from pewter. The JVC recommended including a section on pewter and the FRN solicited comment on whether the guides should include a provision, and whether the standard of any alloy consisting of at least 900 parts per thousand Grade A Tin is appropriate.

Thirty comments addressed this issue, and most thought pewter should be included in the Guides and that the proposed standard was appropriate. Four opposed the change, stating that the Guides should only address precious metals.[162] One comment stated that there was no apparent need for regulation of pewter but another stated that there are ''many companies that are abusing the representation of pewter products.'' [163]

It appears that pewter has been increasingly utilized in costume or fashion jewelry. Nellie Fischer of the American Pewter Guild advised staff in a telephone interview that over the past five years her company's sales of pewter jewelry to the trade have increased by 40 percent.[164] Pewter jewelry and other pewter products are sold by at least some of the same entities that sell other products covered by the current Guides. The Commission has concluded that inclusion of a provision for pewter may prevent misrepresentations.

With respect to the proposed standard, Salisbury Pewter stated that ''a 90% tin requirement is justified by the metallurgical restraints for strength and hardness.'' [165] The American Pewter Guild, a trade association, attached a list of historical references to pewter which indicate that pewter has virtually always had a tin content of at least 90%.[166] Ten pewter producers also supported the proposed standard.[167]

Because pewter has historically contained at least 90% tin, consumers presumably expect pewter to have the qualities that are associated with an alloy containing at least 90% tin. Thus, the Commission has included a section on pewter in the Guides. Section 23.8(a) states that it is unfair and deceptive to describe a product as ''pewter'' if the description misrepresents the product's true composition. Section 23.8(b) states that a product may be described as ''pewter'' if it contains at least 90% tin, with the remainder composed of metals appropriate for use in pewter.

7. Additional Guidance Relating to Quality Marks: § 23.8

The JVC proposed several changes in § 23.8 of the current Guides. The introductory paragraph of this section defines ''quality mark'' and gives specific examples of words (*e.g.*, ''gold,'' ''karat,'' ''silver,'' etc.) that are considered to be quality marks. (As noted previously, the Commission has added the word ''vermeil'' to this list of words that constitute quality marks.) [168]

Part (a) of this section addresses the use of quality marks on articles that are made from more than one metal. The JVC suggested that the title be changed from ''Deception as to applicability of marks'' to ''Deception as to application of marks'' and that a definition of application be added. The definition of application suggested by the JVC includes bills, invoices, orders, statements, letters, and advertisements. However, this definition is inappropriate in the context of part (a) of this section, which is limited to deception in the use of quality marks, which do not encompass bills, invoices, etc. The term ''quality mark'' is defined as a mark ''which has been stamped, embossed, inscribed, or otherwise placed, on any industry product and which indicates or suggests that such product is composed throughout of any precious metal or any alloy thereof or has a surface or surfaces on which there has been plated or deposited any precious metal or any alloy thereof.'' [169] Section 23.8 contains specific guidance for marks on the products themselves

[161] The Franklin Mint (250) stated at p.4, that there is no evidence that a gold karat mark is misleading on a gold and silver item when the gold constitutes less than 1/20 of the total metal weight. Moreover, it also noted that the JVC did not propose any such prohibition for vermeil products, ''which are but another form of gold and silver item. . . .''

[162] Nowlin (109); LaPrad (181); Sheaffer (249); and Leach (258).

[163] NACSM (219) p.7; Bales (156) p.9.

[164] Christopher R. Mellott, counsel for the Pewter Guild, compiles voluntary statistical reports from samplings of pewter manufacturers and, over the period from 1983 to 1990, found a six-fold increase in the value at wholesale of pewter jewelry sales.

[165] Comment 86, p.1.

[166] Comment 89 (also stating that pewter has been defined as containing 90% tin in the Guild's By-Laws since their adoption in 1976).

[167] Stieff (25); Empire (44); Woodbury (64); Lance (84); Web (85); Salisbury (86); Fischer (87); Seagull (111 and 120); Universal (178); and Heritage (215). Other comments favoring the proposed standard for pewter are: Fasnacht (4); Estate (23); G&B (30); Jabel (47); Bales (156); Canada (209); Bruce (218); MJSA (226); and Preston (229).

[168] The Watch Band Guides differ from the Jewelry Guides with respect to quality marks in that they list the words duragold, diragold, noblegold, and goldine as quality marks in § 19.2(g). However, the Jewelry Guides, in a Note following § 23.8 on quality marks, reach the same practices by stating that quality marks ''include those in which the words or terms 'gold,' 'karat,' 'silver,' 'platinum,' (or platinum related metals), or their abbreviations, are included, either separately or as suffixes, prefixes, or syllables.'' The Commission has added this sentence of this Note to the introductory paragraph of this section in the revised Guides (§ 23.9). The Commission does not believe it is necessary to add the words duragold, diragold, noblegold, and goldine to the examples of quality marks listed in current § 23.8.

[169] This is consistent with the references to such marks in the National Stamping Act, which applies to articles ''having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate'' the degree of fineness of the gold or silver in the article. 15 U.S.C. 294. A quality mark does not have to be placed on a product, but, if it is, it must be accurate within the tolerances prescribed by the National Stamping Act. 15 U.S.C. 294–296. The National Stamping Act goes beyond embossing quality marks on products to things surrounding the product (e.g., labels, wrappers), but not as far as bills, advertisements, etc., as the JVC proposes for the Guides.

(or attached thereto). Other sections of the Guides apply to claims made in bills, invoices, orders, statements, letters, and advertisements. Thus, the Commission has not included the proposed definition of application in the Guides.

Part (b) of this section addresses deception by reason of the difference in the size of letters or words in quality marks (*e.g.*, GOLD electroplate). A Note following this section, entitled ''Legibility of markings,'' recommends that quality marks be of sufficient size to be legible and be so placed as to be likely to be observed. The JVC has not suggested any changes to this section, or to the Note following it. The Commission agrees that the portion of the Note pertaining to legibility should remain unchanged.[170] However, the second sentence of the Note implies that quality marks should normally be engraved on products and that tag or labels can only be used when ''such marking cannot be achieved without injury to the appearance of the product.'' The National Stamping Act indicates that quality marks can be applied by means of tags or labels, regardless of whether engraving would damage the product. The Commission has therefore modified this Note to clarify the fact that if a quality mark is used, it may be either engraved on the product or placed on a tag or label.

The second Note following this section currently states that it is the consensus of the members of the industry that quality marks on such items should be accompanied by identification of the manufacturer, processor, or distributor. The Commission has changed this Note to reference the requirements for identification contained in the National Stamping Act.[171]

8. Exemptions From Assay

Some functional parts of gold alloy, gold-filled, silver and platinum items may need to be made of other sturdier metals to function properly, and thus, are exempt from any assay for quality. (An assay is a test made to determine the quantity of precious metal in a product compared to the weight of the whole product.) The current Guides include the exemptions for these parts that are set out in the various Voluntary Product Standards. Since trade practice for many years has been to make such parts of base metals, it is unlikely that consumers would expect them to be made of precious metal; hence, a claim that an item was silver would not be deceptive because the screws and rivets were made of base metal.

The current Guides list the exemptions for gold and gold-filled items in section 23.5(e) and (f) and for silver and for silver in combination with gold, in footnote 2.[172] However, the Commission believes that detailed listings of the exemptions need not appear in the body of the Guides and has included the list of exemptions for all covered metal products in an Appendix.[173]

The list includes all exemptions from the current Guides and, based on the comments, includes some additions.[174] Tru-Kay stated that there is a significant inconsistency in the Guides between the exemptions recognized in the manufacture of gold-filled jewelry and those which are exempted in the manufacture of silver jewelry. Tru-Kay stated that ''industry trade practice over many years has been to apply the exemptions as listed for gold-filled to both gold-filled and sterling silver,'' because the same reasons that certain parts are exempt in gold-filled jewelry are also applicable in silver jewelry.[175] Tru-Kay explained that when the exemptions were first written, ''many articles that were being produced in gold-filled, were not at that time being produced in sterling silver.'' [176] Since this is no longer the case, Tru-Kay urged that ''these exemptions be standardized in a consistent manner.'' [177] The Commission agrees with this proposal and has expanded the list of exemptions for silver items to include all exemptions listed for gold-filled items.[178]

General Findings, which makes small functional components of jewelry, suggested that there should be two additions to the gold exemptions.[179] First, it suggested the exemptions for karat gold jewelry include ''metallic parts completely encased in nonmetallic covering.'' This would include base-metal pegs used in gluing pearls or stones to the findings. (According to General Findings, ''the pegs are completely encased within the stone or pearl.'') The current Guides exempt ''metallic parts completely encased in nonmetallic covering'' when they are included in articles made of silver in combination with gold.[180] On the basis of the comment, the Commission has determined that such parts should be added to the list of exemptions for gold alloy jewelry (and to the list of exemptions for silver items, under the rationale advanced by Tru-Kay). The second suggestion was that ''bracelet and necklace snap tongues, *i.e.*, clasps'' (sometimes referred to as springs) should be added to the exemptions for rolled gold plate jewelry. Bracelet and necklace snap tongues are already an exemption for articles made of platinum, and the Commission has added this to the list of exemptions for rolled gold plate jewelry (and to the list of exemptions for silver items).

Donald Bruce also suggested that the mechanical parts of lockets be added to the lists of exemptions for silver and gold alloy jewelry. These are already in the list of exemptions for gold-filled jewelry (which exempt ''field pieces and bezels for lockets''), and Bruce stated that ''the trade practice has interpreted this for Silver and Gold as well'' because a base metal hinged frame ''offers stability and strength to the moving parts.'' [181] Adding these to the list of exemptions for silver is logical because silver is relatively soft. Gold

[170] There is no requirement that there be a quality mark; however, it may be deceptive to place an illegible mark on a product, because consumers might interpret such a mark to mean the product is of higher quality than it actually is.

[171] The Watch Band Guides differ from the Jewelry Guides in their treatment of quality marks in two respects (in addition to that discussed in note , supra). Section 19.2(g)(3) of the Watch Band Guides, dealing with the marking of watch bands composed of two metals of similar appearance, is adequately addressed by § 23.8(a) of the current Jewelry Guides, discussed above. Section 19.2(g)(1) of the Watch Band Guides provides that if a quality mark is concealed by packaging, it should appear on the outside of the packaging if the failure to so display it would deceive consumers. The Jewelry Guides do not require that products contain quality marks and, thus, do not require that a quality mark be visible in spite of packaging. The Commission believes it is neither unfair nor deceptive to fail to include a quality mark; hence, it is neither unfair nor deceptive to allow packaging to conceal a quality mark. Thus, the Commission has not included this provision in the revised Guides.

[172] The Guides contain no exemptions for products which are never assayed. This includes products made of gold or silver electroplate. (Such articles are not sold with the representation that they contain a specific percent by weight of precious metal.)

[173] The current Guides use the Appendix to list and classify the Guides. The JVC proposed placing this material first as a Table of Contents. The Commission believes that the existing list of section numbers and titles in the table of contents is sufficient and has omitted this classification from the revised Guides.

[174] In addition, because the revised Guides cover items other than jewelry, the exemptions are stated as applying to industry products, not to jewelry industry products.

The JVC proposed exemptions from assay for optical products, which are based on the VPS, with some additions. There were no comments opposing this proposal, and the Commission has included this list of exemptions for optical products in the Guides.

[175] Comment 196, p.2.

[176] *Id.*

[177] *Id.*

[178] Silver is relatively soft. Hence, it is logical for the exemptions for gold-filled items to apply also to silver items.

[179] Comment 88, p.1.

[180] Footnote 2 to current Guides.

[181] Comment 218, p.3.

alloy, however, is relatively hard.[182] Nevertheless, because trade practice has interpreted this exemption as applying to gold lockets for some time, it is unlikely that consumers would believe that the field pieces and bezels of a locket advertised as 14 karat gold were 14 karat gold. Therefore, the Commission has added these exemptions to the list of exemptions of silver and gold alloy products.[183]

9. Misuse of ''Corrosion Proof,'' ''Noncorrosive,'' etc.

The Watch Band Guides, 16 CFR 19.3, contain a section regarding the use of the terms ''corrosion proof,'' ''noncorrosive,'' ''corrosion resistant,'' ''rust proof,'' ''rust resistant,'' or any word or term of equivalent import. The JVC did not recommend any changes in this section. Thus, the Commission has included this provision, unchanged, in the revised Guides as the last section pertaining to metals (§ 23.10).

D. Diamonds (Category III): §§ 23.9–23.14

The current Guides address diamonds in the definition section, § 23.0, and in §§ 23.9–23.14. Section 23.9 describes practices which are unfair uses of the word ''diamond.'' Sections 23.10–23.14 deal with misuse of the terms ''perfect,'' ''blue white,'' ''properly cut,'' ''brilliant,'' ''full cut,'' and ''clean.'' In addition, artificial coloring, imitation and synthetic diamonds, and the words ''reproduction,'' ''replica,'' ''gem,'' ''real,'' ''genuine,'' and ''natural'' are addressed in §§ 23.18–23.21.

1. Definition

The Commission has moved the definition of ''diamond'' from § 23.0 to the beginning of the substantive sections that deal with diamonds (§ 23.11, which is renamed ''Definition and misuse of the word 'diamond' ''). The JVC proposed adding the following sentence to the definition of the word diamond: ''It is the hardest natural substance and in 1818 was arbitrarily given 10 on the Mohs relative scratch hardness scale.'' The JVC also proposed adding, after the definition of diamond, a ''Note'' regarding the Mohs scale and the standards for determining mineral ''hardness.''

A definition of diamond is helpful to the extent that it makes clear what can nondeceptively be represented to be a diamond. However, there is no indication that the current definition of diamond has ever failed to serve its purpose, and some comments indicated the current definition is better.[184] The Commission, therefore, is not adopting this proposal.

The Postal Service stated that mail order jewelry promoters sell ''tiny, unattractive, industrial grade diamonds'' as jewelry which ''no one would buy if they saw them.'' It suggested that the Guides be modified to prohibit ''advertisers from representing expressly or impliedly, that industrial or other non-jewelry quality diamonds are of jewelry quality.''[185] The Commission agrees that such a practice is unfair and deceptive, and has included a Note that states the practice of advertising industrial grade diamonds as jewelry is unfair and deceptive. The provision advising against misrepresenting products visually, in § 23.2, also would apply to this practice.

2. Misuse of the Word ''Diamond''

Section 23.9 of the current Guides deals with misuse of the word ''diamond.'' Neither the JVC nor any of the commenters proposed a change in this section, and there is no other information indicating a need for changing this section.

3. Misuse of the Words ''Perfect'' and ''Flawless''

Section 23.10 of the current Guides, and the accompanying Note, deal with the use of the words ''perfect'' and ''flawless'' to describe a diamond. The JVC proposed revising this section to focus on the use of the term ''flawless,'' with a subsection stating that it is unfair to use the word ''perfect'' with respect to any diamond which is not flawless, or which is of inferior color or make. The organization of the current section is convoluted and difficult to understand. The Commission has determined that the proposed change will improve the clarity of the Guides, and has revised this section accordingly.

To determine whether there was evidence that the term ''perfect'' has been used to mislead consumers, the FRN sought comment on whether the Guides should advise against use of the term ''perfect.'' Thirty-two comments addressed this issue.

Seven comments indicated that the term ''perfect'' is acceptable as defined in the current Guides.[186] Twenty-eight commenters stated that the term ''perfect'' should be prohibited, and one stated it should be allowed only as a synonym for flawless.[187] However, the current Guides allow diamonds to be called ''perfect'' if they are flawless and not of inferior color or make, and there is no evidence that large numbers of consumers have been deceived by the use of the word ''perfect.''[188] The Commission has determined that the scheme in the current Guides adequately explains the type of diamond that nondeceptively may be described as ''perfect'' and that guidance that in effect totally bars the use of the word ''perfect'' would be an unwarranted infringement on free speech.[189]

The JVC also proposed changing current § 23.10 to state that it is unfair to use the word ''flawless'' to describe a diamond ''which discloses blemishes, inclusions, lasering, prominent reflective whitish or colored grain lines, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.'' With the exception of the addition of ''lasering,'' the changes appear to be simply a change in terminology. No reasons for the changes

[182] As a result, the list of exemptions in the current Guides is much shorter for gold items than for silver items.

[183] The following were added to each list of exemptions: (1) karat gold: metallic parts completely and permanently encased in a nonmetallic covering, and field pieces and bezels for lockets; (2) gold-filled: bracelet and necklace snap tongues; (3) silver: field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; metallic parts completely and permanently encased in a nonmetallic covering. There were no additions to the exemptions for silver in combination with gold or for platinum.

[184] AGTA (49) p.15 (commenting that either information should be added to the proposed JVC definition or the last sentence of that definition and the following Note should ''be struck,'' adding that ''AGTA prefers that both be struck from the guides''); NACSM (219) pp.25–26 (stating that the proposed addition to the definition is ''not an improvement on the clarity of the mandates of the law'').

[185] Comment 244, p.2.

[186] King (11); Estate (23); Lannyte (65); GIA (81); Bales (156); NACSM (219); and Best (225).

[187] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); Honora (14) and (15) p.1 (stating that if diamonds can be called perfect, ''it would open vast opportunities for deceptive advertising and many consumers would be hurt''); Argo (17); AGS (18) p.3 (favoring the prohibition because ''[t]he potential for misuse is too great''); Capital (19); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bridge (163) p.2 (stating that ''perfect'' should not be allowed because relatively few diamonds ''meet all these very high standards''); LaPrad (181); IJA (192); Phillips (204); Bedford (210); Matthey (213); Bruce (218); MJSA (226); Preston (229); Limon (235); Leach (258); and Solid Gold (261).

[188] Indeed, many consumers may regard the word as ''mere puffing.'' One comment noted, '''Perfect' pertaining to anything is a dumb word and should arouse suspicion.'' Jabel (47) p.2.

[189] One comment stated that limiting the use of the term ''perfect'' as a synonym for ''flawless'' to those situations in which the diamond described is not ''of inferior color or make'' is meaningless because ''inferior color or make'' cannot be defined. Limon (235) p.2. The Commission agrees that the definition is not precise, but nevertheless believes that the word can be used in a non-deceptive manner.

in terminology are apparent (*e.g.*, changing the terms ''flaws, cracks, carbon spots, clouds or other blemishes or imperfections'' to ''blemishes, inclusions, lasering, prominent reflective whitish or colored grain lines, or clarity faults''). Thus, the Commission has not adopted these changes. However, the numerous comments which addressed lasering of diamonds in the context of a related JVC proposal, discussed below, indicate that lasering leaves channels or surface openings in a diamond that are similar to grains or other clarity faults. The Commission believes that it would be deceptive to describe a diamond that discloses internal lasering under the conditions specified in that section as ''flawless,'' and therefore has revised this section.[190]

The Commission also has included the JVC's descriptions of when the flaws are visible—*i.e.*, ''when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.'' This is an updating of the current Guides (which refer to an examination ''in normal daylight, or its equivalent, by a trained eye under a ten-power, corrected diamond eye loupe or equal magnifier'') to reflect changes in available equipment.[191]

In the current Guides, the Note following § 23.10(a) also states that the use of a phrase such as ''commercially perfect'' for a diamond that has flaws is ''regarded as misleading and in violation of this section.'' The JVC proposed expanding this portion of the Note to also cover the phrase ''commercially flawless.'' [192] The Commission believes that the provision in the revised Guides, which applies to use of the words ''perfect,'' ''flawless,'' or ''any representation of similar meaning,'' is sufficient to prevent deception. The current Note is superfluous, and the Commission has deleted it.[193]

Section 23.10(b) states that it is unfair to describe a ring or other article of jewelry with a ''perfect'' center stone and side stones which are not ''perfect,'' as ''perfect,'' without disclosing that the description applies only to the center stone. The JVC proposed modifying this to apply to representations that stones are ''flawless,'' and also proposed changing the reference to ''center stone or stones'' to ''principal diamond or diamonds.'' Such a change appropriately includes jewelry in which the principal stone is not the center stone.

4. Disclosure of Treatments

Section 23.18 of the current Guides, entitled ''Deception as to precious and semi-precious stones,'' contains a Note which states that any artificial coloring or tinting of a diamond or precious or semi-precious stone by ''coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means'' should be disclosed and the fact that the coloring is not permanent, if such is the fact.

The JVC proposed moving the portion of this section that applies to diamonds into the diamond category, modifying it to apply to any diamond that has been treated (rather than colored) by certain methods, and adding the following treatments to this list of those that should be disclosed: the internal use of a laser beam, the introduction or the infusion of any foreign substance, or treatment ''by any other means, without disclosure of the fact that the inherent quality and/or appearance of such diamond has been enhanced, and the result of this enhancement is not or may not be permanent, if such is the case.'' [194]

Internal laser treatment and the infusion of a foreign substance are treatments that did not exist in 1959 when the Guides were last substantively revised. A laser treatment involves the use of a laser beam to improve the appearance of diamonds having black inclusions by directing the laser beam at the black inclusion and then forcing acid through the tunnel made by the laser beam to remove the inclusion or to alter it so that the inclusion is not visible to the naked eye. ''Infusion'' treatment, also known as ''fracture-filling,'' conceals cracks in diamonds by filling them with a foreign substance.

Thirteen comments opposed the disclosure of laser treatment stating that it is ''a common practice'' and ''an extension of cutting, since soaking out surface black leaves no evidence of soaking. The channel left by the laser is often just one of several or numerous 'natural' cracks, inclusions, or grain.'' [195] Verstandig stated that the other treatments which the JVC proposed should be disclosed ''are hardly-if at all-noticeable under a 10X magnification'' but that lasering is obvious under such magnification. It also noted that while lasering produces a small surface opening, the majority of diamonds sold in the U.S. have similar surface imperfections, and disclosure of these is not required.[196]

DMIA noted that lasering is ''irreversible, does not add a foreign substance, is readily detectable with a ten power loupe, and does not require disclosure any more than * * * cutting an additional facet to improve the purity of a diamond.'' It also noted that GIA, which it described as a world-renowned diamond grading lab, refuses to grade diamonds infused with a foreign substance but does grade lasered diamonds, indicating on the grading report ''inclusions, naturals, extra facets, as well as lasering.'' [197] In addition, it noted that resolutions have been adopted on ''a world-wide basis requiring full disclosure of any ''treatment'' of diamonds such as irradiation which changes the color and atomic structure or the infusion of a foreign substance which produces a product no longer a pure diamond, but a ''composite'' material.'' It stated that ''[l]asering, on the other hand, is not a ''treatment'' * * * .'' [198]

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[190] Preston (229) stated, at p.10, that the word ''internal'' should precede the word ''lasering'' in this section, apparently to clarify that ''lasering'' in this section is not meant to include the use of lasers to cut diamonds but rather the use of lasers to remove blemishes. The Commission agrees with this comment and has included this clarification in the revised Guides.

[191] ICT (189) also suggested, at p.2, a modification of § 23.10, *i.e.*, that the word ''flawless'' should always be accompanied by the magnification level at which no flaws are visible [for example, ''flawless under 15X loupe'']. However, there is no evidence that such detailed information is material to consumers.

[192] Eisen (91) stated, at p.1, that ''commercially flawless'' should not be allowed but did not offer any reasons.

[193] The JVC also proposed adding a Note that states that the term ''internally flawless'' may be used to describe a diamond ''which meets the requirements set forth . . . but possesses only minor surface blemishes such as grain lines, polish or burn marks, scratches, nicks, or small naturals.'' No reasons were offered for this change. However, Lannyte (65) p. 5, stated ''Do not play games with the word 'internally.' Any surface blemish has to exist on or in the surface to exist at all.'' Based on this comment, and the lack of other explanation for this provision, the Commission has not included this Note in the Guides.

[194] ISA (237A) proposed, at p.53, changing ''internal use of laser beam'' to ''the penetration of a laser drilling technique and/or acid bath(s) which is customarily used by the trade to change the color of 'black' inclusions to 'white.'" It also suggested that ''infusion of any foreign substance'' should be followed by the words ''fracture filled.'' However, the Commission believes that the words used in the JVC proposal adequately identify the processes that are being addressed.

[195] Green (6) p.1; *see also* London Star (20); DMIA (26); Roisen (31); Werdiger (48); Verstandig (154); David (194); H.R. Diamonds (195); ADS (197); Weitz (200); Kwiat (203); NACSM (219); and Service (222).

[196] Comment 154, p.2.

[197] Comment 26, pp.1–2.

[198] Comment 26, p.1. Roisen (31), David (194), H.R. Diamonds (195), ADS (197), and Weitz (200), all referred to the fact that the rules of the World Federation of Diamond Bourses require strict punishment of a member who fails to disclose treatment of a diamond, such as irradiation or infusion of a foreign substance. *See* the text of the joint resolution of the World Federation of Diamond Bourses and the International Diamond Manufacturers Association, as described in the

On the other hand, one comment contained an attachment that argued that internal lasering should be disclosed because it adversely affects the value of the diamond.[199] The attachment stated that lasered stones are inferior because they ''are worth less than normal non-lasered stones of the same grade.'' It further stated that a diamond purchaser who is unaware of the lasering, will be upset ''when the appraisal indicates laser treatment, or upon resale when the buyer offers a lower price due to lasering.'' [200]

However, the comments (including eleven comments from diamond dealers and a diamond trade association) indicated that lasering is a common practice and not an extraordinary process that would be deceptive to conceal from the consumer. Moreover, a consumer acting reasonably under the circumstances would be on notice of laser treatment before sale. A grading report would indicate that the diamond had been laser-cleaned, and, if the buyer chose to examine the diamond under standard ten-power magnification, the laser tunnels would be obvious to the buyer. Thus, the Commission has determined not to include lasering among the treatments that always should be disclosed to avoid misleading consumers.

By contrast, twelve of the thirteen comments that opposed disclosure of lasering stated that the fracture-filling process is a treatment of a diamond that should be disclosed to the consumer.[201] As previously noted, several of these comments stated that the rules of the World Federation of Diamond Bourses require disclosure of fracture-filling. Because fracture-filling is not the norm or what consumers acting reasonably under the circumstances would expect, it would be deceptive to fail to disclose fracture-filling. Consumers will not likely expect, in the absence of disclosure, that the stone was so treated. Thus, the absence of disclosure is also unfair in that it is likely to cause injury to consumers by affirmatively misleading their informed choice and so causing substantial, unavoidable injury that is not outweighed by any countervailing benefits.[202] Accordingly, the revised Guides advise sellers to disclose this treatment.

The JVC also proposed that this section require the disclosure of treatment of a diamond ''by any other means.'' However, the Commission believes that phrase is sufficiently vague to imply, for example, that removal of blemishes by lasering always should be disclosed, and thus, has not included this phrase in the section.

5. ''Blue White'': § 23.11

Section 23.11 of the current Guides prohibits the use of ''blue white'' to describe a diamond ''which under normal, north daylight or its equivalent, shows any color or any trace of color other than blue or bluish.'' The JVC proposed prohibiting the use of this term.

The term ''blue white'' has apparently been misused in the past to describe poorer quality or ''off color'' diamonds.[203] The use of blue white appears to have diminished because most of the industry now uses formal diamond grading systems. One comment suggested that ''blue white'' be restricted to ''a diamond that has strong blue fluorescence and is of the D–G color range [in the GIA grading system].'' [204] However, the current Guides describe a proper use of blue-white and discourage its misuse. The Commission therefore has retained this section of the Guides.[205]

6. Cuts of Diamonds and ''Clean Diamonds'': §§ 23.12– 23.14

Section 23.12 of the current Guides states that it is unfair to describe a diamond as ''properly cut,'' ''well made,'' or ''modern cut'' or words of similar meaning, if it is ''lopsided, or so thick or so thin in depth as materially to detract from the brilliance of the stone.'' Section 23.13 restricts the use of the terms ''brilliant,'' ''brilliant cut'' or ''full cut'' to a round diamond having at least 56 facets.[206]

The JVC did not propose any changes to these sections, but several comments did propose revisions. Two comments proposed certain numerical standards for describing ''properly cut'' diamonds.[207] AGL proposed that the Guides state that it is unfair for ''a diamond quality assessment report to itemize a series of percentages and non-integrated cutting details without reference to a meaningful and comprehensive evaluation of cutting in order to facilitate a consumer's understanding of these critical value components.'' [208] However, AGL also indicated that such reports do not usually contain such an evaluation of cutting.[209] No other comments addressed this issue. Because there is insufficient information in the record to evaluate the proposals, the Commission has not changed these sections.

Section 23.14 states that it is unfair to use the terms ''clean,'' ''eye clean,'' ''commercially clean,'' ''commercially white,'' or similar terms to mislead or deceive consumers. The JVC did not propose any changes to this section. Unlike other provisions of the Guides, this section does not provide guidance regarding the use of these terms, other

Rapaport Diamond Report, July 17, 1992, p.5 (attached to Rapaport (233)).

[199] Rapaport Diamond Report, July 17, 1992, p.6, attached to Rapaport (233); *see also* Preston (229) p.3; ISA (237A) p.51.

[200] Rapaport Diamond Report, July 17, 1992, p.6, attached to Rapaport (233).

[201] Green (6); London Star (20); DMIA (26); Roisen (31); Werdiger (48); Verstandig (154); David (194); H.R. Diamonds (195); ADS (197); Weitz (200); Kwiat (203); and NACSM (219). Service (222) opposed all disclosure of diamond treatments, and did not specifically discuss fracture-filling. Best (225) opposed all the changes proposed by the JVC, but stated that fracture-filling ''may justify some future study and potential regulation by the FTC.''

[202] *International Harvester Co.,* 104 F.T.C. 949, 1051 (1984). NACSM (219), at p. 26, pointed out that the process can sometimes be reversed by heat. For example, it is not uncommon for a diamond to be remounted and the heat from that process may partly melt out the foreign material used to fill the fracture. This adversely affects the appearance of the diamond and it may not be possible to remove the remainder of the fracture-filling material. *See* S. Lynn Diamond, ''Filled Diamonds in the Spotlight,'' National Jeweler, Dec. 1, 1994, at 36, 42 & 43.

[203] The definition of blue white in the Jewelers' Dictionary states: ''Term, often abused, to describe the color of a diamond. As frequently abused, it includes anything from a Jager to a Silver Cape. . . . [*n.b.*, Jager refers to a fine white diamond; Silver Cape is a yellow one.] Better Business Bureaus recommend avoidance of the term and the American Gem Society prohibits its use.'' ''Jewelers' Dictionary'' 28 (3d ed. 1976). However, the proprietor of Solid Gold (261) stated, at p.2, that he has seen ''many diamonds which are accurately described as having a bluish-white color.''

[204] Rapaport (233) p. 2 (stating that the ''guides should not outlaw any terminology used by the trade'' but instead should define it ''so that it is not misleading'').

[205] ISA (237A) recommended, at p.53, the addition of a definition of ''normal north daylight'' and an addition which would limit the use of the term blue white to ''a diamond which is totally natural and free from any man induced treatments which exhibits a partially white body color and a partially blue body color. . . . The term blue body color is not to be blue caused by visible fluorescence . . . '' However, no evidence was provided that either of these additions were necessary, and the Commission has not included them in the Guides.

[206] This section does allow certain other cuts (emerald, pear-shaped, heart-shaped, oval-shaped, and marquise) meeting the above-stated facet requirements to be described as ''brilliant cut'' or ''full cut'' if ''disclosure is made of the fact that the diamond is of such form.''

[207] ISA (237A) pp.54–56; Rapaport (233) p.3 (proposing a definition for a range of 'Properly Cut' round diamonds and numerical standards (which differ from ISA's proposed numerical standards)).

[208] Comment 230, p.5. AGL also suggested that the Guides state that it is unfair for any diamond or colored stone quality assessment reports or appraisals to fail to contain adequate tolerance information for each element that impacts on the value. *Id.* at 4. However, the Commission believes such a proposal, which would involve providing guidance on the manner in which appraisers and graders prepare reports, is beyond the scope of these Guides.

[209] Comment 230, p.5. Preston (229) stated, at p.6, that ''AGS attempts to train its members to specify cutting grades rather precisely. GIA, on the other hand, does not specify a cutting grade at this time.''

than to state that they should not be used to deceive purchasers. Although one comment indicated that these terms are still in use,[210] the Commission has concluded that the admonition in § 23.1 not to misrepresent material characteristics of a product adequately encompasses misrepresentations regarding these terms. Therefore, the Commission has deleted this provision from the Guides.

7. Proposals Relating to Diamond Weight

a. *Misrepresentation of weight.* Section 23.16 of the JVC petition deals with misrepresentations of diamond weights, an issue which is not specifically addressed in the current Guides. The JVC's proposed preamble to this section states that the standard unit of weight for diamonds is the carat, defines the terms carat and point, and states that the abbreviation for carat is ct. The Commission has not included this preamble in the revised Guides. As discussed below, the Commission has included a provision relating to the use of ''points'' in the revised Guides, and that provision contains an explanation of the meaning of ''carat'' and ''point.''

The JVC suggested adding a section stating that it is unfair to misrepresent the weight of a diamond. Section 23.1 of the current Guides provides that it is unfair to misrepresent various material characteristics of industry products, including weight. However, the Commission has included this admonition against misrepresenting the weight of diamonds in section 23.17 of the revised Guides, and has provided additional guidance for diamond weight representations in that section, as discussed in detail below.

b. *Use of ''points''.* The JVC, in section 23.16(a), proposed that a section be added to the Guides stating that the use of the term ''points''[211] to represent the weight of a diamond is unfair except ''in direct conversations.'' In some instances, according to the comments, consumers perceive a representation that a diamond is ''.25 pt.'' to mean ''.25 ct.''[212] The latter is ¼th carat; the former (.25 pt.) is 1/400th carat. To obtain more information about this issue, the FRN asked whether the use of ''points'' to describe diamond weights should be limited to oral representations.

Thirty-five comments addressed this issue. Four comments, including ones from the Postal Service and NACAA, supported eliminating use of the term ''points'' in either oral or written representations.[213] Twenty-two comments supported limiting the use of the term ''points'' to oral representations.[214] Nine comments stated that the use of the term should be permitted in written as well as oral representations, contending that the term can be used in writing in a manner that is not unfair or deceptive.[215]

One comment noted that ''points'' is ''a term that the layman is not familiar with.''[216] The Postal Service favored a prohibition, stating that, in many situations, consumers do not actually see the jewelry before purchasing it, and the term point (*i.e.*, .25 pt.) is used to misrepresent the value of a diamond.[217]

The comments clearly believe that the term ''pt.'' is being used to deceive the public, particularly in mail order transactions.[218] The deception described in the comments appears to arise primarily when the abbreviation for point (''pt.'') appears in writing.[219]

Nevertheless, the term ''point,'' with adequate disclosure, could be used in a non-deceptive manner. Therefore, the Commission has added a provision to the Guides which states that if the term ''point'' is used in advertising (including television) or in point of sale materials to describe the weight of a diamond, the weight should also be given in decimal parts of a carat (*e.g.*, .25 pt. is .0025 ct.). The admonition to include the carat weight in decimals should deter sellers from attempting to mislead consumers. Furthermore, § 23.2 of the Guides addresses the use of misleading visual representations of diamonds.

c. *Disclosure of minimum total weight.* The JVC also proposed adding provisions to the Guides stating that it is unfair to fail to mark new industry products containing one or more diamonds with the minimum weight of the diamonds in the product and that it is unfair to refer to the weight of a diamond or diamonds in advertising for new industry products without disclosing the minimum total weight.[220] The FRN solicited comment on this proposal.

Thirty-nine comments addressed this issue. Thirty-one comments approved marking jewelry, or tags or invoices attached to it, with the minimum weight of the diamonds set in it.[221] Eight comments opposed the proposal.[222]

Generally, the comments indicated a belief that marking new jewelry with the minimum diamond weight would prevent misrepresentation of weight by the manufacturer or other sellers farther down in the line of commerce. GIA stated that there was a tendency for ''multistone rings and other jewelry sold as a given weight to weigh less than the indicated weight,'' especially where the ring is not stamped with the minimum weight.[223] GIA further stated that ''[i]n our experience, if the total weight is stamped on the jewelry, the manufacturer usually makes sure that

[210] Rapaport (233) stated, at pp.2–3, that the terms ''clean,'' ''eye clean,'' and ''commercial white'' are ''regularly used by the diamond trade to describe diamonds,'' noting specifically that the term ''eye clean'' is ''commonly used to describe diamonds that do not have inclusions that are visible to the naked eye.''

[211] The term ''point'' is used to express one-hundredths of a carat (*e.g.*, .25 ct = 25 points).

[212] Limon (235) p.3 (stating that the proposal ''was inspired by a nationally published advertisement for an item containing a diamond weighing '.25 pt.'[which was] universally misread as '.25 ct.'''); Skalet (61) p.4 (stating that ''considerable deception has been leveled at the consuming public to make a 'point .25 carat' or '.25 point' gemstone appear to be describing a ¼ carat gemstone''); Bedford (210) p.2 (stating ''I have had some people come in thinking they were going to win a .25ct. diamond and they were actually getting a .025 point diamond''); Bruce (218) p.10 (noting that ''we have seen advertisements where people confuse points with carats (pt. with ct.)'').

[213] Honora (15); Lannyte (65); NACAA (90); and Postal Service (244).

[214] Fasnacht (4); Sibbing (5); Thorpe (7); Argo (17); AGS (18); Capital (19); Estate (23); Jabel (47); Schwartz (52); Skalet (61); GIA (81); Nowlin (109); McGee (112); Bridge (163); IJA (192); Phillips (204); Bedford (210); Matthey (213); Bruce (218); MJSA (226); Preston (229); and Limon (235).

[215] G&B (30); ArtCarved (155); Bales (156); LaPrad (181); NACSM (219); Service (222); Diamonique (224); Best (225); and Leach (256). Diamonique (224) stated, at p.1, that prohibition of ''point'' or ''pt.'' would ''result in the use of fractional definitions of diamond weights as used in the past.'' However, other comments (discussed below), stated that fractions are currently in wide use, and are not deceptive.

[216] Bruce (218) p.10.

[217] Comment 244, pp.1–2.

[218] Thorpe (7) p.2 (stating that the ''consumer sees a jewelry term they are 'familiar' with and read it as 0.25 ct.'').

[219] However, one comment noted that problems also occur in television advertising. Sibbing (5) p.1 (stating ''No more 'quarter point diamonds' as can be found on TV advertisements'').

[220] Apparently the proposal was limited to new products because, as one comment noted, ''it is impossible to get exact measurements of a diamond weight when measuring diamonds when mounted.'' Bedford (210) p.2.

[221] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); Honora (15); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Lannyte (65); GIA (81); NACAA (90); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (213); Bruce (218); MJSA (226); Preston (229); Limon (235); and Leach (258). Two of these stated that diamonds under .10 carat should be exempt [Skalet (61) and ArtCarved (155)], and one stated that the minimum weight information should only be required on the invoice [Honora (15)].

[222] Argo (17); Schaeffer (211); NACSM (219); Service (222); Best (225); Sheaffer (249); and Franklin (250). (Solid Gold (261) also opposed this provision, but apparently did not understand that it would only apply to new jewelry.) Several of these comments stated that this requirement would increase costs.

[223] Comment 81, p.2.

the weight is accurate,'' and believed that ''requiring stamping of a minimum weight on the jewelry (particularly in combination with trademark stamping) would provide a strong deterrent against underweighting diamond content.'' [224]

NACAA commented that its members received complaints about exaggeration of the weights of stones (not limited to diamonds) and stated that it would be ''helpful to consumers'' for the Guides to require marking of minimum total weight on new items.[225] However, the Guides already state that it is unfair to misrepresent the weight of a diamond (or any other jewelry). Moreover, none of the comments explained why it would be unfair or deceptive to fail to mark new jewelry containing diamonds with the minimum total weight of the diamonds, nor is there any obvious reason why a failure to so mark the jewelry, or to include this in advertising, would be unfair or deceptive.[226] Therefore, the Commission has not included this provision in the revised Guides.

d. *Weight tolerance.* The JVC also proposed adding provisions to the Guides setting forth specific tolerances for diamond weight representations. The JVC proposed in sections 23.16(c)–(e) of its petition, a tolerance of .005 carat for weight representations for individual diamonds, whether mounted or unmounted, and a tolerance of .01 carat for weight representations pertaining to ''two or more diamonds in a single product.'' This proposal generated 84 comments.[227] Three comments specifically supported the JVC's proposed tolerance.[228] Eighty-one commenters opposed the proposed tolerances.[229]

One comment stated that the proposed tolerance was too small because few diamond scales are so finely calibrated, and that the tolerance should be .01 ct.—one hundredth of a carat.[230] However, Commission staff telephoned several companies, and determined that most have scales that can weigh diamonds to .005 carats.[231]

Numerous other comments opposed the tolerances because they would increase the cost of sorting diamonds, raise the price of diamonds for high-volume manufacturers, and increase prices for consumers. MJSA explained that high-volume manufacturers sieve rather than weigh individual stones, and that the proposed tolerance would require manufacturers to ''weigh, tag, and flute the stones to be incorporated in a piece of jewelry.'' [232] MJSA stated that ''the added costs of this procedure would be reflected in the price of the finished article and be passed on to the consumer.'' [233]

Although Bruce supported the proposed tolerance and opposed the use of fractions to describe diamond weights, it noted that ''fractional diamond sizes are a convenience for the industry, in the trading of loose stones,'' and that ''keeping track of diamond sizes for tagging purposes would require a little more care and planning, but it can be done.'' [234]

Many commenters stated that the current industry practice is to use fractions to designate weights of less than a carat, and that there is a standard tolerance for such fractional representations. Service explained that chain retailers use fractions to advertise diamonds so that specific prices can be given for specific weights. Service explained that the proposed tolerance would be costly because it ''would narrowly and unreasonably limit the range of weights available for particular fractions of a carat.'' [235] For example, a fifth represents 20 points and under the JVC's proposed tolerances, only diamonds that weigh at least 19.5 points could be described as a fifth. Several commenters stated that they used the standards contained in the GIA publication, ''Diamonds 3.'' [236] This 1986 GIA booklet, states, at p.19, that ''approximate weights are often stated in fractions,'' and it sets out a chart stating the average weight range associated with the various fractions (*i.e.*, ⅕ carat refers to .18 through .22 carat).[237]

Best noted that under the GIA tolerances, a diamond can be sold as half a carat if it weighs between .47 and .56 carats, but that the proposed tolerances would require it to weigh at least .495 carats. Best stated that under the JVC proposal it would be forced to either select stones that fall within the tolerances, so that prices for the size could be advertised, or to treat each stone individually, and not provide price information regarding the stones in advertising. It explained that because there is a limited supply of stones that fall within the JVC's proposed tolerances, demand will escalate for these stones and the cost of the stones will increase. Therefore, ''[j]ewelers like Best would no longer be able to offer a consistently lower price alternative to the traditional high margin jewelers.'' Instead, Best would be forced to ''price, mark and sell each item individually,'' which is the philosophy of a boutique

[224] Comment 81, p.2. AGS (18) p.2 (stating, ''The market place is replete with purveyors of diamond jewelry who overstate the total carat weight of multi-diamond items'').

[225] Comment 90, pp.1–2.

[226] Indeed, if this practice is unfair or deceptive for ''new'' jewelry, logically it is also unfair or deceptive for ''old'' jewelry and for jewelry containing gemstones other than diamonds. LaPrad (181) p.2, and Limon (235) p.4, each suggested that the weight marking requirement should apply to colored stones as well as diamonds.

[227] This figure is exclusive of comments that simply favored all the changes suggested by the JVC.

[228] Bruce (218); Limon (235); and Schwartz (52).

[229] NACSM (219); Service (222); Diamonique (224); Best (225); MJSA (226); Rapaport (233); and NRF (238) submitted individual comments. The other 74 were form letters. In the interest of brevity, the 74 commenters are listed here by their comment number only: 28; 32; 33; 35; 36; 37; 39; 40; 41; 43; 45; 46; 50; 51; 53; 54; 55; 56; 57; 58; 59; 60; 63; 67; 68; 69; 70; 71; 72; 73; 74; 75; 77; 78; 79; 80; 93; 94; 95; 96; 97; 99; 100; 101; 102; 104; 105; 107; 108; 110; 114; 115; 117; 119; 121; 122; 157; 158; 160; 164; 179; 180; 190; 191; 201; 211; 214; 220; 241; 243; 260; 263; and 264.

[230] Rapaport (233) p.4. Diamonique (224) pp.1–2 (stating that current measuring devices are not adequate and the present tolerance is .01 carat). *But see* Fasnacht (4) p.2 (stating that weighing is fast and accurate with today's electronic scales).

[231] Commission staff interviewed 5 jewelers (Boone and Sons Jewelers, Fleisher Jewelers, Kings Jewelry, Loubons, and Jewelry by Design) in the Washington area about what kind of scales they use. No store utilized a scale that was not accurate enough to meet the proposed .005 carat tolerance. Staff also interviewed Ben Fine, who sells Melter Scales; Gaston Lopez, a sales representative of Gemological Institute of America, which sells several different makes of scales; and a representative from Dendritic Scales. All confirmed that they sell scales that are accurate to within ½ point.

[232] Comment 226, p.8.

[233] Comment 226, p.8. NACSM (219) pp.20–21 (explaining that rough diamonds ''are purchased most often from DeBeers * * * [and] sold to manufacturers * * * in parcels containing certain grade and quantities such as 'one fifths,' 'quarters,' 'one thirds,' 'halves,' 'carats,' etc. *The fractions refer to the approximate sizes of the diamonds* contained in the parcels''); Goldman (60) p.3 (stating that the international market ''sells as a fifth of a carat, goods (diamonds) from 18 to 23 points'').

[234] Comment 218, pp.2–3 (also stating that ''if people in the trade buy a single stone they will pay for it by its exact weight'').

[235] Comment 222, p.3. Numerous comments also indicated that there would be high demand for stones close enough to the fractions to be designated as fractions, and other stones could not be used by mass retailers. ''If retailers were no longer allowed to sell 18 points as a fifth, then what would happen to all the 18 and 19 pointers * * *?'' Goldman (60) p.2. London Star stated, ''This standard would considerably lessen the availability of stones within each size and therefore drastically increase the price to the consumer.'' Comment 20, p.2. Of course, diamond weights can be, and often are, expressed in the decimal system. However, the mass marketers, for the reasons described above, state that it is more efficient for them to describe diamond weights as fractions.

[236] Attachment B to NACSM (219). Best (225) pp.4–5 (stating that these standards ''have been widely used and accepted for many years and have effectively become the national and international industry standard''); NACSM (219) p.11 (stating that these GIA ranges ''merely recognize industry standards which have resulted from longstanding *accepted custom and usage*'').

[237] Attachment B to NACSM (219). The booklet notes that the ranges ''may vary slightly from one firm or organization to another.'' *Id.* This is borne out by the comments.

jeweler, and ''contrary to the way a mass merchandiser operates.'' [238]

Several comments suggested alternatives to the JVC proposal. MJSA suggested ''a broader minus tolerance which is expressed in proportional terms rather than as an absolute quantitative measurement.'' [239] Ross-Simons suggested a tolerance of 5% or .05 carat for a piece with multiple diamonds, whichever is smaller.[240]

The Commission agrees with the comments that state that the proposed tolerance may be too restrictive and may result in an increased cost to the consumer. However, consumers may not interpret a claim that a diamond is half a carat as meaning that it falls within the range set out in the GIA booklet. In fact, the GIA booklet states: ''Customers also think in terms of fractions, but they tend to expect a half-carat stone to weigh exactly 0.50 carat.'' [241] Furthermore, diamonds are so expensive that receiving a diamond that is even a few points less than what was represented can be a significant loss to the consumer. In this respect it appears that at least for some industry members, current practice may be contrary to consumers' expectations and may not adequately apprise consumers of the terms of the seller's offer (*i.e.*, that jewelry advertised with ⅕ carat diamonds is actually offered as jewelry with ⅕ carat weight, plus or minus some tolerance the seller is using).

However, the Commission believes that a fractional representation of carat weight may be qualified so that it is neither unfair or deceptive. For example, if a claim such as ''½ carat'' is accompanied by a disclosure of the weight range that is used, it does not imply precision to the level of 0.005 carat. A decimal representation of carat weight, such as ''0.47 carat,'' does imply accuracy to the level of the second decimal place—*i.e.*, .005 carat. Therefore, the level of tolerance applicable to a diamond weight claim depends on the type of claim that has been made.

Thus, the revised Guides clarify that representations of diamond weight should indicate the weight tolerance that is being used. If diamond weight is stated as decimal parts of a carat, the stated figure should be accurate to the last decimal place. If a fractional representation is used to describe the weight of a diamond, the fact that the diamond weight is not exact should be conspicuously disclosed in close proximity to the fractional representation, and the range of weight for each fraction should also be disclosed. A Note following this section (23.17) explicitly states that, for claims made in catalogs, the disclosure should appear on every page where the claim is made, but that the disclosure may refer to a chart or other detailed explanation of the actual ranges used. (For example, ''Diamond weights are not exact; see chart on p.X for ranges.'') [242] These provisions also provide guidance for making weight representations for items with multiple stones.

e. *Misrepresentation of weight of diamonds combined with other gemstones.* Finally, one comment suggested that a provision be added to the Guides stating that it is unfair to represent the combined weight of two or more gemstones of different gemological varieties in any new single product as ''total gemstone weight'' or words of similar import, without disclosing with equal conspicuity the combined weight of the gemstone of each gemological variety in the products.[243]

However, the phrase ''total gemstone weight'' does provide notice that the weight given applies to all gemstones in the item, not just the most expensive. Thus, the Commission does not believe that a representation of ''total gemstone weight'' would inherently be unfair or deceptive. Consumers interested in a breakdown by gemstone category would be put on notice by the statement ''total gemstone weight'' that further inquiry is needed.

E. Pearls (Category IV): §§ 23.15–23.17

The current Guides address pearls in the definition section, § 23.0, and in §§ 23.15–23.17. Section 23.15 describes practices which are unfair uses of the word ''pearl.'' Section 23.16 describes unfair uses of other terms, such as ''cultured pearl,'' ''Oriental pearl,'' and ''natura.'' Section 23.17 describes unfair practices involving false, misleading, or deceptive statements about cultured pearls, including the manner in which they are produced and the thickness of the nacre coating. In addition, provisions in §§ 23.20 and 23.21, pertaining to the misuse of certain words (real, genuine, natural, gem, reproduction, replica, and synthetic) apply to pearls. The changes proposed by the JVC and by certain commenters are discussed below.

1. Definitions

a. *Modifications of existing definitions.* The Commission has moved the definitions relating to pearls from § 23.0 to the beginning of the substantive sections that deal with pearls (§ 23.18). The JVC proposed changes (in section 23.17 of its petition) in the three definitions pertaining to pearls (''pearl,'' ''cultured pearl,'' and ''imitation pearl'') that currently appear in the Guides. No reasons were offered for changing the current definitions, and there was no allegation that they were inaccurate or caused any problems.

Four comments addressed the proposed changes in the definitions. The National Retail Federation stated that cogent definitions for the three basic types of pearls ''are lacking'' in the JVC petition.[244] Three comments suggested changes in the JVC's proposed definitions, but did not explain why it is necessary to change the definitions in the current Guides, nor state that any misconceptions have occurred.[245]

Definitions are helpful to the extent that they make clear what can nondeceptively be represented to be a pearl, a cultured pearl, or an imitation pearl. There is no indication that the definitions of the three types of pearls in the current Guides have ever failed to serve this purpose. Consequently, the Commission has not changed these definitions.

b. *Additional proposed definitions.* The JVC proposed adding eleven new definitions of types of pearls to the Guides. The JVC offered no reason for adding definitions of these terms to the Guides, nor did it allege that these terms had been used to deceive consumers. The National Retail Federation noted that there are three basic types of pearls (natural, cultured, and simulated) and that the definition section proposed by the JVC ''is unnecessarily detailed and confusing.'' [246] The Commission has

[238] Comment 255, p.8.

[239] Comment 226, p.8.

[240] Ross-Simons (67) stated, at p.1, that for catalog advertisers ''a tolerance of just .01 ct on a piece of jewelry with multiple diamonds is too restrictive . . . [because] we show a piece of diamond jewelry in our catalog and order backup items after the catalog is mailed.'' Ross-Simons further stated that for pieces containing several carats of diamonds, with multiple stones, a .01 ct. deviation is unrealistic, and would require it to either ''understate the weight to be safe or overcharge the consumer.'' Comment 67, p.1.

[241] GIA booklet, p.19, attached as Exh. B to NACSM (219).

[242] Some mass retailers stated that they already provide the weight ranges in their catalogs and/or at the point of purchase. Best (225) p.5 and Service (222) p.3.

[243] Limon (235) p.4.

[244] Comment 238, p.2.

[245] A&Z Pearls (29) p.1 (suggesting that the JVC's definition of ''cultured pearl'' be revised to include a better definition of the word ''nacre'' because it would ''eliminate misinterpretations of the term therefore clearing any misconceptions of 'nacre' being formed by a human agency''); AGTA (49) p.15 (suggesting editing the JVC's proposed definition of ''pearl''); CPAA (193) p.3 (suggesting editing the JVC's proposed definition of ''pearl'' and ''imitation pearl'').

[246] Comment 238, p.1; NACSM (219) p.27 (stating that the definitions ''seem unnecessary'').

determined to include additional definitions in the Guides, as discussed below, only where there are specific reasons for doing so.

i. Definitions proposed by the JVC. The only apparent purpose for five of the proposed definitions appears to be to emphasize the fact that a cultured pearl (or whatever specific type of cultured pearl) must be described as a cultured pearl. The JVC proposed definitions, with accompanying sections regarding the use of the term ''cultured,'' for the following pearls: Mabe cultured pearl, black pearl and black cultured pearl, natural color, fresh water pearl [247] and sweet water pearl. However, § 23.15 of the current Guides already states that it is unfair to use the unqualified word ''pearl'' to describe anything other than a natural pearl and that it is unfair to use the word ''pearl'' to describe a cultured pearl ''unless it is immediately preceded, with equal conspicuity, by the word 'cultured' or 'cultivated,' or by some other word or phrase of like meaning and connotation, so as to indicate definitely and clearly that the product is not a pearl.'' Because there is no information indicating a problem with these terms, or the adequacy of the existing provision, the Commission is not including these definitions in the Guides.

South Sea pearls: The JVC suggested the following definitions for South Sea pearls: ''A natural pearl found in the salt water mollusks of the Pacific Ocean South Sea Islands, Australia and Burma.'' It suggested that a South Sea cultured pearl be defined as a cultured pearl ''found in the salt water mollusks of the Pacific Ocean South Sea Islands, Australia and Burma.'' There was comment suggesting that there is a market for South Sea cultured pearls, and that such pearls are quite valuable. An article attached to the Rapaport comment stated that South Sea cultured pearls ''have come to challenge the supremacy of the Japanese akoya [cultured pearls] in quality * * *. The South Sea pearls have a strong market because of one particular feature that makes them attractive: size.'' [248] The CPAA stated that it frequently receives complaints that imitation pearl companies are using foreign names to confuse consumers.[249]

The Commission therefore has revised the Guides to state that it is unfair or deceptive to represent a pearl or a cultured pearl as being a South Sea pearl when such is not the case. This statement, which includes a definition of the term, is included in section 23.20(g) of the revised Guides.[250]

Oriental pearl: The meaning of the term ''Oriental pearl'' is clear in the current Guides. There is no evidence that the lack of a separate definition has caused any confusion or resulted in any misuse of the term. There was no comment pertaining specifically to this proposed definition. Thus, the Commission has not included a separate definition in the Guides.

Blister pearls: The JVC suggested definitions for ''blister pearl'' and ''cultured blister pearl'' and proposed a section stating that it is unfair to use the term blister pearl unless it is a pearl which meets the definition (*i.e.*, a pearl ''often hollow and irregular in form'').

There is no evidence that blister pearls are more valuable than other pearls or that the term ''blister pearl'' is being used to deceive consumers. Moreover, misrepresentations of the word ''pearl'' are adequately covered in the Guides. The Commission therefore is not including the definitions relating to blister pearls in the Guides.

Seed pearl: Section 23.16(b) of the Guides states that it is unfair to use the term ''seed pearl'' or any similar term to describe any cultured or imitation pearl. The JVC proposed defining seed pearl as: ''A small, natural pearl which measures approximately two millimeters or less.'' In a related portion of its petition, the JVC proposed a section that states that it is unfair to describe a cultured or simulated pearl as a seed pearl without using a qualifying term such as ''cultured,'' ''simulated,'' ''artificial,'' or ''imitation.''

The proposed definition and related section would indicate it is not deceptive to describe cultured and artificial pearls as seed pearls, if qualified appropriately, whereas the current Guides appear to inhibit this. The Commission has concluded that this is a useful change because it allows products that consumers might wish to purchase (i.e., cultured or artificial seed pearls) to be accurately described.

ii. Definitions suggested by other commenters. Keshi pearls: A & Z Pearls, CPAA, and AGTA proposed that a definition of ''Keshi'' pearls be added to the Guides.[251] A & Z Pearls and CPAA also proposed adding two more definitions relating to ''Keshi'' pearls (Keshi pearl, Sweet Water or Freshwater Keshi pearl, and South Sea Keshi pearl.) CPAA stated the word ''Keshi'' has been used in recent years ''as a product name for seed pearls derived by accident as a by-product of the pearl cultivation process.'' CPAA proposed adding the term to the Guides ''to further define what is and what is not a cultured pearl.'' [252] A & Z Pearls stated, ''There is a lot of debate in the trade as to whether ''Keshi'' pearls should be considered natural pearls. Like natural pearls, they grow accidentally, but they form in mollusks that are cultivated by man.'' [253]

The Commission believes that the JVC proposal—*i.e.*, allowing the term ''cultured seed pearl'' to be used to describe very small pearls that grow in mollusks cultivated by man—is an appropriate solution to this issue. However, there is no reason that the term ''Keshi'' could not also be used to refer to these pearls as long as it is not used to deceive consumers. There is no evidence that the term ''Keshi'' is being used to deceive consumers, and thus, the Commission has not included the term in the Guides at this time.

Organic pearl: Majorica suggested adding a definition for ''organic pearl.'' [254] This definition would permit Majorica pearls to be called ''organic'' rather than ''imitation.'' An article attached to Majorica's comment noted that ''to the untrained eye, Majorica imitation pearls look very much like

[247] Finlay implied that retailers may be describing fresh water cultured pearls as simply ''fresh water pearls'' and objected to requiring advertisers to use ''cultured'' for fresh water pearls, stating, ''consumers have come to associate the term 'cultured pearls' with round pearls and that to use the term 'cultured' in conjunction with irregularly shapen [*sic*] fresh water pearls would create confusion.'' Comment 253, p.2.

[248] Rapaport Diamond Report, July 17, 1992, p.24, attached to Comment 233 (noting that the South Sea pearls are the product of a different oyster than Japanese pearls).

[249] Comment 193, pp.13–14.

[250] The CPAA suggested revising the JVC's proposed definition of South Sea pearl: ''The word 'Burma' should be replaced with the words 'Southeast Asia.' Not only is Burma now officially called Myanmar, but there are other countries such as Malaysia, Indonesia, and Thailand in that region which are producing similar pearls.'' Comment 193, p.4. The Commission has made this change.

[251] AGTA (49) pp.15–16 (defining ''Keshi pearls'' as: ''Pearls that grow accidentally in the soft tissue or the adductor muscle of cultured pearl-bearing mollusks. These tiny non-nucleated pearls are by-products of cultured pearls. The term 'Keshi' also refers to the bigger pearls without nuclei that are spontaneously formed in mollusks which bear South Sea cultured pearls and freshwater cultured pearls'').

[252] Comment 193, p.8 (defining ''Keshi pearl'' as: ''A non-nucleated pearl, usually less than 2 millimeters in size, that may be formed by an oyster in addition to the cultured product during the process of cultivation'').

[253] Comment 29, p.2 (defining ''Keshi pearl'' as: ''A formation of some nucleated baroque shape pearls that grow 'accidentally.' The invasion of a foreign body (such as a nucleus shell or mantle tissue) stimulates the mollusk and induces abnormal production of nacre that forms to create 'keshi' pearls'').

[254] Comment 240, p.6 (''A pearl produced by means of manufacture characterized by a formation of layers obtained from guanine crystals, an organic substance from the scales of ocean fish around a nucleus.'').

saltwater cultured pearls.'' [255] The article, authored by employees of the Gemological Institute of America, also implies that some other brands of imitation pearls, like Majorica pearls, are made from guanine crystals, although there may be other differences in the manufacturing process that make Majorica imitation pearls superior to most other imitation pearls.[256]

Majorica states that the current system of classification (*i.e.*, pearl, cultured, and imitation) ''has narrowed the market for MAJORICA pearls as a real alternative to so-called cultured pearls'' and ''gives an unfair advantage to the cultured pearl industry.'' [257] One commenter noted that most cultured pearls today have only a small percentage of nacre (the iridescent coating), unlike pearls from 40–50 years ago. Thus, cultured pearls today may not look very different from imitation pearls.[258]

Majorica's suggestion, however, involves renaming items that the public has for many years known as imitation pearls. This seems likely to provide more rather than less opportunity for deceiving consumers. NACAA noted, for example, that ''consumers may be particularly confused by the many varieties of natural, cultured, and imitation pearls.'' [259] Moreover, two commenters noted that consumers currently confuse Majorica pearls with real or cultured pearls.[260] Accordingly, the Commission is not including a definition of ''organic pearls'' in the Guides.[261]

2. Misuse of the Word ''Pearl''

Section 23.15 of the current Guides deals with misuse of the word pearl. Section 23.15 (a) states that it is unfair to use the unqualified word ''pearl'' to describe anything other than a natural pearl, and § 23.15(b) states that it is unfair to use the word ''pearl'' to describe a cultured pearl unless it is qualified by the word ''cultured'' or ''cultivated,'' or a word of similar import, to indicate that the product is not a pearl. The JVC did not propose any changes in these two sections.

Section 23.15(c) states that it is unfair to use the word ''pearl'' to describe an imitation pearl unless it is immediately preceded, with equal conspicuity, by the word ''imitation'' or ''simulated,'' or by some other similar word or phrase. The JVC proposed adding the word ''artificial'' to this section. NACAA stated that the Guides should ''require artificial pearls to be clearly labeled using one standard term.'' It preferred the terms ''imitation'' or ''artificial,'' instead of ''simulated,'' because ''consumers are more likely to understand what those words mean.'' [262] The word ''artificial'' clearly indicates that a product is not a natural pearl. Thus, the Commission is including this term in the Guides as another example of a term (along with simulated) that can be used to describe imitation pearls.

CPAA suggested that the Guides include a section that states that it is unfair ''to use the terms 'faux pearl,' 'fashion pearl,' 'Mother of Pearl' or any other proper name or noun term alone when describing or qualifying an imitation pearl product without including the words 'imitation', 'simulated' or any other term of similar connotation within the same product description and with equal conspicuousness.'' CPAA stated that the use of these terms ''has been the number one marketing and advertising tool in the sale of imitation pearl products across the U.S.'' CPAA explained that ''many customers can not tell the difference between the products by sight alone,'' and that ''[w]ithout proper product designations such as natural, cultured and imitation, customers are often misled as to the true nature of the product that they are buying.'' [263] With respect to ''faux'' generally, NACAA stated that ''we do not believe that most consumers know what it means'' and the Postal Service stated that ''the term 'faux' has been used to confuse unsophisticated consumers and enhance the apparent value of their costume jewelry.'' [264]

As noted, the Guides currently state that it is unfair to describe an imitation pearl as a pearl without a qualifier such as ''imitation.'' Although the Guides permit sellers to use terms other than imitation as long as they ''indicate definitely and clearly that the product is not a pearl,'' based on information from CPAA, the Postal Service, and NACAA, it appears that the terms faux pearl, fashion pearl, and Mother of Pearl are inadequate to convey to a substantial group of unsophisticated consumers that the items are imitation pearls. Accordingly, the Commission has revised the Guides to state that it is unfair or deceptive ''to use the terms 'faux pearl,' 'fashion pearl,' 'Mother of Pearl,' or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word 'artificial,' 'imitation,' or 'simulated,' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.'' [265]

The JVC also proposed adding a new subsection (d) which states that it is unfair to use the word 'pearl' with an asterisk which references to a footnote explaining that the product is an imitation or cultured pearl. This proposal is similar to a Note currently in section 23.15 of the Guides. However, section 23.15(c) states that the word ''pearl'' should be ''immediately preceded'' by a qualifying word such as ''imitation'' or ''cultured,'' if the item is not a natural pearl. The Commission believes that this language advises sellers about how to avoid a deceptive use of the term ''pearl.'' The current Note is superfluous and the Commission has deleted it.

3. Misuse of Other Terms

a. *Proposed changes to existing subsections.* Section 23.16 of the current Guides consists of six subsections describing several terms that can only be used to describe specific types of pearls. The JVC did not suggest any changes in these sections.[266]

The only comment on these sections referred to § 23.16(e), which states that it is unfair to use the word ''natura'' or any similar word to describe a cultured or imitation pearl. CPAA suggested the words ''natural,'' ''nature's,'' and ''organic'' be ''added to the list of words that cannot be used to describe an imitation pearl product.'' [267] CPAA explained that these words have been used to describe imitation pearls, and argued that they ''only serve to confuse the consumer and retail buyer as to the proper origin and intrinsic value of an imitation product.'' [268]

[255] ''Majorica Imitation Pearls,'' Gems and Gemology 185 (Fall 1990), attached to Comment 240.

[256] The article notes that ''pearl essence'' (*i.e.*, guanine crystals) was discovered in the late 17th century. *Id.* at 181. It states that ''the process used to produce most other imitation pearls involves dipping or painting the beads with a resin; thus, these imitations lack the iridescence of the Majorica product and its cultured counterpart.'' *Id.*

[257] Comment 240, p.5.

[258] Russell (217) pp.1, 2, and 4.

[259] Comment 90, p.3.

[260] Lange (183) and CPAA (193) p.14.

[261] *See* below for a discussion of other proposals regarding the term ''organic.''

[262] Comment 90, p.3.

[263] Comment 193, p.9.

[264] Comment 90, p.3 and comment 244, p.3.

[265] The comments discussing the use of the word ''faux'' are discussed in more detail *infra*.

[266] The JVC did suggest that subsection (b), which relates to the term ''seed pearl,'' be modified to allow the use of the term ''cultured seed pearl'' or the terms ''simulated,'' ''artificial,'' or ''imitation seed pearl.'' As noted above, the Commission has concluded that this change is useful and has included it in the revised Guides.

[267] Comment 193, p.6.

[268] *Id.*

On the other hand, Majorica requested that the Guides be revised to add a section stating that pearls made from guanine crystals can be described as ''organic'' pearls. It stated that elimination of the word ''organic'' would eliminate ''the only real competition which cultured pearls have in this country.'' [269] However, for the reasons stated above, the Commission has concluded that describing pearls made from guanine crystals as ''organic'' pearls is likely to mislead consumers. Nevertheless, there is a difference between the words ''natural'' and ''nature's''—neither of which can inherently be used in a nondeceptive manner with respect to imitation pearls—and the word ''organic.'' The Commission believes that the word ''organic'' could be used, with adequate qualification, to describe Majorica pearls in a truthful manner. For example, in its ads, Majorica describes its pearls as ''organic man-made pearls'' that consist of a translucent nucleus ''coated with layers of pearlized essence, an organic material extracted from marine species.'' [270] Thus, the Commission has revised § 23.16(e) of the current Guides to indicate that it is unfair or deceptive to use the term ''natural'' and ''nature's'' to refer to an imitation pearl. The Commission also has added a sentence to this section stating that it is unfair or deceptive to use the term ''organic'' to refer to an imitation pearl unless the term is qualified in such a way as to make clear that the product is not a natural pearl.

The JVC suggested adding the word ''cultura'' to § 23.16(f) of the current Guides, which states that it is unfair to use the word ''kultured'' or any similar word to describe an imitation pearl. However, the section as currently written prohibits the use of ''any other word, term, or phrase of like meaning * * *.'' The word ''cultura'' is very similar to ''kultured.'' Thus, § 23.16(f) already provides adequate guidance on how to avoid deceptive representations. However, CPAA stated that terms such as ''semi-cultured pearl,'' ''cultured-like,'' ''part-cultured,'' and ''pre-mature cultured pearl,'' have been used to describe imitation pearls, and argued that they ''only serve to confuse the consumer and retail buyer as to the proper origin of an imitation product.'' [271] The Commission has determined that these terms are deceptive when applied to imitation products and has included them in § 23.16(f) of the current Guides.

b. *Additional proposed provisions relating to cultured pearls.* The JVC proposed the addition of six new subsections relating to the failure to describe a cultured pearl as a cultured pearl. These proposed subsections relate to fresh water cultured pearls, Biwa cultured pearls, South Sea cultured pearls, black cultured pearls, and Mabe cultured pearls.

All of these have been discussed previously, in connection with the section on definitions, except Biwa pearls (which were not included in the definition section proposed by the JVC.) As noted, the Commission has concluded that § 23.15(b) of the current Guides, which states that it is unfair to use the word ''pearl'' to describe a cultured pearl unless the word ''pearl'' is ''immediately preceded, with equal conspicuity,'' by the word ''cultured'' or a word of similar import, is sufficient to admonish sellers that they should adequately disclose that a cultured pearl—of whatever type—is cultured. Thus, the Commission has not included any of these proposed subsections except the ones dealing with South Sea pearls (discussed *supra*) and Biwa pearls.

The subsection proposed by the JVC for Biwa pearls states that it is unfair to use the term ''Biwa pearl'' without the qualifying term ''cultured.'' The Commission has concluded that this portion of the proposed subsection is unnecessary. However, the proposed subsection also provides that ''the term 'Biwa cultured pearl' must only be used when describing those formations which have the distinctive appearance of a fresh water cultured pearl taken from the fresh water mollusks inhabiting Lake Biwa within the island of Honshu, Japan.''

CPAA commented that the term should be limited to ''those formations which are grown in fresh water mollusks in the lakes and rivers of Japan.'' CPAA stated that the words ''distinctive appearance'' might allow imitation pearls and pearls from other countries to use the regional description. CPAA explained that ''Biwa'' represents all Japanese freshwater pearls because ''first, many people currently refer to all Japanese origin freshwater cultured pearls as 'Biwa'' and second, because freshwater pearl production in Japan is nearing extinction ''Biwa pearls'' are appreciating in value.[272] CPAA stated that many U.S. importers use the term ''Biwa pearl'' ''to describe freshwater pearls that have a similar appearance to Biwa pearls but come from other countries such as China'' and artificially inflate the prices of them, which ''cost as little as 30 times less than the Biwas.'' [273]

Because of the evidence of deceptive use of this term, the Commission has included a provision in the Guides stating that the term ''Biwa'' should only be applied to pearls ''which are grown in fresh water mollusks in the lakes and rivers of Japan.''

c. *Other proposed provisions.* The JVC proposed that eight other subsections be added to the section dealing with misuse of specific terms (in addition to the proposed subsections described above.) The first such proposed subsection is general: ''It is an unfair trade practice to use the term 'pearl,' 'oriental pearl,' 'cultured pearl,' 'cultivated pearl' * * * to describe * * * any such pearl product whose outer surface does not consist wholly of naturally occurring concentric layers of nacre secreted by that mollusk.'' This section duplicates other subparts of § 23.16 of the current Guides, and therefore, the Commission has not included it in the Guides.

Another JVC proposal prohibits the use of the term ''non-nucleated pearl,'' because ''cultured pearls of this type are formed by the introduction of mantle tissue within the body of the mollusk'' and thus are nucleated. However, both the CPAA and AGTA used the expression ''non-nucleated pearl'' in their comments in referring to Keshi pearls.[274] Moreover, whether or not the term ''non-nucleated'' is correct, no evidence has been offered to show that it is being used to deceive consumers as to a material fact. Thus, the Commission has not included this section.

Two of the additional proposed sections relate solely to imitation pearls. One states that it is unfair ''to use the term 'man-made' or 'man-created' without using the term 'simulated' or similar term, to qualify the product as in 'man-made simulated pearls.'" CPAA commented that this section should state that it is unfair to use these terms ''without also using the term 'simulated,' 'imitation' or any other term that has the same connotation and meaning when qualifying or describing an imitation pearl product.'' [275] The only other comment relating to this provision was from Majorica, which requested the FTC ''to *withhold* any further restrictions on the words 'organic,'

[269] Comment 240, pp.6 and 11. The section requested by Majorica would limit the use of ''organic'' to any pearl other than an imitation pearl made from guanine crystals. *Id.* at 7.

[270] Attachment to comment 49.

[271] Comment 193, p.6.

[272] Comment 193, p.7.

[273] Comment 193, p.7.

[274] Comment 193, p.8; comment 49, p.15.

[275] Comment 193, p.6.

'man-made,' 'synthetic,' and 'created' while considering the creation of a new category of pearl to which the word 'organic' could properly and accurately be applied.'' [276] CPAA may be arguing that the phrase ''man-made'' could be understood to mean cultured pearls, since such pearls are ''started'' by man. However, there is no evidence that consumers are interpreting the phrase ''man-made'' or similar phrases in this manner, and without such evidence, the Commission has decided not to include the section, as proposed by CPAA, in the revised Guides.

Four of the remaining five proposed subsections relate to the misuse of certain words, which are described in §§ 23.20 and 23.21 of the current Guides. Section 23.20 of the current Guides provides that it is unfair to use the words ''real,'' ''genuine,'' ''natural,'' or ''similar terms as descriptive of any article or articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated * * *.'' Although this section deals primarily with precious and semi-precious stones, it also applies to cultured or imitation pearls.

The subsection proposed by the JVC states that it is unfair to use these words or the word ''precious'' or similar terms to describe imitation or cultured pearls.

The Commission has reorganized the Guides so that this statement appears in the pearl section, making it more likely that industry members searching for guidance as to pearl advertising will see it. As noted above, the Commission already has included the term ''natural'' in the subsection dealing with the term ''natura,'' § 23.20(e) of the revised Guides. Thus, the Commission has added a new subsection, 23.20(i), that states that it is unfair or deceptive to use the terms ''real,'' ''genuine,'' or ''precious'' as descriptive of an imitation pearl.[277]

This subsection does not state that the terms ''real'' or ''genuine'' are unfair or deceptive if used to describe cultured pearls. The Commission has determined that it is possible to truthfully describe ''real'' or ''genuine'' cultured pearls without implying that they are not cultured. In addition, there may be instances when cultured pearls could be truthfully described as ''precious.'' Therefore, § 23.20(i) is limited to imitation pearls.

Section 23.21(a) in the current Guides states that it is unfair to use the term ''gem'' or a similar term to describe ''a pearl, cultured pearl, diamond, ruby, * * * which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.'' The JVC proposed a section recommending that the word ''gem'' not be used as a quality designation or description of natural pearls, ''since there is no existing criteria for these terms, and their use to describe, imply, or represent quality could be misleading.''

AGTA commented that this provision should only apply to sales to a consumer, stating, ''The term 'gem' is traditionally used within the trade to describe particularly fine qualities of any given gemstone species, including pearls. To prohibit its use within the trade is restrictive of traditional practice and is unnecessary as it is clearly understood.'' [278] There is no evidence that consumers would be deceived by this term as applied to pearls that ''possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.'' Therefore, the Commission has retained current § 23.21(a) and has moved the portion relating to pearls to the pearls section of the Guides (revised § 23.20(j)). The Commission has included a Note after this section (which currently follows § 23.21(b) in the current Guides) which states that the use of ''gem'' with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualities and that imitation pearls should not be described as 'gems.'

Section 23.21(c) of the current Guides states that it is unfair to use the words ''reproduction,'' ''replica,'' or similar terms to describe a cultured or imitation pearl (or imitation precious or semi-precious stones.) The JVC proposed including this statement, as it pertains to pearls, in the pearls section. However, if the nature of the material used in a reproduction or replica is adequately disclosed, as advised by other sections of the Guides, it is not clear that the use of these terms would be deceptive or unfair. Thus, the Commission has not added this section to the Guides.[279]

Section 23.21(d) of the current Guides states that the use of the term ''synthetic'' to describe cultured or imitation pearls is unfair. The term may be used for precious and semi-precious synthetic stones if they have ''essentially the same optical, physical, and chemical properties as the stone named.'' The JVC proposed moving the portion of § 23.21(d) that pertains to pearls to the pearls section and adding that it is unfair to use the word ''created'' to describe cultured or imitation pearls. AGTA and CPAA both supported the proposal, and Majorica opposed it.[280] No evidence was offered to explain why the use of the term ''created'' is unfair or deceptive as applied to cultured or imitation pearls. The Commission therefore has not included the proposed section regarding the term ''created'' in the Guides.

However, the term ''synthetic'' has been used with respect to gemstones to refer to a man-made substance that has all the physical, chemical and optical properties of the natural stone. Since cultured pearls do not have the same physical and optical properties as natural pearls, the use of this term may be deceptive. Furthermore, the use of the term ''synthetic'' to describe an imitation pearl might convince some consumers that the pearls were cultured rather than imitation. Thus, the Commission has included a new subsection, 23.20(k), which states that it is unfair or deceptive to use the word ''synthetic'' to describe cultured or imitation pearls.

Finally, the JVC proposed a subsection stating that it is unfair to use the term ''semi-precious'' to describe any pearl, cultured pearl, ''or man-made industry product.'' No evidence was offered to show that this use of ''semi-precious'' would be unfair or deceptive, and there was no comment on this proposal. In the absence of such evidence, the Commission has decided not to add this provision to the Guides at this time.

d. *Additional provisions proposed by commenters.* CPAA proposed that several additional subsections be added to the section pertaining to ''Misuse of terms.'' First, CPAA suggested a subsection stating that it is unfair to use the term ''orient'' to describe the properties of an imitation pearl.[281] CPAA stated that ''the term 'orient' was first used in a gemological sense by the Gemological Institute of America in

[276] Comment 240, p.6 (emphasis added).

[277] Although there was no comment on the inclusion of ''precious'' in this subsection, the Commission has determined that it is deceptive as applied to imitation pearls because ''precious'' in the jewelry industry implies rarity. Although imitation pearls can be of high quality, they are not likely to be rare.

[278] Comment 49, p.16 (noting that there is not a similar prohibition of the use of the term 'gem' in the section on diamonds).

[279] The Commission has deleted § 23.21(c) of the Guides, as discussed below, in the section pertaining to gemstones.

[280] AGTA (49) p.16; CPAA (193) p.7 (suggesting that the provision be modified to apply to ''cultured, simulated, or imitation pearls'' rather than to ''cultured or imitation pearls''); Majorica (240) p.6 (requesting no ''further restrictions'' be placed on the use of ''created'' or ''synthetic'').

[281] Comment 193, p.8 (''Orient is gemologically defined as a subdued iridescence, occurring when white light is divided into its separate and distinct spectral colors as it passes through and is refracted back from the nacre secreted by mollusks whether surrounding a nucleus or not.'').

order to explain and clarify quality points of natural and cultured pearls * * * many retailers and gemologists alike hold their [GIA] definitions to be the authoritative standard within the industry.'' [282] However, an article from the GIA quarterly journal *Gems & Gemology* was attached to Majorica's comment; the authors are all employees of GIA. The article states, ''An iridescence resembling the orient seen on some cultured pearls may also be observed on Majoricas [an imitation pearl].'' Thus, it appears that at least some imitation pearls can possess ''orient.'' Therefore, the Commission has not included this provision in the revised Guides.

CPAA also proposed a new provision, stating that it is unfair to use the terms ''Japanese Pearls,'' ''Mallorca Pearls,'' ''Chinese Pearls,'' or any other regional designation to describe cultured or imitation pearls without including the words ''cultured, imitation or simulated.'' [283] CPAA explained that imitation pearl companies recently have used regional terms to describe their products, and that this misleads consumers about the true nature of the product.[284]

Majorica made a similar suggestion, stating that there is continued abuse of terms such as ''Mallorca Pearl,'' ''Majorca Pearl,'' and ''Mayorca Pearl'' and that they ''have numerous examples of customers and distributors who have been deceived into purchasing pearls under the label of 'Majorca' or 'Mallorca' pearls believing them to have special qualities related to the Island of Majorca or, for that matter, that they are MAJORICA pearls.'' [285]

The Commission has concluded that there is some evidence that regional descriptions are being used to mislead consumers. The Commission therefore has included a provision in the revised Guides that states that the regional description of a pearl should be accompanied by a description of whether the item is a cultured or imitation pearl.

4. Misrepresentation as to Cultured Pearls

The JVC recommended no substantive changes in § 23.17 of the current Guides. As noted above, this section describes unfair practices involving false, misleading, or deceptive statements about cultured pearls, including the manner in which they are produced and the thickness of the nacre coating.

One commenter, Kenneth Russell, recommended that the Commission establish grades for cultured pearls based on the thickness of the nacre deposited by the mollusk, following the introduction by man of a mother-of-pearl bead. He noted that the thickness of the nacre ''mainly determines their wearable value'' and that this ''indexing'' information should accompany this product ''just as karatage serves to rank gold jewelry.'' [286] He stated that most cultured pearls consist of 90 to 95% nucleus and very little nacre.[287]

The article attached to the Majorica comment stated that the thickness of the nacre in a cultured pearl ''will vary depending on the amount of time the nucleated mollusk was allowed to grow before harvest.'' [288] The article attached to the Rapaport comment quoted a pearl industry source as saying that some of the lowest-quality Chinese pearls should not be on the market because ''the nacre peels off the nucleus within a year.'' [289] The article notes that pearl grading is ''a non-standardized process that gives dealers a lot of room for opinion.'' It also notes that GIA has a grading system which ''uses numerical grades to show differences in appearance, durability and value of pearl strands'' and that some companies use their own methods.[290]

The literature indicates that the nacre on some cultured pearls might be so thin that they do not meet the expectations consumers have when an item is described as a cultured pearl. Section 23.17 in the current Guides admonishes against misrepresentations about the thickness of the nacre on cultured pearls or the quality of pearls. However, it is not unfair or deceptive to fail to grade cultured pearls that contain a coating of nacre that is thick enough to meet minimal consumer expectations.

F. Precious and Semi-precious Stones (Category V): §§ 23.18–23.21

Guides in this part apply primarily to colored gemstones, precious (rubies, sapphires, emeralds) and semi-precious (amethyst, topaz, etc.) stones. The Guides refer to three types of gemstones: natural (i.e., mined from the ground); synthetic stones, which are laboratory-created and which § 23.21(d) describes as having ''essentially the same optical, physical, and chemical properties'' as natural stones; and imitation stones, which resemble natural stones but do not have the same properties.

1. Deception Generally: § 23.18

Section 23.18 states that any material misrepresentation with respect to precious or semi-precious gemstones is unfair. The JVC proposal omitted this section. Section 23.18 merely repeats the general admonition in § 23.1 against material misrepresentations of any industry product. Thus, the Commission has deleted this provision from the revised Guides.

a. Disclosure of Treatment

A Note following § 23.18 states that any artificial coloring or tinting of a diamond or precious or semi-precious stone by ''coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means'' should be disclosed and the fact that the coloring is not permanent, if such is the fact. The JVC proposed, in section 23.20(c) of its petition, a section in lieu of the Note which requires the disclosure of any enhancement ''by coating, application of colorless or colored oil, irradiation, surface diffusion, dyeing, heating or by use of nuclear bombardment, or by any other means.'' [291] This proposal would expand the recommended disclosure about enhancements relating to color to all enhancements (*e.g.*, those related to concealing cracks). In addition, it explicitly covers enhancement by applications of colored or colorless oil, surface diffusion, or dyeing.[292]

[282] Comment 193, p.9.

[283] *Id.*

[284] CPAA (193) p.9 (explaining, for example, that the ''use of the term 'Misaki Japanese Pearls' in several cases has led consumers to believe that they were purchasing Japanese cultured pearls instead of imitation pearl products'').

[285] Comment 240, pp.8–10. Unlike the CPAA proposal, Majorica proposed to prohibit the use of the term ''Mallorca'' or any similar expression connoting the name of the Island of Mallorca, Spain in combination with the word pearl. (The CPAA proposal would allow an imitation pearl to be described as a ''Mallorca imitation pearl.'') Majorica stated that it has sued distributors of pearls and has obtained relief which requires such distributors to ''to reduce the emphasis on [Mallorca] in their advertising and distribution.'' Majorica asserts that it is unfair to require it to go to the expense of litigation every time such an abuse occurs. *Id.* However, Majorica's specific complaint regarding the ''passing off'' of one manufacturer's product for another is already adequately addressed by caselaw under Section 5.

[286] Comment 217, p.1 (suggesting that cultured pearls with a ¼ to ½ mm. coating of nacre should be marked ''Service Grade'' and those with more than ½ mm. marked ''Heirloom Grade'').

[287] Id. at p.2.

[288] ''Majorica Imitation Pearls,'' Gems and Gemology 187 (Fall 1990), attached to Comment 240.

[289] ''Rapaport Diamond Report'' 26 (July 17, 1992) attached to Comment 233.

[290] Id.

[291] Nassau (10) suggested, at p.1, three modifications to the JVC proposal: the addition of the word ''impregnation'' after the word ''coating''; the addition of the words ''wax, plastic, or glass'' after ''colored oil''; and the removal of the word ''surface'' (*i.e.*, in ''surface diffusion'').

[292] Although most of these techniques enhance color, application of colorless oil could arguably be used simply to cover inclusions. The current

Continued

Numerous commenters noted that almost every natural gemstone is subject to some form of enhancement.[293] AGS stated that many new enhancement techniques have been developed since the Guides were issued and that ''[c]oating processes are developed daily.'' [294] NACSM stated that up to 95% of colored gemstones are dipped in oil and that this treatment is ''taken for granted by retailers and consumers alike.'' [295] It questioned the value of disclosures under these circumstances and contended they would clutter written advertisements and increase prices.[296] However, NACAA commented that its members receive complaints about failure to disclose stone enhancement.[297] Although the Guides currently recommend disclosure of color enhancement, some comments indicated that there is little such disclosure in the marketplace.[298] However, some industry associations strongly encourage their members to disclose treatments.[299]

The Commission is persuaded by the comments that many consumers do not have detailed knowledge about the nature and types of treatments used to enhance gemstones. However, consumers would expect their gemstone purchases to retain their appearance over time regardless of any treatments and to not require special care to retain their appearance. On the basis of the comments and for the reasons discussed below, the Commission has concluded that non-permanent treatments of various types (not just those that affect color), or any treatments that create special care requirements should be disclosed. There is no logical reason to limit disclosure to treatments that affect color. Further, consumers should be informed when the treatment is not permanent.[300]

Some comments argued that any treatment, even if it is permanent, may reduce the value of a stone and a failure to reveal treatment amounts to a representation that a stone is more valuable than it is. One commenter noted that treatments should be disclosed ''since the stone gives the appearance to the consumer that it is a higher grade than what it actually is.'' [301] AGTA also stated that ''the difficulty in detecting treatments presents opportunities for misrepresentation of the value'' and that ''the potential for overcharging consumers if the enhancements are not disclosed at every level of the trade is very real.'' [302] AGTA attached a May 1993 notice it issued to its members in which it referred to the fact that a number of knowledgeable wholesalers purchased diffusion-treated sapphires without knowing that they were treated.[303]

On the other hand, Service argued that failure to reveal treatment is not deceptive if the treatment is permanent, stating, ''[i]t is unreasonable to require a retailer to disclose what has happened to a stone in the manufacturing process if the change is permanent.'' Service agreed that if the change is not permanent, the customer ''wants to know if the color or quality may degrade over time and what the customer must do, if anything, to maintain the stone's quality and color. Requiring this information to be provided is acceptable.''[304]

The Commission has concluded that it is not unfair or deceptive to fail to disclose a treatment that is permanent or that does not create special care requirements. As the Commission stated in *International Harvester*, 104 F.T.C. at 948, it may be deceptive for a seller ''to simply remain silent, if he does so under circumstances that constitute an implied but false representation.'' These implied representations ''may arise from the physical appearance of the product, or from the circumstances of a specific transaction, or they may be based on ordinary consumer expectations as to the irreducible minimum performance standards of a particular class of goods.'' *Id.* The Commission explained, however, that ''[i]ndividual consumers may have erroneous preconceptions about issues as diverse as the entire range of human error, and it would be both impractical and very costly to require corrective information on all such points.'' *Id.* at 949.[305] Thus, if an express or implied representation is made (in advertising or at the point of sale) that might imply rarity and therefore lack of treatment—*e.g.*, that the gemstones are of an exceptionally high quality—then the failure to reveal any treatment may be deceptive. However, if no such representation is made, consumers simply might not give any thought to whether the gemstones were treated, beyond assuming that all gemstones undergo some processing to achieve their finished state. Therefore, it is neither unfair nor deceptive to fail to reveal treatments that are permanent, and that do not create special care requirements.[306]

Guides recommend disclosure of techniques which artificially color gemstones, and the fact that the techniques are not explicitly mentioned may lead readers to assume that it need not be disclosed. Some comments gave this indication because they assumed that the disclosure of treatment with colorless oil was not currently advised.

[293] Lannyte (65) p.8 (also suggesting, at p.10, that the guides state that it is unfair to state that a gemstone has *not* been enhanced when it has been, a suggestion that has been incorporated into § 23.1 of the revised Guides by including ''treatment'' in the list of attributes that should not be misrepresented); JGL (77) p.1; Majestic (115) p.1; Suberi (214) p.2; Bruce (218) p.12; NACSM (219) p.13; Impex (220) p.1; Best (225) pp.8–9.

[294] Comment 18, p.2; AGTA (49) p.5 (noting several technologies (*e.g.*, diffusion-treated sapphires, irradiated topaz) that ''did not even exist on a commercial scale ten years ago''); GIA (81) p.2; Eisen (91) p.1; ArtCarved (155) p.1; LaPrad (181) p.1; IJA (192) p.1.

[295] Comment 219, p.13 and letter to Secretary, p.1. *See also* ''Epoxy-Like Resins,'' Jewelers' Circular-Keystone 176 (June 1994) (stating that ''[t]he majority of emeralds sold today are epoxy resin impregnated'' and noted that oil and epoxy resin are both designed to ''soften or hide the effect of cracks and fissures'').

[296] *Id.*

[297] Comment 90, p.1.

[298] Lannyte (65) p.7; Impex (220) stated that the JVC proposal would ''defy standard industry practices.''

[299] *See* discussion *infra* of the 1990 Gemstone Enhancement Manual (attached to comment 49).

[300] By letter dated February 7, 1989, the JVC informed staff that it wished to revise its petition to ''include disclosure in the colored gemstone provision the permanency and/or non-permanency of enhancement.''

[301] Bales (156) p. 10.

[302] Comment 49, p. 5 (stating that it sees examples of overcharging too frequently and listing as ''most notable examples,'' *i.e.*, diffusion-treated sapphire, Yehuda-treated and laser-drilled diamonds, and irradiated topaz, sapphire, and diamond); Chatham (231) p. 24 (stating that consumers are deceived by treated natural stones that are passed off as more valuable than they actually are).

[303] AGTA recommended that diffusion-treated and irradiated gemstones always be described as ''chemically colored by diffusion,'' and, if the color does not permeate the entire gem, that fact should be revealed with a warning that re-cutting or re-polishing is not recommended. Comment 49, p. 16. However, River (254) stated, at pp. 2–3, that many people find diffusion treated sapphire a better value, and that the problem of re-cutting is ''blown out of proportion'' since very few stones are re-cut or re-polished at a customer's request, and in the rare instance when a stone is broken, it is replaced. For these latter reasons, the Commission has not included the language suggested by AGTA (*i.e.*, a warning about re-cutting or re-polishing) in the Guides. Further, it is not practical for the Guides to address every conceivable issue that may arise in a jewelry transaction.

[304] Comment 222, p.5.

[305] Numerous comments noted that disclosure of treatment of all gemstones would be expensive for retailers. Service (222) p.5 (stating this is difficult because the stone probably changed hands a few times before being purchased by the retailer); Best (225) p.9 (stating that the retailer may not know of the enhancement); Finlay (253) p.2 (stating that it would be an ''overwhelming task'' for the retailer to obtain information about enhancement from the manufacturers). Others commented (without further explanation) that disclosure would ''complicate'' sorting, advertising, and selling. Philnor (93) p.1; PanAmerican (101) p.1; Fame (102) p.1; Orion (113) p.1; Precision (121) p.1.

[306] The Commission does not believe that it would be unfair to fail to disclose the treatments because, even assuming there might be some consumer injury associated with such failure, the injury would be outweighed by the benefits to competition, *see supra* note 305, associated with not requiring the disclosure. *See International Harvester*, 104 F.T.C. at 949.

Nevertheless, most treatments of gemstones are not permanent, and most treatments create special care requirements. AGTA attached to its comment a copy of the 1990 *Gemstone Enhancement Manual,* which states, at p.3, that it was ''developed by a coalition of jewelry industry leaders representing the various trade organizations, gemological scientists, and the trade press.'' This Manual gives examples of treatments that are not permanent, or that create special care requirements.[307] What appears to be the most common treatment—oiling—is definitely not permanent.[308] Although a new treatment with epoxy resin ''leads to a longer lasting improvement in appearance which is not possible with volatile compounds like oils and paraffin used traditionally,'' experts have suggested that a number of problems may occur even with this treatment and that disclosure is necessary because otherwise a seller ''could easily ask a price commensurate with a stone's appearance.'' [309]

Further, as noted above, most consumers probably do not have detailed knowledge about the nature and type of treatments that are used to enhance gemstones. Therefore, if consumers are unaware of the non-permanency of a treatment or the special care requirements associated with a treatment, the gemstone may not meet their expectations if the color fades or inclusions appear, etc. Accordingly, the Commission has included a section in the revised Guides that states that non-permanent treatments and treatments that create special care requirements should be disclosed. This section explicitly states that certain treatments, such as application of colored or colorless oil or epoxy-like resins, surface diffusion, or dyeing, should be disclosed because they usually are either not permanent or create special care requirements. This recognizes that whether a treatment is permanent or invokes special care requirements may be dependent on factors such as the type of gemstone that is treated.

Several commenters noted that the current Guides do not specify whether disclosure of treatment should appear in advertising (as opposed to at the point of sale). Several retailers commented that disclosure of enhancement in advertising would be burdensome and would have a disparate impact on large chains, which do advertise, as opposed to small jewelry stores, which generally do not advertise. NRF suggested that whatever enhancement disclosures are required should be limited to the point of sale.[310] Because the potential deception arises due to the appearance of the product, the Commission has determined that disclosure at the point of sale is adequate to prevent the deception, except in the case of any solicitations where the product can be purchased without first viewing it (*e.g.,* mail, on-line, or telephone orders). In those cases there should be disclosure that stones have been treated in the solicitation or, in the case of televised shopping programs, on the air.

b. *Disclosure of special care requirements.* The current Guides do not recommend the disclosure of special care requirements for treated stones, and the JVC petition did not propose that special care requirements be disclosed. However, the permanency of some treatments is dependent on the care exercised by the consumer. The FRN solicited comment on whether the Guides should advise sellers to disclose to consumers in writing any special care requirements and whether the method of disclosure should be specified.

Thirty-four comments addressed this issue. Seventeen comments stated that the Guides should not require such disclosure, with several stating that it would be a costly burden for the retailer.[311] Eleven commenters favored the disclosure of special care requirements.[312] GIA and three other commenters stated that the Guides should require such disclosures if the stability of the enhancement may be affected by the care provided.[313] AGTA and CPAA both stated that they advocated responsible communication between retailers and their clients as to special care, but they deferred to the opinion of retail jewelers as to whether this should be required by the Guides.[314] AGTA suggested appending the current edition of the industry's *Gemstone Enhancement Manual* to the FTC guides to advise the industry about the current methods being used.[315]

However, none of the comments explained why failure to disclose special care requirements would be unfair or deceptive. Although failure to reveal a fact material to consumers can constitute deception by omission, the Commission has determined that it is not inherently deceptive to fail to reveal special care requirements. First, as discussed *supra,* the Commission has revised the Guides to state that sellers should disclose enhancements that result in special care requirements. Therefore, having been informed that the stone was ''enhanced,'' a consumer acting reasonably in the circumstances could be expected to inquire about the process and its permanence, and that inquiry should result in disclosure of special care requirements. For example, Capital commented that ''as long as enhancement is faithfully disclosed, special care requirements will also be disclosed,'' since consumers will ask for

[307] For example, the Manual states that emeralds are usually oiled with colorless oil to improve appearance; the stability of this treatment is described as ''fair to good.'' According to the Manual, oiled emeralds should not be subjected to temperature changes, steaming, chemicals, or ultrasonic cleaning machines. Moreover, numerous other stones that are commonly treated to improve appearance (*e.g.,* Amazonite—usually waxed; Jadite—impregnated with colorless wax; Lapis Lazuli—impregnated with colorless wax or oil; Malachite—coated with wax) should not be cleaned in ultrasonic machines, according to the Manual. Ultrasonic cleaning machines are now sold to the general public by mass retailers.

[308] An article entitled ''Emeralds'' in National Geographic, Vol. 178, July 1990, stated that oiling of emeralds probably lasts from a few months to a year or two ''if the emerald is kept away from heat and out of the sun.'' *Id.* at 68. The oiling process involves submerging vials of emeralds in boiling water and then placing the vials in a pressure chamber to drive the oil even deeper into the cracks in the emeralds. This is not a process that the average consumer could repeat. The article noted, at another point, that the oil evaporates or seeps out ''within a year or two'' and that oiling ''can puzzle and dismay emerald owners.'' *Id.* at p.49.

[309] ''Epoxy-Like Resins,'' *supra,* at 177. The article quotes experts who suggest that the filler may be harder to take out if it deteriorates and changes color, that it may turn cloudy over time, or that it may cause stress and increase the chances of gem breakage. *Id.* at 178.

[310] NACSM (219) pp.9, 10, 13; Best (225) p.8; NRF (238) p.2.

[311] JMC (1); Thorpe (7); Capital (19); G&B (30); Lannyte (65); Nowlin (109); McGee (112); Bridge (163); LaPrad (181); IJA (192); Bedford (210); Matthey (213); NACSM (219); MJSA (226); Preston (229); Sheaffer (249); and Solid Gold (261). Some of these comments indicated that such disclosure should be recommended, rather than required.

[312] Honora (15); Argo (17); AGS (18) p.3 (stating that ''professional jewelers routinely disclose special care requirements''); Estate (23); Jabel (47) p.2 (suggesting that the ''stone manufacturer might supply a 'care and feeding' card for every type of stone he handles''); Skalet (61); NACAA (90); ArtCarved (155); Bales (156); Shire (221); and Leach (257).

[313] Comment 81, p.3; Schwartz (52) p.3 (stating that there should be disclosure since ''many, if not most, of gemstone enhancements are unstable . . . .''); Bruce (218) p.12 (stating that ''it is only when a stone is not permanently changed and may revert back to another color or shade that a ticket should be attached letting the consumer know of this, as well as other precautions''); Service (222) p.3 (stating that it does not oppose disclosing ''the need for any particular care of a gemstone to insure its continued quality in appearance'').

[314] AGTA (49) and CPAA (193).

[315] Comment 49, p.10 (stating that the Manual, unlike the Guides, is revised frequently and ''if the guides attempt to address specific enhancements, the information may be obsolete before changes could be incorporated at the federal level''). *But see* River (254) p.2 (stating that the Manual uses letter codes to describe treatment, which it described as ''an arcane method of communicating'').

instructions and retailers will offer them to avoid future problems.[316]

Furthermore, according to the *Gemstone Enhancement Manual,* attached to the AGTA comment, special care requirements are quite common for many types of unenhanced stones. The Guides have not recommended the disclosure of special care requirements for these unenhanced stones. Because unenhanced stones have been sold for many years, the Commission presumes that over time consumers have become familiar with their characteristics and their care requirements. Similarly, consumers may expect that enhanced stones would require certain care requirements too. Therefore, the Commission believes that if the enhancement is revealed, it is not inherently unfair or deceptive to fail to reveal special care requirements. (Consumers who request, but do not receive special care requirements, presumably will choose to take their business elsewhere. Thus, sellers should have an incentive to provide such information.) However, since enhanced stones that have special care requirements are newer products in the marketplace, and consumers may not be as familiar with the requirements of these stones, the Commission has recommended that the seller disclose special care instructions to the consumer.

2. Deceptive Use of Names of Specific Stones: § 23.19

Section 23.19(a) in the current Guides states that it is unfair to use the unqualified name of a precious or semi-precious stone to describe a product which is not a natural stone. This section is not changed in the revised Guides (§ 23.23(a)).

Section 23.19(b) states that it is unfair to use the name of a precious or semi-precious stone (or the words ''stone'' or ''birthstone'') to describe a synthetic, imitation or simulated stone unless the name is immediately preceded by the word ''synthetic,'' ''imitation,'' or ''simulated,'' whichever is applicable, or by some other word or phrase of like meaning, so as to disclose the fact that it is not a natural stone.[317]

Both the current Guides and the JVC petition allow the use of ''synthetic'' or words or phrases of like meaning to describe created stones that have the same properties as a natural stone. The purpose of this section is to prevent the deceptive impression that an item is a natural stone, and any word or words that accomplish that goal are acceptable. In *Chatham Research Laboratories,* 64 F.T.C. 1064, 1075 (1964), the Commission found that the phrase ''Chatham-Created Emeralds'' was not deceptive because the reasonable inference from the phrase was that ''such emeralds are Chatham created and must therefore be synthetic since they are not created by nature.'' Chatham's comment stated that after almost 30 years of use, there is no evidence that ''Chatham-created'' is deceptive to consumers.[318]

AGTA commented, however, that there should be no acceptable synonyms for the word ''synthetic.''[319] Other comments argued that the Guides should specifically identify terms other than ''synthetic'' that can be used, such as ''laboratory created,'' ''created,'' or ''cultured.'' AGL noted that it introduced the term ''Laboratory Grown (Synthetic)'' some time ago because it seemed obvious that this would ''increase the ability of a retailer to explain and the capacity of consumer to understand the basic differences between glass/plastic, i.e., imitations, and those products that are laboratory grown to emulate the characteristics and properties of a natural material.''[320]

Chatham and numerous other commenters also suggested that synthetic stones appropriately could be described as ''cultured.'' Chatham, Kimberley, and Crystal argued that this term should only be used for synthetics that were created by the ''hydrothermal'' or ''flux'' method (which they use).[321] Others argued that synthetics made by the ''melt'' or ''flame-fusion'' process also should be allowed to describe the stones as ''cultured.''[322]

Although some companies have used the term ''cultured'' to describe their products for some time,[323] no actual evidence about consumer perceptions arising from the use of a term such as ''cultured ruby'' was submitted. However, in *Chatham Research Laboratories,* 64 F.T.C. at 1074, the Commission found that the phrase ''Chatham Cultured Emeralds'' was deceptive. Further, several commenters indicated that they regarded the term ''cultured emerald'' as deceptive.[324] Because there currently is insufficient evidence as to consumer perceptions regarding the use of the term ''cultured,'' the Commission has not included the term in the Guides as a ''safe harbor'' (*e.g.,* an example of an adequate disclosure). Furthermore, the Commission has concluded that there is not enough evidence in the record to establish ''safe harbor'' terms by which makers of flux-grown gems could distinguish their products from other created gems. However, such manufacturers can distinguish their products from others by means of truthful advertising.

Similarly, the Commission has determined that there is not sufficient evidence with respect to the consumer interpretation of a phrase such as ''created emerald'' (as opposed to

[316] Comment 19, p.2 (noting that trade associations provide the industry with material on disclosing care information, and that it is not necessary to include this in the Guides).

[317] A Note following this section states that qualifying these terms by means of an asterisk, which reference a footnote explanation, ''is not to be regarded as compliance with the requirements of this section.'' The Commission believes that this section, which states that a qualifying term should immediately precede the name of the stone, adequately advises sellers of the proper disclosure. The Note is superfluous and the Commission has deleted it.

[318] Comment 231, p.5.

[319] Comment 49, p.17.

[320] Comment 230, p.3. AGL also noted that the colored stone industry opposed this change, citing ''the historical, 'universally understood' application of the term 'synthetic.'" However, AGL stated that there is a ''conscious desire to leave the consumer in a quandary regarding the difference between 'synthetic' and 'imitation' products. . . . to reduce the capacity of the synthetic material manufacturer to penetrate the U.S. marketplace with their products.'' *Id.*

[321] Chatham (231) pp.2, 31; Crystal (24) pp.1, 4; Kimberley (227) p.7 (stating that the hydrothermal process is the same process that creates ''natural'' emeralds); Matlins (205) pp.2–3, favored the use of terms such as ''created'' or ''laboratory-grown'' for flux-grown synthetic gems only, which she described as being very different from melt or ''flame-fusion'' synthetic products, in that the flux-grown products look more like natural stones and are more expensive to produce. Manning (159) p.2, which uses the melt method to produce rubies, argued that solution growers [by which it appears to be referring to flux-growers] should be allowed to describe their products as ''cultured'' and melt growers to describe their products as ''created'' or ''lab-grown'' because ''without the ability of solution growers to somehow separate their process from ours in fair descriptive language, *they will be forced from the marketplace as too costly for the market to bear.*'' Diamonique (224) p.3, stated without elaboration, that it favored ''cultured'' for gemstones that were produced by a method ''which replicates that growth process of natural gemstones.''

[322] ICT (189), which makes gemstones by the melt method, stated at p.3, that it objected to ''reserving the word 'lab-created,' 'lab-grown,' or 'created,' to describe flux or hydrothermal methods of growth only.'' Service (222) stated, at p.2, that it is ''unfair to allow sellers of low quality created stones to use the same term for their product as is used for the highest quality of created stones'' but suggested this issue should be addressed in a ''separate rulemaking.'' Friedman (234) stated, at p.3, that ''cultured'' would communicate to consumers ''that they were purchasing a true, high-value gemstone, identical to a natural gemstone and made by a process which included human intervention.'' It apparently favored the use of ''cultured'' for both types of lab-created stones.

[323] Crystal (24) p.3 (stating that it uses the term ''cultured'' to describe its ''Ramura Cultured Ruby''); Chatham (231) p.31 (stating that Crystal and Emsprit Cultured Emeralds have been using the term ''cultured'' for flux-grown gems).

[324] Krementz (208) p.1; Shire (221) p.1; River (254) p.3.

''laboratory created'' or ''Chatham-created'') to justify including it in the Guides as a safe harbor. As River stated, the description ''laboratory grown'' is clear immediately, without further explanation. However, terms such as cultured, created and synthetic ''are not as clear to the general public and are more often misunderstood because they are not part of the common vocabulary in the special sense in which we use them.'' [325]

Chatham argued that most consumers ''understand synthetic to mean fake, artificial, and otherwise of low quality.'' It also stated that it is essential that it ''be able to honestly and accurately educate consumers that the only difference between its gemstones and natural is the environment in which the crystals grow.'' [326] The Commission is persuaded that the term ''synthetic,'' as applied to gemstones, is misunderstood by some consumers to mean something fake or artificial. Therefore, the Commission has included the phrases ''laboratory grown,'' ''laboratory-created,'' or ''[manufacturer name]-created'' in the revised Guides (now § 23.23).[327] Although the Commission has determined that these terms more clearly communicate the nature of the stone, sellers can still use the term ''synthetic.'' The Commission has also included an admonition against misusing the terms ''laboratory-grown,'' ''laboratory-created,'' or ''[manufacturer name]-created.''

The JVC also proposed adding a Note stating that if the term ''created'' is used to describe a synthetic stone, ''the name of the firm or company using this product-term must be disclosed in equal prominence and size type as the term 'created' . . . [and] must be separated from the term 'created by a dash (-) so as clearly to disclose the stone is man-made, i.e., Chatham-Created Emerald.'' AGTA proposed prohibiting any synonym for ''synthetic,'' but urged that, if the Commission decided to allow the continued use of the term ''created,'' then ''the precise language'' from the Chatham action should be incorporated into the Guides.[328] The effect of the Note proposed by the JVC (and ''urged'' by AGTA) would be to prohibit the use of ''created'' except in precisely the form mandated by the Note. However, there is no evidence as to how most consumers interpret a phrase such as ''created emerald.'' The Commission has thus determined that there is no basis for advising against all but one specific use of the term ''created.'' However, although the terms ''laboratory created'' and ''[manufacturer name]-created'' will be included in the list of ''safe harbor'' terms, the term ''created'' alone will not be included in this list.

In the FRN, the Commission also sought comment on whether foreign words or phrases like ''faux'' should be added ''to the list of terms in Section 23.24(b) [of the JVC petition] that are not to be used to describe industry products.'' Thirty-five comments addressed this question.[329] The Postal Service stated that ''faux'' has been used ''by disreputable promoters to confuse unsophisticated consumers and enhance the apparent value of their costume jewelry.'' [330] Three other commenters stated that ''faux'' is only used to deceive and should be prohibited.[331] Six commenters, including NACAA, stated that ''faux'' should be prohibited because some consumers do not know what it means.[332] Three stated that ''faux'' is confusing and misleading.[333] Thirteen other comments stated that ''faux'' should be prohibited but provided no reasons.[334] Nine comments believe the use of ''faux'' to describe industry products should be acceptable.[335]

The evidence shows that many unsophisticated consumers do not know what the word ''faux'' means and that it has been used to deceive them. Thus, the Commission has added a Note to the Guides that states that the use of the word ''faux'' to describe a laboratory-created stone is not regarded as an adequate disclosure of the fact that it is not a natural stone.

Finally, the JVC proposed the addition of a Note [following petition section 23.22] that states that descriptive words relating to species and varieties of gemstones must be in conformance with approved gemological terminology. No evidence was offered to show that there is a need for guidance in this area.[336] Thus, the Commission has not added this Note to the revised Guides.

3. Misuse of the Words ''Real,'' ''Genuine,'' ''Natural'': § 23.20

Section 23.20 states that it is unfair to use the words ''real,'' ''genuine,'' ''natural,'' or similar terms, to describe any ''articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated,'' if such use is likely to deceive consumers. The JVC has proposed [in section 23.23(a) of its petition] expanding this section to include the words ''precious'' or ''cultured'' and to state that ''it must clearly be disclosed that a man-made industry product is not a gemstone.'' For the reasons discussed above, the Commission has not included the word ''cultured'' as a ''safe harbor'' term to describe man-made gemstones. However, there is not sufficient evidence to advise against the use of ''cultured'' as applied to synthetic gemstones. Further, there is no evidence that it is being applied to imitation gemstones, where its use is more likely to be misleading. Thus, the Commission

[325] Comment 254, p.3.

[326] Comment 231, pp.2, 5, 22; Manning (159) p.4 (stating that there is no way to change the public misunderstanding of ''synthetic''); River (254) p.3 (stating that consumers misunderstand ''synthetic,'' and noting that ''their greatest experience is with synthetic fabrics'' so that ''it is difficult for a clerk in a retail store to explain that gemologists have a special meaning for the word synthetic'').

[327] Although the revised Guides no longer list the word ''synthetic,'' some consumers may know the technical meaning that has been attributed to the word in the context of gemstones for many years, and they might be deceived into thinking that imitation stones described as ''synthetic'' have the same physical and optical properties as natural stones. Thus, the Commission has determined that the provision which limits the use of the word ''synthetic'' to certain circumstances continues to be useful.

[328] AGTA (49) argued, at p.17, that a phrase such as ''A 'Chatham-created emerald *ring*' implies not that the emerald was created, but that the ring was manufactured by Chatham.'' (Emphasis added.) However, it provided no evidence that consumers interpret the phrase in that manner. If manufacturers or sellers of these items have reason to believe that consumers are misinterpreting this phrase, it would be unfair or deceptive not to correct the misunderstanding.

[329] Only one of the comments focused on the issue of whether foreign words or phrases should be added to the list of terms that are not to be used to describe industry products. Sheaffer (249) stated, at p.5, that it is not necessary ''to identify and specify . . . the many foreign terms which might be misleading if used in connection with an industry product'' but instead believed it more desirable to add a general admonition that it would be unfair or deceptive ''to use any foreign term which may be accurate and appropriate in its native language'' but which is not otherwise generally used or understood.

[330] Comment 244, p.3.

[331] Schwartz (52); Bridge (163); and CPAA (193).

[332] Honora (15); Skalet (61); NACAA (90); Bedford (210); MJSA (226); and Preston (229). Bedford stated that a consumer might think that ''faux'' refers to the color of a ''faux emerald.''

[333] AGTA (49); Bruce (218); and Shire (221). AGTA gave an example, at p.11, of a consumer who thought that ''faux'' referred to the place of origin of a ''faux emerald.''

[334] JMC (1); Fasnacht (4); Sibbing (5); AGS (18); Estate (23); G&B (30); GIA (81); Nowlin (109); McGee (112); LaPrad (181); Lange (183); IJA (192); and Leach (257).

[335] Lannyte (65); Ross-Simons (67); ArtCarved (155); Bales (156); NACSM (219); ICT (189); Service (222); Best (225) and Franklin Mint (250). Two of these [NACSM (219) and ICT (189)] stated that ''faux'' has become part of the English language. Ross-Simons (67) stated that ''faux'' should be permitted because it romances the merchandise without deception.

[336] There was little comment on this suggestion. Lannyte (65) stated, at p.11, that ''it is totally inappropriate for a school to be THE authority on descriptive names as names will develop from within the trade usage in the same way as language usage changes. This smacks of censorship!''

has not added the word ''cultured'' to this section of the Guides.

The Commission, however, has determined that the term ''precious'' [337] is deceptive when applied to synthetic or imitation gemstones because it implies rarity. Because synthetic or imitation gemstones can be produced in virtually unlimited quantities, they are not ''rare'' or ''precious'' like natural gemstones. Therefore, the Commission has included the word ''precious'' in this section (§ 23.24 of the revised Guides).

The JVC also proposed (in section 23.23(b) of its petition) a section which would in effect prohibit the use of the term ''semi-precious'' to describe any gemstones. The Commission has determined that ''semi-precious'' is deceptive when applied to synthetic or imitation gemstones (because it implies they occur naturally) and has included it in § 23.24 of the revised Guides.[338] The proposal to ban its use as to natural gemstones is discussed below, as is the proposal that the Guides state that ''it must clearly be disclosed that a man-made industry product is not a gemstone.''

4. Deceptive Use of ''Gem'' and ''Synthetic'': § 23.21

Section 23.21(a) in the current Guides states that it is unfair to use the word ''gem'' to refer to a pearl or a stone (whether precious or semi-precious) ''which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.'' Section 23.21(b) states that the word ''gem'' may not be used to describe a synthetic product unless that product meets the requirements of 23.21(a) and ''unless such word is immediately accompanied, with equal conspicuity, by the word 'synthetic,' or by some other word or phrase of like meaning.* * *'' A Note to section 23.21 states that ''few cultured pearls or synthetic stones possess the necessary qualifications to properly be termed 'gems' '' and that the use of the word ''gem'' therefore should be avoided. The Note also states that imitation pearls, diamonds, and other stones should not be described as ''gems.'' Finally, the Note states that ''Not all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to properly be termed 'gems.' ''

The current Guides do not contain any admonitions as to the use of the words *''gem stone''* other than the general admonition, in § 23.18, against misleading representations used in connection with the sale of precious or semi-precious gemstones. Under the current Guides, few if any synthetic stones are likely to qualify as ''gems,'' but synthetic stones may be described as ''gemstones'' (for example, in an advertisement for various varieties of stones), as long as the term is so qualified as to disclose that the product is not a natural stone.[339] In addition, the Guides allow lower quality natural stones, which do not possess ''the beauty, symmetry, rarity, and value necessary for qualification as a gem'' to be referred to as gemstones as long as they are not of such low quality (*e.g.*, industrial quality stones) that it would be deceptive to so describe them.

The JVC proposed changing this scheme. It proposed that the Guides state that the word 'gem' should not be used as a quality designation of gemstones. It also proposed that a definition of ''gemstone'' be added to the Guides, along with a provision stating that it is unfair to use the word ''gemstone'' to describe any object that does not meet the definition. The JVC defined gemstone as ''a naturally occurring substance which has been carefully fashioned into a jewel suitable for use in jewelry, for personal adornment, display, etc. A gemstone possesses beauty, rarity, durability and value.''

This definition is similar to the definition of ''gem'' in the current Guides but it limits the use of ''gemstone'' to natural cut and polished stones, suitable for use in jewelry, that are also durable. The JVC has provided no evidence indicating that industry members or consumers have misunderstood the definition of ''gem'' in § 23.21 in the current Guides, nor has it provided any evidence as to why the definition it suggests for ''gemstone'' (which omits symmetry and adds durability to the qualities a gem must possess and excludes any synthetic stone) is more accurate or useful than the definition of ''gem'' in the current Guides.

The part of the proposal that would prevent natural stones from being described as gemstones unless they possessed beauty, rarity, durability and value was not discussed by most comments. However, the House of Onyx stated, ''This is a broad statement that, if taken literally, would eliminate the vast majority of the Gemstones currently in the market.'' [340] For example, under the scheme proposed by the JVC, a natural emerald that did not possess, *e.g.*, rarity, would not be a gemstone. The Commission has determined to retain the current Guides, which allow lower quality natural stones, which do not possess ''the beauty, symmetry, rarity, and value necessary for qualification as a gem'' to be referred to as gemstones.[341]

The proposed definition of ''gemstone'' also would prevent synthetic stones from being described as ''gemstones.'' The FRN solicited comment on this proposal. AGS commented simply that it is essential ''that a like size declaration of the words 'synthetic, imitation, etc.' accompany the description of the stone.'' [342] Service commented that the proposed definition of gemstone ''is not needed to avoid deception of the consumer. As long as the consumer is ultimately advised whether or not the stone was naturally occurring * * * the interest in full disclosure has been satisfied.'' [343] Best noted that ''gemstone'' is ''loosely used in the industry today to refer to both naturally occurring and laboratory

[337] ''Precious'' stones are diamonds, emeralds, rubies, and sapphires. All other gemstones are ''semi-precious.''

[338] Several comments that opposed banning ''semi-precious'' stated that its use with respect to synthetic or imitation gems would be confusing. AGTA (49) p.11; Schwartz (52) p.3; GIA (81) p.4; MJSA (226) p.10.

[339] A synthetic stone is not likely to meet the rarity criterion necessary to be described as a gem, although it is conceivable that a particularly beautiful and difficult to create stone could meet the rarity criterion. In a separate section of its petition [23.24(a)], the JVC also proposed the addition of a section that states that it is unfair to use the word ''gem'' to describe a synthetic or imitation stone. Diamonique (224) noted, at p.4, that ''there are differing quality levels with natural gemstones, as there are with man-made gemstones. If the term 'gem' is appropriate for natural material, it should also be appropriate for man-made material.'' The Commission has determined that the word ''gem'' may be appropriately used to describe a synthetic stone and has not added the proposed section to the Guides.

[340] Comment 162, p.2 (adding, at p.3, that most gemstones are not durable ''in the true sense of the word,'' citing as examples amber, ivory, malachite, lapis lazuli, coral pearls, cameos, sodalite, and turquoise).

[341] One comment suggested that the words ''rarity and value'' be deleted from the current definition of gem in § 23.21, arguing that beauty and durability are the two basic properties of all gemstones. Lannyte (65) pp.6, 11. However, this comment appears to have confused the definition of ''gemstone'' with ''gem.'' As noted, the current Guides suggest only a very limited use of the word ''gem'' is appropriate.

[342] Comment 18, p.3.

[343] Comment 222, p.4 (noting that this proposal creates problems for ''fair and competitive advertising''); Franklin (250) p.6 (stating that there is no reason the term should not be used for laboratory-created stones as long as it is properly qualified); Lannyte (65) p.9, 10 (asking ''How does one refer to gemstones made by man when discussing them generically?'' and suggesting that the Guides provide that it is unfair to use the word ''gemstone'' to refer to a synthetic stone without disclosing that it is ''not the unassisted product of nature'').

manufactured stones.'' [344] Friedman stated, ''[t]o our customers, the laboratory grown gems have gained acceptance as, and *are*, gemstones.'' [345] Chatham noted that it has used the terms ''gemstone'' and ''gem'' virtually from its inception in 1946 and that the terms ''have been adopted and widely used by tradespeople in the jewelry industry * * * To date there has not been any suggestion (other than by the JVC) that consumers have been misled thereby.'' [346] Chatham also noted that the proposal would place Chatham gemstones ''at a competitive disadvantage vis-a-vis their natural counterparts and would do so for no justifiable reason.'' [347]

Although many commenters supported the JVC proposal, few gave any reason beyond stating that ''synthetics are not natural.'' GIA agreed that ''gemstone'' should be limited to natural stones because it implies that the material occurred in nature.[348] AGTA stated that synthetics ''emulate and often approximate the appearance of and have similar durability to that of natural gemstones,'' but they lack rarity, and allowing them to be referred to as ''gemstones'' will ''further blur the distinction in the consumer's mind as to the important differences between the two. In all probability, this will result in higher consumer prices for synthetic and simulated materials.'' [349] Other commenters agreed that synthetics should not be described as gemstones.[350]

The current Guides permit the use of, *e.g.*, ''synthetic ruby'' or ''imitation ruby.'' The Commission is persuaded that consumers would understand that gemstones described as ''laboratory-created gemstones'' or ''imitation gemstones'' are not natural gemstones. Thus, the word ''gemstone'' is not deceptive when applied to synthetic or imitation stones, if its use is properly qualified by a word or phrase that discloses that the stone is not natural. The Commission therefore has added the word ''gemstone'' to § 23.19(b) of the current Guides, which states that the name of a precious or semi-precious gemstone as descriptive of a synthetic or imitation stone should be adequately qualified to disclose that it is not a natural stone. However, for the reasons described above, the Commission has not adopted the definition of ''gemstone'' suggested by the JVC nor changed the definition of ''gem'' in § 23.21 of the current Guides.

As noted, the JVC also proposed adding a Note recommending that the word ''gem'' or ''similar term'' not be used as a quality designation or as descriptive of gemstones because no criteria for these terms exist and ''their use to describe, imply or represent quality could be misleading.'' However, the JVC cited no evidence that such terms have actually been misleading to consumers. Moreover, as Onyx noted, ''there are 'Gem' quality Gemstones as well as 'trash' quality in the same Gemstone.'' [351] Truthful, and indeed informative, use of the word ''gem'' is possible and thus, the Commission has not adopted this proposal.

The JVC also proposed adding a section to the Guides stating that ''gemstone'' may not be used to describe any object ''not fashioned for use as jewelry or personal adornment, *e.g.*, statues, ashtrays, boxes, *etc.*'' unless qualified by a term such as ''carving'' or ''engraving'' [Petition 23.20(b)]. No explanation was offered as to how such a use could deceive consumers.[352]

The Commission has not included this section in the Guides because items other than jewelry are sometimes made of gemstones and it would not be deceptive to so describe them.

The JVC proposed that a section be added to the Guides stating that it is unfair to use the term ''semi-precious'' when referring to gemstones or any synthetic, imitation, or simulated stone. [Petition 23.23(b)] The FRN solicited comment on this proposal.

No explanation was offered as to why the term ''semi-precious'' was unfair or deceptive when applied to natural gemstones. Some commenters who favored the proposal stated that it is a ''misnomer'' or that it ''gives a false impression of a gem having little intrinsic value; an impression which may not be correct.'' [353] However, sellers are not required to describe their wares as semi-precious; the import of the JVC's proposal would be to prohibit those who wish to so describe their wares from doing so. AGTA commented that, while it believes ''semi-precious'' is denigrating to ''natural gemstones other than Ruby, Emerald, Sapphire and Diamond which are traditionally referred to in the trade as the 'precious gemstones,'" it did not believe it should be illegal to so describe natural stones.[354] Skalet explained that the term ''semi-precious'' has been used in the jewelry and gemstone industry for generations ''as a reference to natural gemstones of moderate value and wide availability.'' [355] Based on the comments, the Commission has concluded that there is no basis for advising against the use of this term to describe natural gemstones.

Finally, the JVC also proposed redrafting all sections pertaining to precious and semi-precious stones, removing the terms ''precious'' and ''semi-precious'' and substituting ''gemstone.'' However, there is no valid purpose for this change, and the Commission has determined that substituting the term ''gemstone'' for ''precious and semi-precious stones'' would make the Guides less clear.

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[344] Comment 225, attachment at p.8.

[345] Comment 234, p.2. Freidman did suggest that imitation gems should not be defined as gemstones. *Id.* at 3.

[346] Comment 231, p.5. Chatham also attached a declaration from Robert Miller, a merchant who has sold both Chatham-created gemstones and natural gemstones for ten years. He stated that a prohibition on the use of the words ''gem'' or ''gemstone'' ''would be inconsistent with current trade practice, in which the words 'gemstone' and 'gem' are an integral part of the marketing of Chatham products, as well as most other jewelry'' and that ''prohibiting sellers from using these common-place terms would hurt our ability to communicate with our customers about the very nature of Chatham products'' and that the end result ''would be confusion on the part of consumers who would wrongly perceive that the prohibition is a negative reflection on the quality of Chatham gemstones.'' Miller declaration ¶ 8 and 9. Chatham also attached a declaration from Dr. Frederick Pough, who received a Ph.D. in Mineralogy from Harvard in 1935 and who has authored hundreds of articles on mineralogy. He states that the definitions proposed by the JVC ''would represent a dramatic departure from the way in which the terms 'gemstone' and 'gem' have been understood and used in the trade and in gemological circles for several decades'' and ''as it is currently and loosely used, and as it has been used for years, the term 'gemstone' does *not* identify the source of the stone, or whether or not it is a 'naturally occurring substance.'" Similarly, he stated ''under no current definition of 'gem' of which I am aware, is the term limited to 'naturally occurring substances.'" Pough declaration ¶ 8, 9, and 13.

[347] Comment 231, pp.5, 9. The eight other commenters who sell significant quantities of synthetic gemstones also believe it is not deceptive to use the term for synthetic stones as long as it is qualified to indicate that the stones are not natural stones: Crystal (24); Union Carbide (38); Manning (159); ICT (189); Kimberley (227); Friedman (234); Kyocera (242); and River (254).

[348] Comment 81, p.3 (stating ''We consider this to be of minor importance, but believe neither stone nor gemstone should be used to describe an artificial product.'').

[349] Comment 49, p.9.

[350] One of these, LaPrad (181) stated, at p.3, that ''gemstone'' should also be prohibited as descriptive of any *artificially colored* natural stone.

[351] Comment 162, p.3; NACSM (219) stated, at p.12, that this would ''limit the use of the English language;'' AGTA (49) stated, at p.16, that the Note should be stricken or, if retained, ''like language should be added to the diamond section.''

[352] Onyx (162) p.3 (stating that the proposed prohibition ''flies in the face of fact''); NACSM (219) p.13 (opposing the provision and describing it as a restrictive limitation for which no justification has been given); Service (222) p.5 (stating that there is no reason to prohibit a phrase such as ''gemstone jewelry box'').

[353] Thorpe (7) p.2; Capital (19) p.2.

[354] Comment 49, p.10

[355] Comment 61, p.5.

5. Misuse of the Words ''Flawless,'' ''Perfect,'' Etc.

The JVC proposed the addition of a new section [petition 23.21] that prohibits the use of the word ''perfect'' when applied to gemstones and limits ''flawless'' to gemstones that do not have blemishes. The JVC's definition of ''flawless'' is similar to the provision in § 23.10 of the current Guides, which applies only to diamonds.[356] A claim that a colored stone is flawless when it is not is deceptive. The Commission has determined that the addition of this section clarifies the meaning of ''flawless.''[357]

Part (b) of the section proposed by the JVC prohibits the use of ''perfect'' as a quality description ''of any gemstone other than a diamond.'' No reasons were offered as to why the use of ''perfect'' as applied to colored stones would always be deceptive, and numerous comments objected to this provision.[358] On the basis of the comments, the Commission has not included this provision. However, the Commission has determined that the industry may need guidance as to the use of ''perfect'' with respect to gemstones,[359] and has included a provision (like the provision for diamonds) that ''perfect'' should be used only for a gemstone that is flawless and not of inferior color or cut.

The JVC proposed that the Guides state it is unfair to use ''flawless'' or ''perfect'' to describe synthetics or imitations. No reasons were offered as to why the use of ''flawless'' or ''perfect'' as applied to synthetic stones would always be deceptive. Thus, the Commission has concluded that there is not enough evidence to include this provision as to synthetic stones. However, because the terms imply that a stone is a finer quality and, accordingly, a greater value, when used to describe imitation stones, which are almost always flawless, they could be misleading.[360] Thus, the terms ''flawless'' and ''perfect'' should not be used to describe imitation stones.

6. Misuse of the Words ''Reproduction,'' or ''Replica'': § 23.21(c)

Section 23.21(c) of the current Guides states that it is unfair to use the words ''reproduction,'' ''replica,'' or similar terms to describe cultured or imitation pearls or any imitation of precious or semi-precious stones. The JVC proposed changing this section so that it only prohibits the use of ''reproduction'' or ''replica'' when applied to synthetic or imitation stones [petition 23.24(b)]. If the nature of the material used in a reproduction or replica is adequately disclosed, as is advised by other sections of the Guides, it is not clear that the use of these terms would be deceptive or unfair.[361] Accordingly, the Commission has deleted this entire section from the Guides.

List of Subjects in 16 CFR Parts 19 and 23

Advertising, Labeling, Trade practices, Watch bands and jewelry.

Accordingly, Part 23 is revised to read as follows:

[356] The JVC proposed that the Guides state that it is unfair ''to use the word ''flawless'' as a quality description of any gemstone which discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.'' However, no reference was made, in the petition or the comments, to removal of blemishes by internal lasering of gemstones.

[357] There was little comment about this provision. Diamonique (224) stated, at p.4, that the change ''regarding the examination of gemstones under 10-power magnification is radical and would have far-reaching consequences. This proposed change replaces practices and guidelines currently in use worldwide, requiring examination of gemstones with the unaided eye.'' However, no other commenter stated that the proposal was a change from existing practices. Lannyte (65) suggested, at p.10, modifying the section to state that it is unfair ''to use the words ''flawless'' or ''perfect'' or any other description which would lead a buyer to presume that such gemstone is totally without blemishes, inclusion or other faults when viewed by a skilled person under ten times magnification in adequate light.''

[358] Lannyte (65) p.11; ICT (189) p.2. AGTA (49) stated, at pp.15, 16, that it ''prefers that the term 'perfect' be deleted from use in the trade for both diamonds and colored gems,'' but if the use of the term ''perfect'' is acceptable for diamonds, it should also be acceptable for colored gemstones. Otherwise, there ''would be a passive inference that colored gemstones are less desirable than diamonds. There are certainly as many 'perfect,' i.e. flawless (under 10X magnification), top color, well-cut gemstones as there are diamonds.''

[359] Diamonique (224) p.3 (stating that ''the Guides should contain more specific guidelines in this area, including a definition of the term 'perfect,' instead of simply limiting its use'').

[360] NACSM (219) p.27 (stating that the proposal ''fails to take into account a clearly recognized difference in the marketplace between a 'synthetic' . . . and an 'imitation' stone''); Diamonique (224) p.3 (stating that ''cultured, synthetic and simulated gemstones would be described according to the same standards used for natural gemstones. To do otherwise would create confusion within the industry itself as well as among consumers'').

[361] NACSM (219) p.27 (stating that the attempt to ''ban'' the word ''reproduction'' is dubious); ISA (237A) p.15 (stating that this would prohibit the use of ''reproduction'' and ''replica'' to describe ''items which are in fact reproductions and replicas. We recommend more emphasis on section 23.1(a), the general paragraph which makes clear that the intent of the Guides is to prohibit deception and deceptive use of such terms'').

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

Sec.
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Appendix to Part 23—Exemptions recognized in the assay for quality of gold alloy, gold filled, gold overlay, rolled gold plate, silver, and platinum industry products.

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

§ 23.0 Scope and application.

(a) These guides apply to jewelry industry products, which include, but are not limited to, the following: gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations; and metallic watch bands not permanently attached to watches.[1] These guides also apply to articles, including optical frames, pens and pencils, flatware, and

[1] The Guides for the Watch Industry, 16 C.F.R. Part 245, address watchcases and permanently attached watchbands.

hollowware, fabricated from precious metals (gold, silver and platinum group metals), precious metal alloys, and their imitations. These guides also apply to all articles made from pewter. For the purposes of these guides, all articles covered by these guides are defined as ''industry products.''

(b) These guides apply to persons, partnerships, or corporations, at every level of the trade (including but not limited to manufacturers, suppliers, and retailers) engaged in the business of offering for sale, selling, or distributing industry products.

Note to paragraph (b): To prevent consumer deception, persons, partnerships, or corporations in the business of appraising, identifying, or grading industry products should utilize the terminology and standards set forth in the guides.

(c) These guides apply to claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means.

§ 23.1 Deception (general).

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note 1 to § 23.1: If, in the sale or offering for sale of an industry product, any representation is made as to the grade assigned the product, the identity of the grading system used should be disclosed.

Note 2 to § 23.1: To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

§ 23.2 Misleading illustrations.

It is unfair or deceptive to use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases, misrepresents the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note to § 23.2: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item's true size.

§ 23.3 Misuse of the terms ''hand-made,'' ''hand-polished,'' etc.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-made or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design, and finish of each part of each individual product.

Note to paragraph (a): As used herein, ''raw materials'' include bulk sheet, strip, wire, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product.

§ 23.4 Misrepresentation as to gold content.

(a) It is unfair or deceptive to misrepresent the presence of gold or gold alloy in an industry product, or the quantity or karat fineness of gold or gold alloy contained in the product, or the karat fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of an industry product or part thereof.

(b) The following are examples of markings or descriptions that may be misleading:[2]

(1) Use of the word ''Gold'' or any abbreviation, without qualification, to describe all or part of an industry product, which is not composed throughout of fine (24 karat) gold.

(2) Use of the word ''Gold'' or any abbreviation to describe all or part of an industry product composed throughout of an alloy of gold, unless a correct designation of the karat fineness of the alloy immediately precedes the word ''Gold'' or its abbreviation, and such fineness designation is of at least equal conspicuousness.

(3) Use of the word ''Gold'' or any abbreviation to describe all or part of an industry product that is not composed throughout of gold or a gold alloy, but is surface-plated or coated with gold alloy, unless the word ''Gold'' or its abbreviation is adequately qualified to indicate that the product or part is only surface-plated.

(4) Use of the term ''Gold Plate,'' ''Gold Plated,'' or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability is assured.

(5) Use of the terms ''Gold Filled,'' ''Rolled Gold Plate,'' ''Rolled Gold Plated,'' ''Gold Overlay,'' or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy applied by a mechanical process and of such thickness and extent of surface coverage that reasonable durability is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(6) Use of the terms ''Gold Plate,'' ''Gold Plated,'' ''Gold Filled,'' ''Rolled Gold Plate,'' ''Rolled Gold Plated,'' ''Gold Overlay,'' or any abbreviation to describe a product in which the layer of gold plating has been covered with a base metal (such as nickel), which is covered with a thin wash of gold, unless there is a disclosure that the primary gold coating is covered with a base metal, which is gold washed.

(7) Use of the term ''Gold Electroplate,'' ''Gold Electroplated,'' or any abbreviation to describe all or part of an industry product unless such product or part is electroplated with gold or a gold alloy and such electroplating is of such karat fineness, thickness, and extent of surface coverage that reasonable durability is assured.

(8) Use of any name, terminology, or other term to misrepresent that an industry product is equal or superior to, or different than, a known and established type of industry product with reference to its gold content or method of manufacture.

(9) Use of the word ''Gold'' or any abbreviation, or of a quality mark implying gold content (*e.g.*, 9 karat), to describe all or part of an industry product that is composed throughout of

[2] See § 23.4(c) for examples of acceptable markings and descriptions.

an alloy of gold of less than 10 karat fineness.

Note to paragraph (b) § 23.4: The provisions regarding the use of the word ''Gold,'' or any abbreviation, as described above, are applicable to ''Duragold,'' ''Diragold,'' ''Noblegold,'' ''Goldine,'' ''Layered Gold,'' or any words or terms of similar meaning.

(c) The following are examples of markings and descriptions that are consistent with the principles described above:

(1) An industry product or part thereof, composed throughout of an alloy of gold of not less than 10 karat fineness, may be marked and described as ''Gold'' when such word ''Gold,'' wherever appearing, is immediately preceded by a correct designation of the karat fineness of the alloy, and such karat designation is of equal conspicuousness as the word ''Gold'' (for example, ''14 Karat Gold,'' ''14 K. Gold,'' or ''14 Kt. Gold''). Such product may also be marked and described by a designation of the karat fineness of the gold alloy unaccompanied by the word ''Gold'' (for example, ''14 Karat,'' ''14 Kt.,'' or ''14 K.'').

Note to paragraph (c)(1): Use of the term ''Gold'' or any abbreviation to describe all or part of a product that is composed throughout of gold alloy, but contains a hollow center or interior, may mislead consumers, unless the fact that the product contains a hollow center is disclosed in immediate proximity to the term ''Gold'' or its abbreviation (for example, ''14 Karat Gold-Hollow Center,'' or ''14 K. Gold Tubing,'' when of a gold alloy tubing of such karat fineness). Such products should not be marked or described as ''solid'' or as being solidly of gold or of a gold alloy. For example, when the composition of such a product is 14 karat gold alloy, it should not be described or marked as either ''14 Kt. Solid Gold'' or as ''Solid 14 Kt. Gold.''

(2) An industry product or part thereof, on which there has been affixed on all significant surfaces, by any process, a coating, electroplating, or deposition by any means, of gold or gold alloy of not less than 10 karat fineness that is of substantial thickness,[3] and the minimum thickness throughout of which is equivalent to one-half micron (or approximately 20 millionths of an inch) of fine gold,[4] may be marked or described as ''Gold Plate'' or ''Gold Plated,'' or abbreviated, as, for example, G.P. The exact thickness of the plate may be marked on the item, if it is immediately followed by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (as, for example, ''2 microns 12 K. gold plate'' or ''2μ 12 K. G.P.'' for an item plated with 2 microns of 12 karat gold.)

Note paragraph (c)(2) to paragraph (b): If an industry product has a thicker coating or electroplating of gold or gold alloy on some areas than others, the minimum thickness of the plate should be marked.

(3) An industry product or part thereof on which there has been affixed on all significant surfaces by soldering, brazing, welding, or other mechanical means, a plating of gold alloy of not less than 10 karat fineness and of substantial thickness[5] may be marked or described as ''Gold Filled,'' ''Gold Overlay,'' ''Rolled Gold Plate,'' or an adequate abbreviation, when such plating constitutes at least 1/20th of the weight of the metal in the entire article and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (for example, ''14 Karat Gold Filled,'' ''14 Kt. Gold Filled,'' ''14 Kt. G.F.,'' ''14 Kt. Gold Overlay,'' or ''14K. R.G.P.''). When conforming to all such requirements except the specified minimum of 1/20th of the weight of the metal in the entire article, the terms ''Gold Overlay'' and ''Rolled Gold Plate'' may be used when the karat fineness designation is immediately preceded by a fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (for example, ''1/40th 12 Kt. Rolled Gold Plate'' or ''1/40 12 Kt. R.G.P.'').

(4) An industry product or part thereof, on which there has been affixed on all significant surfaces by an electrolytic process, an electroplating of gold, or of a gold alloy of not less than 10 karat fineness, which has a minimum thickness throughout equivalent to .175 microns (approximately $^{7}/_{1,000,000}$ths of an inch) of fine gold, may be marked or described as ''Gold Electroplate'' or ''Gold Electroplated,'' or abbreviated, as, for example, ''G.E.P.'' When the electroplating meets the minimum fineness but not the minimum thickness specified above, the marking or description may be ''Gold Flashed'' or ''Gold Washed.'' When the electroplating is of the minimum fineness specified above and of a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately $^{100}/_{1,000,000}$ths of an inch) of fine gold, the marking or description may be ''Heavy Gold Electroplate'' or ''Heavy Gold Electroplated.'' When electroplatings qualify for the term ''Gold Electroplate'' (or ''Gold Electroplated''), or the term ''Heavy Gold Electroplate'' (or ''Heavy Gold Electroplated''), and have been applied by use of a particular kind of electrolytic process, the marking may be accompanied by identification of the process used, as for example, ''Gold Electroplated (X Process)'' or ''Heavy Gold Electroplated (Y Process).''

(d) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.[6]

Note 4 to paragraph (d) : Exemptions recognized in the assay of karat gold industry products and in the assay of gold filled, gold overlay, and rolled gold plate industry products, and not to be considered in any assay for quality, are listed in the Appendix.

§ 23.5 Misuse of the word ''Vermeil.''

(a) It is unfair or deceptive to represent, directly or by implication, that an industry product is ''vermeil'' if such mark or description misrepresents the product's true composition.

(b) An industry product may be described or marked as ''vermeil'' if it consists of a base of sterling silver coated or plated on all significant surfaces with gold, or gold alloy of not less than 10 karat fineness, that is of substantial thickness[7] and a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately $^{100}/_{1,000,000}$ths of an inch) of fine gold.

Note 1 to § 23.5: It is unfair or deceptive to use the term ''vermeil'' to describe a product in which the sterling silver has been covered with a base metal (such as nickel) plated with gold unless there is a disclosure that the sterling silver is covered with a base metal that is plated with gold.

Note 2 to § 23.5: Exemptions recognized in the assay of gold filled, gold overlay, and rolled gold plate industry products are listed in the Appendix.

§ 23.6 Misrepresentation as to silver content.

(a) It is unfair or deceptive to misrepresent that an industry product

[3] The term ''substantial thickness'' means that all areas of the plating are of such thickness as to assure a durable coverage of the base metal to which it has been affixed. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of plating for all items or for different areas of the surface of individual items does not necessarily have to be uniform.

[4] A product containing 1 micron (otherwise known as 1μ) of 12 karat gold is equivalent to one-half micron of 24 karat gold.

[5] *See* footnote 3.

[6] Under the National Stamping Act, articles or parts made of gold or of gold alloy that contain no solder have a permissible tolerance of three parts per thousand. If the part tested contains solder, the permissible tolerance is seven parts per thousand. For full text, see 15 U.S.C. 295, *et seq.*

[7] *See* footnote 3.

contains silver, or to misrepresent an industry product as having a silver content, plating, electroplating, or coating.

(b) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as ''silver,'' ''solid silver,'' ''Sterling Silver,'' ''Sterling,'' or the abbreviation ''Ster.'' unless it is at least $^{925}/_{1,000}$ths pure silver.

(c) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as ''coin'' or ''coin silver'' unless it is at least $^{900}/_{1,000}$ths pure silver.

(d) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as being plated or coated with silver unless all significant surfaces of the product or part contain a plating or coating of silver that is of substantial thickness.[8]

(e) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.[9]

Note 1 to § 23.6: The National Stamping Act provides that silverplated articles shall not ''be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks.'' 15 U.S.C. 297(a).

Note 2 to § 23.6: Exemptions recognized in the assay of silver industry products are listed in the Appendix.

§ 23.7 Misuse of words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' and ''osmium.''

It is an unfair trade practice to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviations thereof, as a marking on, or as descriptive of, any industry product or part thereof, under any circumstance or condition having the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the true composition of such product or part.

Note 1 to § 23.7: Commercial Standard CS66–38, issued by the National Bureau of Standards of the U.S. Department of Commerce, covers the marking of articles made wholly or in part of platinum. Markings on industry products which are in compliance with the requirements of CS66–38 will be regarded as among those fulfilling the requirements relating thereto which are contained in this section.

Note 2 to § 23.7: See also § 23.9 entitled ''Additional guidance for the use of quality marks.''

§ 23.8 Misrepresentation as to content of pewter.

(a) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as ''Pewter'' or any abbreviation if such mark or description misrepresents the product's true composition.

(b) An industry product or part thereof may be described or marked as ''Pewter'' or any abbreviation if it consists of at least 900 parts per 1000 Grade A Tin, with the remainder composed of metals appropriate for use in pewter.

§ 23.9 Additional guidance for the use of quality marks.

As used in these guides, the term ''quality mark'' means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, that has been stamped, embossed, inscribed, or otherwise placed on any industry product and which indicates or suggests that any such product is composed throughout of any precious metal or any precious metal alloy or has a surface or surfaces on which there has been plated or deposited any precious metal or precious metal alloy. Included are the words ''gold,'' ''karat,'' ''carat,'' ''silver,'' ''sterling,'' ''vermeil,'' ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviations thereof, whether used alone or in conjunction with the words ''filled,'' ''plated,'' ''overlay,'' or ''electroplated,'' or any abbreviations thereof. Quality markings include those in which the words or terms ''gold,'' ''karat,'' ''silver,'' ''vermeil,'' ''platinum'' (or platinum group metals), or their abbreviations are included, either separately or as suffixes, prefixes, or syllables.

(a) Deception as to applicability of marks. (1) If a quality mark on an industry product is applicable to only part of the product, the part of the product to which it is applicable (or inapplicable) should be disclosed when, absent such disclosure, the location of the mark misrepresents the product or part's true composition.

(2) If a quality mark is applicable to only part of an industry product, but not another part which is of similar surface appearance, each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.

(b) Deception by reason of difference in the size of letters or words in a marking or markings. It is unfair or deceptive to place a quality mark on a product in which the words or letters appear in greater size than other words or letters of the mark, or when different markings placed on the product have different applications and are in different sizes, when the net impression of any such marking would be misleading as to the metallic composition of all or part of the product. (An example of improper marking would be the marking of a gold electroplated product with the word ''electroplate'' in small type and the word ''gold'' in larger type, with the result that purchasers and prospective purchasers of the product might only observe the word ''gold.'')

Note 1 to § 23.9: Legibility of markings. If a quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product, the quality mark should be of sufficient size type as to be legible to persons of normal vision, should be so placed as likely to be observed by purchasers, and should be so attached as to remain thereon until consumer purchase.

Note 2 to § 23.9: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of the Act, who applies or causes to be applied a quality mark, or imports any article bearing a quality mark ''which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either metal'' shall apply to the article the trademark or name of such person. 15 U.S.C. 297.

§ 23.10 Misuse of ''corrosion proof,'' ''noncorrosive,'' ''corrosion resistant,'' ''rust proof,'' ''rust resistant,'' etc.

(a) It is unfair or deceptive to:

(1) Use the terms ''corrosion proof,'' ''noncorrosive,'' ''rust proof,'' or any other term of similar meaning to describe an industry product unless all parts of the product will be immune from rust and other forms of corrosion during the life expectancy of the product; or

(2) Use the terms ''corrosion resistant,'' ''rust resistant,'' or any other term of similar meaning to describe an industry product unless all parts of the product are of such composition as to not be subject to material damage by corrosion or rust during the major portion of the life expectancy of the product under normal conditions of use.

(b) Among the metals that may be considered as corrosion (and rust) resistant are: Pure nickel; Gold alloys of not less than 10 Kt. fineness; and Austenitic stainless steels.

§ 23.11 Definition and misuse of the word ''diamond.''

(a) A diamond is a natural mineral consisting essentially of pure carbon

[8] *See* footnote 3.

[9] Under the National Stamping Act, sterling silver articles or parts that contain no solder have a permissible tolerance of four parts per thousand. If the part tested contains solder, the permissible tolerance is ten parts per thousand. For full text, see 15 U.S.C. 294, *et seq.*

crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

(b) It is unfair or deceptive to use the unqualified word ''diamond'' to describe or identify any object or product not meeting the requirements specified in the definition of diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

Note 1 to paragraph (b): It is unfair or deceptive to represent, directly or by implication, that industrial grade diamonds or other non-jewelry quality diamonds are of jewelry quality.

(c) The following are examples of descriptions that are not considered unfair or deceptive:

(1) The use of the words ''rough diamond'' to describe or designate uncut or unfaceted objects or products satisfying the definition of diamond provided above; or

(2) The use of the word ''diamond'' to describe or designate objects or products satisfying the definition of diamond but which have not been symmetrically fashioned with at least seventeen (17) polished facets when in immediate conjunction with the word ''diamond'' there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond that denotes shape and that usually has less than seventeen (17) facets (*e.g.*, ''rose diamond'').

Note 2 to paragraph (c): Additional guidance about imitation and laboratory-created diamond representations and misuse of words ''gem,'' ''real,'' ''genuine,'' ''natural,'' etc., are set forth in §§ 23.23, 23.24, and 23.25.

§ 23.12 Misuse of the words ''flawless,'' ''perfect,'' etc.

(a) It is unfair or deceptive to use the word ''flawless'' to describe any diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.

(b) It is unfair or deceptive to use the word ''perfect,'' or any representation of similar meaning, to describe any diamond unless the diamond meets the definition of ''flawless'' and is not of inferior color or make.

(c) It is unfair or deceptive to use the words ''flawless'' or ''perfect'' to describe a ring or other article of jewelry having a ''flawless'' or ''perfect'' principal diamond or diamonds, and supplementary stones that are not of such quality, unless there is a disclosure that the description applies only to the principal diamond or diamonds.

§ 23.13 Disclosing existence of artificial coloring, infusing, etc.

If a diamond has been treated by artificial coloring, tinting, coating, irradiating, heating, by the use of nuclear bombardment, or by the introduction or the infusion of any foreign substance, it is unfair or deceptive not to disclose that the diamond has been treated and that the treatment is not or may not be permanent.

§ 23.14 Misuse of the term ''blue white.''

It is unfair or deceptive to use the term ''blue white'' or any representation of similar meaning to describe any diamond that under normal, north daylight or its equivalent shows any color or any trace of any color other than blue or bluish.

§ 23.15 Misuse of the term ''properly cut,'' etc.

It is unfair or deceptive to use the terms ''properly cut,'' ''proper cut,'' ''modern cut,'' or any representation of similar meaning to describe any diamond that is lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone.

Note to § 23.15: Stones that are commonly called ''fisheye'' or ''old mine'' should not be described as ''properly cut,'' ''modern cut,'' etc.

§ 23.16 Misuse of the words ''brilliant'' and ''full cut.''

It is unfair or deceptive to use the unqualified expressions ''brilliant,'' ''brilliant cut,'' or ''full cut'' to describe, identify, or refer to any diamond except a round diamond that has at least thirty-two (32) facets plus the table above the girdle and at least twenty-four (24) facets below.

Note to § 23.16: Such terms should not be applied to single or rose-cut diamonds. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise-(pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, the form of the diamond is disclosed.

§ 23.17 Misrepresentation of weight and ''total weight.''

(a) It is unfair or deceptive to misrepresent the weight of a diamond.

(b) It is unfair or deceptive to use the word ''point'' or any abbreviation in any representation, advertising, marking, or labeling to describe the weight of a diamond, unless the weight is also stated as decimal parts of a carat (*e.g.*, 25 points or .25 carat).

Note 1 to paragraph (b): A carat is a standard unit of weight for a diamond and is equivalent to 200 milligrams (1/5 gram). A point is one one hundredth (1/100) of a carat.

(c) If diamond weight is stated as decimal parts of a carat (*e.g.*, .47 carat), the stated figure should be accurate to the last decimal place. If diamond weight is stated to only one decimal place (*e.g.*, .5 carat), the stated figure should be accurate to the second decimal place (*e.g.*, ''.5 carat'' could represent a diamond weight between .495–.504).

(d) If diamond weight is stated as fractional parts of a carat, a conspicuous disclosure of the fact that the diamond weight is not exact should be made in close proximity to the fractional representation and a disclosure of a reasonable range of weight for each fraction (or the weight tolerance being used) should also be made.

Note to paragraph (d): When fractional representations of diamond weight are made, as described in paragraph d of this section, in catalogs or other printed materials, the disclosure of the fact that the actual diamond weight is within a specified range should be made conspicuously on every page where a fractional representation is made. Such disclosure may refer to a chart or other detailed explanation of the actual ranges used. For example, ''Diamond weights are not exact; see chart on p.X for ranges.''

§ 23.18 Definitions of various pearls.

As used in these guides, the terms set forth below have the following meanings:

(a) Pearl: A calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

(b) Cultured Pearl: The composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

(c) Imitation Pearl: A manufactured product composed of any material or materials that simulate in appearance a pearl or cultured pearl.

(d) Seed Pearl: A small pearl, as defined in (a), that measures approximately two millimeters or less.

§ 23.19 Misuse of the word ''pearl.''

(a) It is unfair or deceptive to use the unqualified word ''pearl'' or any other word or phrase of like meaning to describe, identify, or refer to any object or product that is not in fact a pearl, as defined in § 23.18(a).

(b) It is unfair or deceptive to use the word ''pearl'' to describe, identify, or refer to a cultured pearl unless it is immediately preceded, with equal conspicuousness, by the word ''cultured'' or ''cultivated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is unfair or deceptive to use the word ''pearl'' to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word ''artificial,'' ''imitation,'' or ''simulated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(d) It is unfair or deceptive to use the terms ''faux pearl,'' ''fashion pearl,'' ''Mother of Pearl,'' or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word ''artificial,'' ''imitation,'' or ''simulated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

§ 23.20 Misuse of terms such as ''cultured pearl,'' ''seed pearl,'' ''Oriental pearl,'' ''natura,'' ''kultured,'' ''real,'' ''gem,'' ''synthetic,'' and regional designations.

(a) It is unfair or deceptive to use the term ''cultured pearl,'' ''cultivated pearl,'' or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(b) It is unfair or deceptive to use the term ''seed pearl'' or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or an imitation pearl, without using the appropriate qualifying term ''cultured'' (*e.g.*, ''cultured seed pearl'') or ''simulated,'' ''artificial,'' or ''imitation'' (*e.g.*, ''imitation seed pearl'').

(c) It is unfair or deceptive to use the term ''Oriental pearl'' or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabiting the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is unfair or deceptive to use the word ''Oriental'' to describe, identify, or refer to any cultured or imitation pearl.

(e) It is unfair or deceptive to use the word ''natura,'' ''natural,'' ''nature's,'' or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or imitation pearl. It is unfair or deceptive to use the term ''organic'' to describe, identify, or refer to an imitation pearl, unless the term is qualified in such a way as to make clear that the product is not a natural or cultured pearl.

(f) It is unfair or deceptive to use the term ''kultured,'' ''semi-cultured pearl,'' ''cultured-like,'' ''part-cultured,'' ''premature cultured pearl,'' or any word, term, or phrase of like meaning to describe, identify, or refer to an imitation pearl.

(g) It is unfair or deceptive to use the term ''South Sea pearl'' unless it describes, identifies, or refers to a pearl that is taken from a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia. It is unfair or deceptive to use the term ''South Sea cultured pearl'' unless it describes, identifies, or refers to a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.

(h) It is unfair or deceptive to use the term ''Biwa cultured pearl'' unless it describes, identifies, or refers to cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan.

(i) It is unfair or deceptive to use the word ''real,'' ''genuine,'' ''precious,'' or any word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(j) It is unfair or deceptive to use the word ''gem'' to describe, identify, or refer to a pearl or cultured pearl that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

Note to paragraph (j): Use of the word ''gem'' with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualifications to properly be termed ''gems.'' Imitation pearls should not be described as ''gems.''

(k) It is unfair or deceptive to use the word ''synthetic'' or similar terms to describe cultured or imitation pearls.

(l) It is unfair or deceptive to use the terms ''Japanese Pearls,'' ''Chinese Pearls,'' ''Mallorca Pearls,'' or any regional designation to describe, identify, or refer to any cultured or imitation pearl, unless the term is immediately preceded, with equal conspicuousness, by the word ''cultured,'' ''artificial,'' ''imitation,'' or ''simulated,'' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is a cultured or imitation pearl.

§ 23.21 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

§ 23.22 Deception as to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements, and to fail to disclose that the treatment is not permanent, if such is the case. The following are examples of treatments that should be disclosed because they usually are not permanent or create special care requirements: coating, impregnation, irradiating, heating, use of nuclear bombardment, application of colored or colorless oil or epoxy-like resins, wax, plastic, or glass, surface diffusion, or dyeing. This disclosure may be made at the point of sale, except that disclosure should be made in any solicitation where the product can be purchased without viewing (*e.g.*, direct mail catalogs, on-line services), and in the case of televised shopping programs, on the air. If special care requirements for a gemstone arise because the gemstone has been treated, it is recommended that the seller disclose the special care requirements to the purchaser.

§ 23.23 Misuse of the words ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz,'' ''stone,'' ''birthstone,'' ''gemstone,'' etc.

(a) It is unfair or deceptive to use the unqualified words ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz,'' or the name of any other precious or semi-precious stone to describe any product that is not in fact a natural stone of the type described.

(b) It is unfair or deceptive to use the word ''ruby,'' ''sapphire,'' ''emerald,'' ''topaz,'' or the name of any other precious or semi-precious stone, or the word ''stone,'' ''birthstone,'' ''gemstone,'' or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word or name is immediately preceded with equal conspicuousness by the word ''laboratory-grown,'' ''laboratory-created,'' ''[manufacturer

name]-created,'' ''synthetic,'' or by the word ''imitation'' or ''simulated,'' so as to disclose clearly the nature of the product and the fact it is not a natural gemstone.

Note to paragraph (h): The use of the word ''faux'' to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not natural.

(c) It is unfair or deceptive to use the word ''laboratory-grown,'' ''laboratory-created,'' ''[manufacturer name]-created,'' or ''synthetic'' with the name of any natural stone to describe any industry product unless such industry product has essentially the same optical, physical, and chemical properties as the stone named.

§ 23.24 Misuse of the words ''real,'' ''genuine,'' ''natural,'' ''precious,'' etc.

It is unfair or deceptive to use the word ''real,'' ''genuine,'' ''natural,'' ''precious,'' ''semi-precious,'' or similar terms to describe any industry product that is manufactured or produced artificially.

§ 23.25 Misuse of the word ''gem.''

(a) It is unfair or deceptive to use the word ''gem'' to describe, identify, or refer to a ruby, sapphire, emerald, topaz, or other industry product that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

(b) It is unfair or deceptive to use the word ''gem'' to describe any laboratory-created industry product unless the product meets the requirements of paragraph (a) of this section and unless such word is immediately accompanied, with equal conspicuousness, by the word ''laboratory-grown,'' ''laboratory-created,'' or ''[manufacturer-name]-created,'' ''synthetic,'' or by some other word or phrase of like meaning, so as to clearly disclose that it is not a natural gem.

Note to § 23.25: In general, use of the word ''gem'' with respect to laboratory-created stones should be avoided since few laboratory-created stones possess the necessary qualifications to properly be termed ''gems.'' Imitation diamonds and other imitation stones should not be described as ''gems.'' Not all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to be properly termed ''gems.''

§ 23.26 Misuse of the words ''flawless,'' ''perfect,'' etc.

(a) It is unfair or deceptive to use the word ''flawless'' as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.

(b) It is unfair or deceptive to use the word ''perfect'' or any representation of similar meaning to describe any gemstone unless the gemstone meets the definition of ''flawless'' and is not of inferior color or make.

(c) It is unfair or deceptive to use the word ''flawless,'' ''perfect,'' or any representation of similar meaning to describe any imitation gemstone.

Appendix to Part 23—Exemptions Recognized in the Assay for Quality of Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products

(a) Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold industry product include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, metallic parts completely and permanently encased in a nonmetallic covering, field pieces and bezels for lockets,[1] and wire pegs or rivets used for applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold optical product include: the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, and nuts of screw assemblies; dowels; springs for spring shoe straps; metal parts permanently encased in a non-metallic covering; and for oxfords,[2] coil and joint springs.

(b) Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate industry product, other than watchcases, include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for lockets, posts and separate backs of lapel buttons, bracelet and necklace snap tongues, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a non-metallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (*e.g.*, of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a nonmetallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat-pin stems, and bracelet and necklace snap tongues. In addition, the following exemptions are recognized for products marked in accordance with section 23.8(b)(5) of these Guides (*i.e.*, products that are less than 500 parts per thousand platinum): pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf-pin stems, hat pin sockets, shirt-stud backs, vest-button backs, and ear-screw backs, provided such parts are made of the same quality platinum as is used in the balance of the article.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—List of Commenters and Abbreviations

Abbreviation	No.	Commenter
A&D Gem	187	A & D Gem Corp.

[1] Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels are the separable inner metal rings to hold the pictures in place.

[2] Oxfords are a form of eyeglasses where a flat spring joins the two eye rims and the tension it exerts on the nose serves to hold the unit in place. Oxfords are also referred to as pince nez.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
A&Z	29	A & Z Pearls, Inc.
ADS	197	American Diamond Syndicate.
Affro	138	Affro Gems.
AGL	230	American Gemological Laboratories.
AGS	18	American Gem Society.
AGTA	49	The American Gem Trade Association, Inc.
Alarama	51	Alarama Jewelry Co., Inc.
Alfille	247	E.J. Alfille, Ltd.
Alie	106	A.E. Alie & Sons, Inc.
Almond	63	Almond Jewelers Inc.
AMG	79	AM-Gold Products, Inc.
APG	89	American Pewter Guild, Ltd.
Argo	17	Argo & Lehne Jewelers.
Armel	32	Armel Manufacturing Co.
ArtCarved	155	ArtCarved.
Artisans	124	Artisans Jewelers, Inc.
Assael	136	Assael Int'l Inc.
Assured	148	Assured Loan Co.
Astoria	56	Astoria Jewelry Mfg. Co., Inc.
Atlantic	135	Atlantic Gem Corp.
Aviv	40 and 41	Aviv Inc.
AWA	236	American Watch Association.
AWI	116	American Watchmakers Institute.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bedford	210	Bedford Jewelers, Inc.
Benrus	22	Benrus Watch Co., Inc.
Best	225	Best Products Co., Inc.
Black Hills	59	Black Hills Gold Jewelry.
Bogo	201	Jerry Bogo Co.
Boston	125	Boston Findings & Jewelers Supply Co., Inc.
Brant	133	Brant Laird Antiques.
Brasilia	143	Brasilia Gems, Inc.
Bridge	163	Ben Bridge.
Brilliance	68	Brilliance-Diamond Importers.
Bruce	218	Donald Bruce & Co.
Canada	209	Consumer & Corporate Affairs Canada.
Capital	19	Capital Mfg./L. Dershowitz Co.
Capitol Ring	191	Capitol Ring Co., Inc.
Catholyte	34	Catholyte, Inc.
Chatham	231	Chatham Created Gems.
Cheviot	104	Cheviot Jewelry Co.
Citizen	228	Citizen Watch Co. of America, Inc.
Classique	96	Classique D'Or, Inc.
Cockrell	134	Charles Cockrell.
Collins	12	Collins Jewelry.
Colormasters	149	Colormasters Gem Corp.
Commercial	202	Commercial Mineral Co.
Consumers	158	Consumers.
Courtship	36	Courtship Int'l Ltd.
CPAA	193	Cultured Pearl Association of America, Inc.
Cross	165	A.T. Cross Co.
Crystal	24	J.O. Crystal Co., Inc.
David	194	W.B. David & Co., Inc.
Day	132	Day Co.
De'Nicole	175	De'Nicole Designs.
DeMarco	161	Joseph DeMarco.
Dendritics	167	Dendritics, Inc.
Diamonique	224	Diamonique Corp.
Diastar	99	Diastar Inc.
Disons	55	Disons Gems, Inc.
DMIA	26	Diamond Manufacturers & Importers Association of America, Inc.
Eastern	173	Eastern Gems, Inc.
Eaton's	248	Eaton's.
Eisen	91	Susan Eisen.
Emkay	146	Emkay Int'l, Inc.
Empire	44	Empire Silver Co., Inc.
Estate	23	Estate Jewelers.
Evvco	73	Evvco Enterprises, Inc.
Fabrikant	53	M. Fabrikant & Sons.
Faleck	50	Faleck & Margolies Manufacturing, Corp.
Fame	102	Fame Jewelry Inc.
Fargotstein	70	S. Fargotstein & Sons, Inc.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Fashion	35	Fashion Line Ltd.
Fasnacht	4	Fasnacht's Jewelry.
Fine	141	Fine Emerald Inc.
Finlay	253	Finlay Fine Jewelry Corp.
Fischer	87	Fischer Pewter, Ltd.
Flyer	95	J & H Flyer.
Foster	100	Foster, Inc.
Francis	139	Mrs. James B. Francis.
Franklin	250	The Franklin Mint.
Friedman	234	A.A. Friedman, Co., Inc.
G&B	30	Gudmundson & Buyck Jewelers.
Gehrkens	206	Kenneth A. Gehrkens.
Gem Vault	147	The Gem Vault.
Gem Gallery	131	The Gem Gallery.
Gemtron	145	Gemtron Corp.
General	88	General Findings.
GIA	81	Gemological Institute of America.
Gold Institute	13	Gold Institute.
Golden West	179	Golden West Manufacturing Jewelers, Inc.
Goldman	60	Frederick Goldman, Inc.
Gray	127	Gray & Co.
Green	6	Green Brothers.
Guyot	82	Maurice F. Guyot Jr.
Handy	62	Handy & Harman.
Hansen	174	Dr. Gary R. Hansen.
Harten	259	Harten.
Harvey	75	E.B. Harvey & Co., Inc.
Heritage	215	Heritage Metalworks, Inc.
Honora	14 and 15	Honora Jewelry Co., Inc.
H.R. Diamonds	195	H.R. Diamonds, Ltd.
ICT	189	ICT, Inc.
IJA	192	Indiana Jewelers Association.
Ijadi	171	Ijadi Gem, Inc.
Imperial	117	Imperial Jade Mining, Inc.
Impex	220	Impex Diamond Corp.
ISA	237 and 237A	International Society of Appraisers.
JA	3	Jewelers of America, Inc.
Jabel	47	Jabel Inc.
JCWA or Japan Watch	216	Japan Clock & Watch Association.
Jeffery	21	Robert K. Jeffery.
Jewelmasters	110	N.E.I. Jewelmasters of N.J. Inc.
JGL	77	JGL Inc.
JMC	1	Jewelry Merchandising Consultants.
JVC	212	Jewelers Vigilance Committee, Inc.
K's	45 and 98	K's Merchandise.
Kast	198	Joe Kast.
Kennedy	9	Kennedy's Jewelers.
Kimberley	227	Kimberley Created Emerald, Inc.
King	11	King's Jewelry.
KingStone	166	KingStone Gem Importers, Ltd.
Kittle	246	Clare Adams Kittle.
Knight	256	George R. Knight, Jr.
Korbelak	27 and 169	A. Korbelak.
Krementz	208	Krementz & Co.
Kurgan	107	I. Kurgan & Co., Inc.
Kwiat	203	Kwiat, Inc.
Kyocera	242	Kyocera America, Inc.
Lance	84	The Lance Corp.
Landstrom's	241	Landstrom's.
Lange	183	M. Lange Co., Inc.
Lannyte	65	Lannyte Co.
LaPrad	181	Robert E. LaPrad.
Leach	257	Leach & Garner Co.
Lee	153	Stewart M. Lee.
Leer	114	Leer Gem Ltd.
Light Touch	54	The Light Touch.
Limon	235	Robert Limon.
Little	164	Little & Co., Inc.
Littman	2	Littman & Barclay Jewelers.
London Star	20	London Star Ltd.
LP Gems	168	L.P. Gems, Inc.
Luria	28	L. Luria & Son.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
M&L	105	M & L Jewelry Manufacturing Inc.
Majestic	115	Majestic Setting Inc.
Majorica	240	Majorica Jewelry, Ltd.
Manning	159	Manning Int'l.
MAR	37 and 42	M.A.R. Creations Inc.
Mark	207	Richard C. Mark.
Mason	170	Mason-Kay Inc.
Mastro	190	Mastro Jewelry Corp.
Matlins	205	Antoinette Leonard Matlins.
Matthey	213	Johnson Matthey.
Mayfield's	185	Mayfield's Co.
McGee	112	McGee & Son.
MCM	152	MCM Gems.
Mendelson	33	Mike Mendelson & Assoc., Inc.
Mikimoto	72	Mikimoto (America) Co., Ltd.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
Moon & Star	172	Moon & Star.
Morton	199	Morton Jewelers.
Mueller	151	Ralph Mueller & Assoc.
Murray's	264	Murray's.
Nabavian	144	Nabavian Gem Co. Inc.
NACAA	90	National Association of Consumer Agency Administrators.
NACSM	219	National Association of Catalog Showroom Merchandisers, Inc.
Nassau	10	Kurt Nassau, PhD.
NAWC	251	North American Watch Corp.
New Era	129	New Era Gems.
New Castle	122	Kings of New Castle, Inc.
Newhouse	76	Leon M. Newhouse.
Nowlin	109	Nowlin Jewelry, Inc.
NRF	238	National Retail Federation.
NY Gold	39	The New York Gold & Diamond Exchange Inc.
Obodda	177	H. Obodda.
Ocean	176	Ocean Gem.
Odi-Famor	58	ODI/FAMOR, Inc.
Onyx	162	House of Onyx.
Orion	94 and 113	Orion Diamond Manufacturing Co., Inc.
Oroco	69	Oroco Manufacturing, Inc.
Overstreet	8	Overstreet's Jewelry.
PanAmerican	57 and 101	Pan-American Diamond Corp.
PGI	245	Platinum Guild Int'l U.S.A. Jewelry, Inc.
Phillips	204	Phillips Jewelers, Inc.
Philnor	93	Philnor Inc.
Postal Service	244	United States Postal Service.
Pounder's	130	Pounder's Jewelry.
Precision	121	Precision Design Inc.
Preston	229	F.J. Preston & Son Inc.
Ransom	184	King's Ransom.
Rapaport	233	Rapaport Corp.
Raphael	78	Raphael Jewelry Co., Inc.
Rare Earth	137	Rare Earth Gallery.
Renaissance	74	Renaissance.
Reys	260	Rey's Jewelers.
River	254	River Gems & Findings.
Roisen	31	Michal Ferman, Roisen & Ferman, Inc.
Ross Simons	67	Ross-Simons Jewelers.
Rosy Blue	108	Rosy Blue Inc.
Roubins	128	A. R. Roubins Sons, Inc.
Russell	217	Kenneth M. Russell.
Salisbury	86	Salisbury Pewter, Inc.
Sarantos	182	Susan E. Sarantos.
Saturn	46	Saturn Rings, Inc.
Schaeffer	211	H.K. Schaeffer & Co.
Schneider	119	Wm. Schneider Inc.
Schwartz	52	Charles Schwartz.
SCI	180	Stanley Creations, Inc.
SDGL	140	San Diego Gemological Laboratories.
Seagull	111 and 120	Seagull Pewter & Silversmiths Ltd.
Service	222	Service Merchandise.
Sheaffer	249	Sheaffer Inc.
Shire	221	Maurice Shire Inc.
Shor	258	Russell Shor.
Sibbing	5	Sibbing's Jewelry.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Siegel	255	Siegel & Assoc., Inc.
Simmons	71	R.F. Simmons Co., Inc.
Sites	123	Sites Jewelers.
Skalet	61	Skalet Inc.
Soft Wear	142	Soft Wear Jewelry.
Solid Gold	261	Solid Gold Jewelers.
Stanley	83	Loyd Stanely.
Stern	157	Louis P. Stern Assoc.
Stieff	25	Kirk Stieff.
Suberi	214	Suberi Brothers Inc.
Swezey	92	Swezey of Westport Inc.
Swiss Federation	232	The Federation of the Swiss Watch Industry.
Taylor	186	Taylor Gem Corp.
Thorpe	7	Thorpe & Co.
TIC	66	Tin Information Center.
Timex	239	Timex Corp.
TransAmerican	43	TransAmerican Jewelry Co., Inc.
Tru-Kay	196	Tru-Kay Manufacturing Co.
Tsavomadini	150	Tsavomadini Inc.
Ultimate	243	Ultimate Trading Corp.
Ultra Blue	160	Ultra Blue Mfg.
Union Carbide	38	Union Carbide.
Univ. Point	126	Universal Point.
Universal	178	Universal Pewter Corp.
USWC	118	U.S. Watch Council Inc.
Vardi	97	Vardi Stonehouse, Inc.
Verstandig	154	Verstandig & Sons, Inc.
Vijaydimon	80 and 103	Vijaydimon (U.S.A.) Inc.
Von's	16	Von's Diamond Jewelry.
Web	85	Web Silver Co., Inc.
Weinman	263	Weinman Bros, Inc.
Weitz	200	Sid Weitz, Inc.
Werdiger	48	Michael Werdiger, Inc.
WGC	223	World Gold Council.
Winston	252	Winston Studio & Imports.
Woodbury	64	Woodbury Pewterers, Inc.
Zahm	188	Philip Zahm.

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BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 19

Guides for the Metallic Watch Band Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'') announces that it has concluded its review of its Guides for the Metallic Watch Band Industry (''Watch Band Guides''). In a separate document published elsewhere in this issue of the Federal Register, the Commission is consolidating certain provisions of the Watch Band Guides with the Guides for the Jewelry Industry, renamed Guides for the Jewelry, Precious Metals and Pewter Industries. The Commission has decided to rescind the Watch Band Guides. The Commission is taking this action to streamline the Guides.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, (202) 326–2966, or Laura J. DeMartino, Attorney, (202) 326–3030, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Guides for the Metallic Watch Band Industry (''Watch Band Guides''), 16 CFR Part 19, address claims made about watch bands that are not permanently attached to watchcases. The Commission requested public comment on the Watch Band Guides, the Guides for the Jewelry Industry (''Jewelry Guides''), 16 CFR Part 23, and the Guides for the Watch Industry, 16 CFR Part 245.[1] Much of the material in the Watch Band Guides duplicates information in the Jewelry Guides. For the reasons discussed in greater detail in the Federal Register Notice announcing revisions to the Jewelry Guides, the Commission is consolidating some of the provisions of the Watch Band Guides into the Jewelry Guides. Therefore, the Commission is rescinding the Watch Band Guides. On the basis of the discussion in the Commission's announcement of revisions to the Jewelry Guides, which is located elsewhere in this issue of the Federal Register, and which is incorporated herein, 16 CFR Part 19 is hereby rescinded.

List of Subjects in 16 CFR Part 19

Advertising, Watch bands, Trade practices.

PART 19—[REMOVED]

The Commission under the authority of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), amends chapter I of Title 16 of the Code

[1] 57 FR 24996 (June 12, 1992). The Commission published this Federal Register Notice soliciting comment, in response to a petition from the Jewelers Vigilance Committee (''JVC''). Among other revisions, the JVC proposed consolidating all three Guides into one.

of Federal Regulations by removing Part 19.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–13523 Filed 5–29–96; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR PART 23

Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the ''Commission'') is requesting public comments on proposed revisions to § 23.7 of the Guides for the Jewelry, Precious Metals and Pewter Industries (''the Guides''). Section 23.7 of the Guides addresses claims made about platinum products. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until August 12, 1996.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments about these proposed changes to the Guides should be identified as ''Guides for the Jewelry, Precious Metals and Pewter Industry—16 CFR Part 23—Comment.''

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or Laura J. DeMartino, Attorneys, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2966 or (202) 326–3030.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a separate Federal Register Notice (''FRN''), the Commission announced revisions to its Guides for the Jewelry Industry, renamed Guides for the Jewelry, Precious Metals and Pewter Industries, 16 CFR Part 23.[1] The Guides for the Jewelry, Precious Metals and Pewter Industries (''the Guides'') address claims made about precious metals, diamonds, gemstones and pearl products. The Commission did not revise section 23.7 of the Guides for the Jewelry Industry, which addresses claims made about platinum products. Industry members have indicated the need to simplify current Commission guidance regarding claims that a product is composed of platinum and bring this guidance into closer accord with international standards. The Commission concluded, however, that additional comment would be helpful to resolve certain issues. Below, the Commission describes the comments discussing the marking of platinum products, submitted in response to the prior FRN.[2] The Commission also discusses its proposed changes to this section. The Commission solicits comment on this provision of the Guides and the proposed changes.

II. Analysis of Comments

A. Background

Section 23.7 of the Guides for the Jewelry Industry states that it is an unfair trade practice to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviations thereof, in a way likely to deceive purchasers as to the true composition of the product. The JVC proposed adding a sentence stating that platinum, iridium, palladium, ruthenium, rhodium, and osmium are the platinum group metals (''PGM''). Because not every reader of the Guides will be familiar with the term ''platinum group metals,'' the Commission proposes including the JVC's explanatory sentence in the Guides. The JVC also proposed adding definitions of ''platinum'' and ''quality mark.'' The Commission believes that the proposed definition of platinum is confusing (because it defines platinum, which is an element, as an alloy). The proposed definition of quality mark is unnecessary because that term is defined elsewhere in the Guides.

B. Suggested Provisions for Platinum Products

1. Proposals Based on the Voluntary Product Standards

In the Guides for the Jewelry Industry, a Note states that markings in compliance with Commercial Standard CS 66–38 (now Voluntary Product Standard 69–76) on the ''Marking of Articles Made Wholly or in Part of Platinum'' will be regarded ''as among those fulfilling the requirements relating thereto which are contained in this section.''[3] The JVC proposed incorporating the Voluntary Product Standard (''VPS''), with some changes, into the Guides.

The VPS sets out requirements for marking items as platinum. In section 3.5(1), the VPS states that an article without solder may be marked ''platinum'' if 985 parts per thousand are platinum group metals and 935 parts per thousand are pure platinum. The JVC proposed changing the requirement of 985 parts per thousand platinum group metals to 950 parts per thousand pure platinum. The FRN solicited comment on this proposed change.[4]

Fourteen comments addressed this issue. Two comments opposed the proposed standard, but offered no substantive reasons.[5] Twelve comments favored the revision.[6] The Platinum Guild stated that "'950 platinum' is an accepted standard worldwide [and] [a]doption of this standard simplifies the import and export of platinum jewelry and allows the U.S. to properly compete with others in the international marketplace.''[7] This comment was echoed verbatim by Johnson Matthey, a major platinum producer.[8] Because of the overwhelming support for the change, which harmonizes the Guides with international practices, the Commission proposes making this change.[9]

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[1] The Commission published a FRN soliciting public comment on amendments to the Jewelry Guides, including revisions to section 23.7 regarding platinum products. 57 FR 24996 (June 12, 1992). That FRN was published in response to a petition proposing changes, submitted by the Jewelers Vigilance Committee (''JVC'').

[2] 57 FR 24996 (June 12, 1992). The comments are cited to by an abbreviation of the commenter's name and the document number assigned to the comment on the public record. A list of the commenters, including the abbreviations and document numbers used to identify each commenter, is attached as an appendix.

[3] Commercial Standards were promulgated by the U.S. Department of Commerce and administered by the National Bureau of Standards (''NBS''). Later renamed by the NBS as Voluntary Product Standards, they had the same legal significance as FTC guides. The Department of Commerce and the NBS, which is now called the National Institute of Standards and Technology, withdrew these and all other VPS, as an economy measure, on January 20, 1984.

[4] The VPS provided, for the various types of PGM products, different ''parts per thousand'' requirements for products with solder and without solder. The JVC proposal dropped these references to solder (except as to a proposed new product, chain articles containing solder-filled wire, discussed *infra*). There was no comment opposing this change. The Commission solicits comment on whether references to solder should be included in the Guides.

[5] Korbelak (27) p.5 (stating that ''platinum is platinum'') and G&B (30) p.8 (stating that platinum should remain at a ''high, high, standard'').

[6] Fasnacht (4); Estate (23); Jabel (47); Handy (62); ArtCarved (155); IJA (192); Canada (209); Matthey (213); MJSA (226); Preston (229); PGI (245); and Leach (257).

[7] Comment 245, p.2 (stating further that other countries ''produce '950 platinum' alloys with oftentimes superior casting and working characteristics,'' and that ''[t]he U.S. needs these materials to be at the cutting edge of jewelry technology from a materials standpoint'').

[8] Matthey (213) p.2; ArtCarved (155) p.4 (stating that ''950'' is used internationally and should be the U.S. standard); Canada (209) p.4 (stating that the proposal ''would align the [Guides] with the current Canadian standard''); JCWA (216) p.3 (stating that ''lowering the minimum to a level of grade 900/1000 would better reflect accepted international practice'').

[9] The National Stamping Act, which establishes tolerance for gold and silver, does not apply to platinum. The JVC proposed including a Note stating that the ''actual Platinum content of an industry product shall not be less than the Platinum content indicated by the quality marks.'' However, because extremely minor variances of the type

The JVC also suggested including in the Guides two other sections of the VPS that state, for an article with 950 parts per thousand platinum group metals but less than 950 parts pure platinum, that other platinum group metals in the article be disclosed in the mark.[10] If the platinum is 750 parts or more, the next predominate metal should be named (*e.g.*, Irid-Plat, for an item containing 90% platinum and 10% iridium). If the platinum is less than 750 parts (but at least 500 parts pure platinum), all the other platinum group metals should be named, preceded by a number indicating the amount in parts per thousand of that metal (*e.g.*, 600 platinum-350 iridium).[11]

The Commission is seeking comment on whether it should adopt these sections as safe harbor provisions (*i.e.*, as examples of markings and descriptions that are not considered unfair or deceptive). The Commission asks that commenters address whether the marking of an item containing between 750 and 950 parts platinum (*e.g.*, Irid-Plat), will be understood by consumers or whether it will be confusing. The Commission is especially interested in how consumers will interpret a marking where the next predominate metal precedes the word platinum.

The Commission also solicits comment on the need for separate guidance for items containing between 750 and 950 parts pure platinum and items containing between 500 and 750 parts pure platinum. The Commission is considering one safe harbor provision for all items containing less than 950 parts pure platinum, that would recommend naming all platinum group metals in the item, preceded by a number indicating the amount in parts per thousand of that metal. This change may simplify Commission guidance and provide greater information to consumers about the amount of platinum and other platinum group metals in the item. The Commission requests comment on this approach.

The JVC also proposed including a section that states that no article containing fewer than 500 parts per thousand of pure platinum shall be marked ''platinum.'' This proposal differs from the VPS section, which states that such an article can be marked ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium'' (whichever predominates in the article) if the article consists of 950 parts per thousand of platinum group metals.[12] There was no comment on this section. The Commission believes that referring to an article that contains less than 500 parts pure platinum as ''platinum,'' without qualification, may be deceptive. The Commission does not believe that it would be deceptive to mark the item with the name of the predominate metal in the item. The Commission recognizes, however, that the predominate metal in such an item may be platinum (*e.g.*, 480 platinum, 250 palladium, 220 iridium). Although the Commission proposes including the provision, in the form it appears in the VPS, as a safe harbor provision in the Guides, it solicits comment on whether the Guides should address separately the situation where an item contains less than 500 parts pure platinum, but platinum is still the predominate metal.

2. Other Proposals

The Commission received a request for an advisory opinion from the JVC and Platinum Guild International on November 30, 1995. The JVC and Platinum Guild International requested that the Commission advise that the following markings or descriptions would not be considered deceptive: PT850 or 850 Plat; PT900 or 900 Plat; PT950 or 950 Plat; and PT999 or 999 Plat. The minimum content for platinum would be 850 parts per thousand. The JVC and Platinum Guild International state that these markings are similar to markings for gold jewelry and would be more understandable than the markings suggested in the VPS. They also state that these markings are used in Japan and Switzerland.

The request differs from the scheme of marking that is contained in the Voluntary Product Standard, described above. For items with less than 950 parts pure platinum, the other component platinum group metals would not be disclosed. Under this scheme of markings, it is unclear how products containing less than 850 parts platinum would be described. The Commission solicits comment on these issues and the costs and benefits of these markings relative to those in the VPS.

3. Abbreviations and Trademarks

The JVC proposed including a section from the VPS describing the ''recognized abbreviations'' for each of the platinum group metals (platinum, iridium, palladium, ruthenium, rhodium and osmium).[13] Each is a four-letter abbreviation. The Platinum Guild suggested that these abbreviations be changed to permit the use of two letter abbreviations.[14] The Guild stated that jewelry manufacturers have said that ''the marking requirements and long metal abbreviations are a deterrent to entering the marketplace with a product such as '585 PLAT 365 PALL.' Shorter abbreviations would be a real help to the platinum segment of the jewelry industry, *i.e.*, '585 PT.' ''[15]

The two letter abbreviations are the same as those listed in the periodic chart of the elements, but the four-letter abbreviations are more likely to be understood by consumers with no knowledge of chemistry. However, in response to the comments, the Commission proposes including a provision that states that the four-letter abbreviations are preferred, but that the use of two-letter abbreviations on articles that consist of more than two platinum group metals would not be objectionable. Comments on this proposal and on whether two-letter abbreviations should be acceptable in all situations are desired.

The JVC also recommended including in the Guides the VPS section that requires that, if a platinum quality mark appears on an article, the trademark of the manufacturer must also appear. The eleven pertinent comments discussing this proposal all favored requiring a trademark on quality-marked platinum.[16] However, most gave no reason. Platinum is not covered by the National Stamping Act, which requires that an article that is stamped with a quality mark indicating that it is made of gold or silver, also bear a trademark of the manufacturer or importer. Preston stated that the Commission would be ''the next logical Federal authority * * * to close the trade mark stamping gap for platinum products'' and that this requirement would ''help maintain uniformly high product standards by causing manufacturers, importers, or sellers who stamp ''platinum'' on their products to identify themselves.'' [17]

The purpose of the Guides, however, is not to ''maintain uniformly high product standards'' but rather to prevent unfairness and deception. It is neither deceptive nor unfair to mark an item as

allowed by the gold and silver tolerances in the National Stamping Act might not be unfair or deceptive, the Commission does not propose including this Note.

[10] Jabel (47) noted at p.1, that ''there's an awful lot of *real* (10% iridium platinum) platinum out there that should be acknowledged.'' This provision addresses the marketing of this product.

[11] VPS sections 3.5(2) and (3).

[12] VPS section 3.5(4).

[13] VPS section 5.

[14] Comment 245, pp. 2–3. ''Plat.,'' ''irid.,'' ''pall.,'' ''ruth.,'' ''rhod.,'' and ''osmi.'' could be replaced by ''PT,'' ''IR,'' ''PA,'' ''RU,'' ''RH,'' and ''OS.''

[15] Comment 245, p.3.

[16] Fasnacht (4); King (11); Estate (23); G&B (30); Handy (62); McGee (112); Bridge (163); IJA (192); Canada (209); Matthey (213); and MJSA (226).

[17] Comment 229, p.10.

platinum but not to identify the trademark of the manufacturer.[18] Hence, the Commission has not included in the Guides a requirement that the trademark must accompany any platinum quality mark.

Finally, the JVC proposed including the list of ''exemptions'' (*e.g.*, joint, catches, etc.) to which the quality mark is deemed not to apply. The Commission proposes adding a note to the section stating that a list of exemptions can be found in the appendix.

C. Suggested Provisions for Platinum-Filled Products

The JVC proposed including a subsection on ''platinum-filled'' or ''platinum overlay'' (*i.e.*, platinum-plated) products. The FRN asked whether a standard should be established for platinum-filled, platinum overlay, or platinum-clad products and whether a standard that the plating constitute at least 1/20th of the weight of the entire article would be appropriate.

In response to this question, Preston stated that platinum-filled and platinum overlay are not yet produced commercially by the platinum industry. Preston also stated that since these products may be introduced in the future, the JVC's Platinum subcommittee, ''[i]n the absence of carefully explored standards * * * arbitrarily copied the technology and standards for similar products in the gold industry.'' [19]

Some comments stated that a standard should be established.[20] One noted that ''if [platinum plating] is currently being done, it should have the same regulations as gold coated products.'' [21] However, another stated the same terms should *not* be used for gold and platinum.[22] Alexander Korbelak stated that the term ''platinum-filled'' was deceptive.[23] Others simply answered the question in the FRN ''yes'' [24] or ''no.'' [25]

Sheaffer commented that ''a standard should be established for platinum plating (regardless of how applied),'' but favored a standard specifying minimum fineness and thickness. Sheaffer stated that a standard based on a weight ratio ''will encourage the production of inferior articles lacking strength and rigidity as the thickness and, thus, the cost of the plate can readily be reduced by use of a very thin base material.'' [26]

The Platinum Guild and Johnson Matthey both favored the proposed standard, noting that it ''will assure that a properly manufactured product will be durable and have a reasonable precious metal content.'' [27]

Because the comments indicate that platinum-filled products are not currently being marketed, there are no deceptive practices occurring. Moreover, there appears to be little consensus on what standard would best meet consumer expectations. Thus, the Commission does not propose including a provision for this product in the Guides at this time. Future marketers of such products could be guided by the provisions that apply to gold- and silver-plated products. The Commission, however, solicits comment on whether there is a need to address platinum-filled products in the Guides at this time, and if so, why.

D. Proposals for Solder-Filled Platinum Chain

The JVC proposed adding a provision on solder-filled platinum chain. The FRN solicited comment on whether a standard of 850 parts per thousand pure platinum is appropriate.

The Platinum Guild and Johnson Matthey both noted that Japan, which consumes the greatest amount of platinum jewelry in the world, uses the 850 standard for platinum chain. They stated that the 850 standard is appropriate, ''whether solder filled or solid wire is used in the manufacture of the product,'' and noted that ''Internationally, little solder filled wire is used * * * .'' Both also stated that a standard of ''850 platinum'' for chain products ''will allow the U.S. manufacturer to compete more fairly in the world marketplace.'' [28] MJSA stated that the proposed 850 standard for platinum chain ''is consistent with existing industry standards and practices.'' [29] Other comments simply approved the proposed standard.[30] Canada commented that ''in Canada no specific standard is advised as the question is under review.'' [31] Korbelak stated that such a product should be designated ''solder-filled platinum.'' [32]

Because the comments indicate that the proposed standard reflects existing standards both in the U.S. and abroad, the Commission proposes including this standard, as a safe harbor, in the Guides.

E. Proposals for Platinum in Combination with Gold Products

Finally, the JVC recommended including a section, adapted from the Voluntary Products Standard, providing that an article in which platinum is combined with gold so that they are ''visually separable and easily distinguishable one from the other,'' may have the term ''platinum'' applied followed by a karat mark. However, the combination of platinum and gold is adequately covered in the Guides by the respective sections on platinum and gold and by the section on quality marks.[33] Thus, the Commission has concluded that it is unnecessary to include this section in the revised Guides.

III. Request for Comment

The Commission seeks public comment on section 23.7 of the Guides and all of the proposed changes discussed above. The Commission also requests comment on the following specific questions:

1. Do products with less than 950 parts per thousand pure platinum have the same qualities and characteristics as products with larger amounts of platinum?

2. Products consisting of between 750 and 950 parts per 1000 pure platinum may be marked ''platinum'' provided that the name of the next predominant PGM precedes the word platinum. Products consisting of between 500 and

[18] If there are problems with the product, the consumer can seek assistance from the seller of the item (probably a retailer who in turn may know, or seek assistance from, the manufacturer of the item).

[19] Comment 229, p.9; Jabel (47) p.1 (stating, ''How were these standards established? For wear? For weight? For appearance?''); Canada (209) p.4 (stating that the proposed standard ''deserves further study,'' and noting that ''there is industry interest for other platinum products with approximately 585 parts platinum per 1000 parts metal'').

[20] Phillips (204) p.1 (stating that ''some standard for platinum filled needs to be established''); Bruce (218) p.9 (stating that ''platinum-filled'' products may have overseas potential and that it would be best ''to have standards set, so that when the opportunity comes, the material will be covered'').

[21] Bales (156) p.9.

[22] G&B (30) p.8.

[23] Comment 27, p.5.

[24] Estate (23); Schwartz (52); Handy (62); and MJSA (226).

[25] Leach (257).

[26] Comment 249, p.4; ArtCarved (155) p.4 (stating that a ''coating thickness'' standard would be more appropriate than a weight standard).

[27] PGI (245) p.2 and Matthey (213) p.2 (both stating that electroplating, or chemical deposition of platinum, although currently not a factor in the marketplace, ''may need to be addressed in future guides'').

[28] PGI (245) p.2; Matthey (213) pp.2–3.

[29] Comment 226, p.6.

[30] Estate (23); Handy (62); G&B (30); and Jabel (47).

[31] Comment 209, p.4.

[32] Comment 27, p.5.

[33] Section 23.8(a)(2) of the Guides deals with quality marks on products that are a combination of two or more metals of similar surface appearance. This section provides that ''each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.'' The Commission has determined that the guidance provided in this section will prevent deception.

750 parts per 1000 pure platinum may be marked ''platinum'' provided that all PGM in the product are marked and preceded by a number indicating the amount of the metal in parts per thousand. Should the guidance for all products consisting of less than 950 parts pure platinum be the same? If so, why? What are the reasons for having different standards for the products?

3. For products consisting of less than 950 parts pure platinum, what are the benefits and costs of marking each PGM contained in the product? Should the amount of each metal, in parts per thousand, be disclosed?

4. Should products with less than 950 parts pure platinum be marked with only the amount of pure platinum contained in the product (*e.g.*, PLAT 900)? Do consumers understand this marking? Would percentage markings (*e.g.*, 90% Plat) be preferable and feasible?

5. Are there any international standards for marking platinum products? Should the Guides follow these standards? Why or why not?

6. Should products with less than 500 parts per thousand pure platinum be marked ''platinum''? Why or why not?

7. Should platinum and other PGM be described with two letter abbreviations? Do consumers understand two letter abbreviations?

8. Is there a need for Commission guidance regarding descriptions of platinum-filled, platinum overlay or platinum-clad products? If so, how should these products be addressed?

9. Should chain articles containing solder-filled wire and consisting of at least 850 parts per thousand pure platinum be marked ''platinum''? Why or why not?

List of Subjects in 16 CFR Part 23

Advertising; Jewelry; Trade practices.

Accordingly, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

2. Section 23.7 is revised to read as follows:

§ 23.7 Misuse of the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' and ''osmium.''

(a) It is unfair or deceptive to use the words ''platinum,'' ''iridium,'' ''palladium,'' ''ruthenium,'' ''rhodium,'' or ''osmium,'' or any abbreviation to mark or describe all or part of an industry product if such marking or description misrepresents the product's true composition. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium.

(b) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) The following four-letter abbreviations for each of the PGM may be used for quality marks on articles consisting of one or two PGM: ''Plat.'' for Platinum; ''Irid.'' for Iridium; ''Pall.'' for Palladium; ''Ruth.'' for Ruthenium; ''Rhod.'' for Rhodium; and ''Osmi.'' for Osmium. If an article contains more than two PGM, the following abbreviations may be used for quality marks to disclose three or more constituent metals: ''Pt.'' for Platinum; ''Ir.'' for Iridium; ''Pd.'' for Palladium; ''Ru.'' for Ruthenium; ''Rh.'' for Rhodium; and ''Os.'' for Osmium.

(2) An industry product consisting of at least 950 parts per thousand pure Platinum may be marked ''Platinum.''

(3) An industry product consisting of at least 950 parts per thousand PGM, of which at least 750 parts per thousand are pure Platinum, may be marked ''Platinum'' provided that the name or abbreviation of the PGM member that is the next largest constituent of the alloy immediately precedes the word ''Platinum.''

(4) An industry product consisting of at least 950 parts per thousand PGM, of which at least 500 parts per thousand (but less than 750) are pure Platinum, may be marked ''Platinum'' provided that the mark of each PGM constituent is preceded by a number indicating the amount in parts per thousand of each PGM, as, for example, ''600 Plat.-350 Irid.,'' ''700 Platinum-250 Iridium,'' or ''500 Pt.-250 Pd.-200 Ir.''

(5) An industry product consisting of at least 950 parts per thousand PGM, of which less than 500 parts per thousand are pure Platinum, may be marked with the name or abbreviation of the PGM member that predominates in the product, provided that the mark is preceded by a number indicating the amount in parts per thousand of the PGM. Such product should not be marked with the name or abbreviation for platinum.

(6) Chain articles containing solder-filled wire and consisting of at least 850 parts per thousand pure Platinum may be marked ''Platinum.''

Note to § 23.7: Exemptions recognized in the assay of platinum industry products are listed in the Appendix to Part 23.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	No.	Commenter
ArtCarved	155	ArtCarved.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bridge	163	Ben Bridge.
Bruce	218	Donald Bruce & Co.
Canada	209	Consumer & Corporate Affairs Canada.
Estate	23	Estate Jewelers.
Fasnacht	4	Fasnacht's Jewelry.
G&B	30	Gudmundson & Buyck Jewelers.
Handy	62	Handy & Harman.
IJA	192	Indiana Jewelers Association.
Jabel	47	Jabel Inc.
JCWA	216	Japan Clock & Watch Association.
King	11	King's Jewelry.
Korbelak	27	A. Korbelak.
Leach	257	Leach & Garner Co.
Matthey	213	Johnson Matthey.
McGee	112	McGee & Co.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
PGI	245	Platinum Guild Int'l U.S.A. Jewelry, Inc.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Phillips	204	Phillips Jewelers, Inc.
Preston	229	F.J. Preston & Son Inc.
Schwartz	52	Charles Schwartz.

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May 30, 1996

Part VI

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 960524148–6148–01]

RIN 0660–AA09

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is issuing a Notice of Proposed Rulemaking. This Notice is intended to clarify and/or revise the rules and appendix governing administration of the Public Telecommunications Facilities Program (PTFP). The PTFP is authorized to provide matching grants to plan and construct public telecommunications facilities.[1]

NTIA intends to issue Final Rules after it has received, evaluated and addressed public comments on these Proposed Rules.

DATES: Comments must be filed no later than the close of business on July 15, 1996.

ADDRESSES: Persons and organizations interested in commenting on the Proposed Rules must send three copies of any comments to: Public Telecommunications Facilities Program, NTIA, Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4625, Washington, DC 20230. Attention: Dennis Connors.

FOR FURTHER INFORMATION CONTACT: Persons desiring further information regarding the Proposed Rules should contact Dennis Connors, Public Telecommunications Facilities Program, NTIA, DOC, 14th Street and Constitution Avenue NW., Room 4625, Washington, DC 20230, telephone (202) 482–5802.

SUPPLEMENTARY INFORMATION: In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed that all agencies undertake an exhaustive review of all their regulations with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. These Proposed Rules represent the first step in NTIA's response to this directive for the PTFP.

In keeping with the Presidential directive, NTIA has taken this opportunity to thoroughly review the existing 1991 Rules.[2] We are proposing a number of changes discussed below which simplify or delete requirements. In order to clarify the rules, we have removed internal repetition as well as duplication of requirements set forth for grantees in other government rules and regulations.

The change most readily apparent to those familiar with the 1991 Rules is that the Proposed Rules have been completely reorganized to make it easier for applicants and grantees to understand the requirements of the program. Additional headers have been added and minor language changes made to increase clarity. However, unless discussed further below, the intent of the regulations remains the same as in the 1991 Rules.

The most significant policy change contained in the Proposed Rules includes a complete revision of the evaluation criteria which formerly was contained in two sections, *§ 2301.13 Funding Criteria for Construction Applications* and *§ 2301.14 Funding Criteria for Planning Applications.* The Proposed Rules combine both construction and planning evaluation criteria into a new § 2301.17. The Proposed Rules also add a description of PTFP's technical evaluation process in § 2301.16 and a description of the selection process used to award grants in § 2301.18.

Two clarifications have been made in the funding priorities, which previously were contained in the Appendix to the 1991 Rules and are now incorporated into the Proposed Rules at § 2301.4. NTIA proposes to modify the former Priority 4, Replacement and Improvement of Basic Equipment for Existing Broadcast Stations. Under the proposed § 2301.(4)(b)(4) NTIA has redesignated this section as Priority 4, Improvement of Public Broadcasting Services and expanded its scope. In addition to the projects formerly included under Priority 4, NTIA now will consider projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities. Under the previous funding priorities in the Appendix to the 1991 Rules, NTIA considered applications intended to serve areas already served by other public broadcasting facilities within the Special Applications category while other broadcast projects were considered within the funding Priorities. NTIA believes that all broadcast applications should be evaluated within the funding priorities. NTIA continues to believe that the PTFP's highest priorities are the provision of a first signal to a geographic area (Priority 1), urgent replacement of equipment at the sole station serving a geographic area (Priority 2), and first local origination (Priority 3). Therefore, projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities will be considered in Priority 4A, where they will be considered with other applications from stations in areas already served by another public broadcasting facility. The remainder of Priority 4A and Priority 4B remain unchanged from the Appendix to the 1991 Rules.

With the proposed revision of Priority 4, all broadcast applications have been placed within the five funding priorities. The Special Applications category therefore will consist solely of nonbroadcast projects and the language of the Special Applications category has been revised at § 2301.(4)(a).

Under § 390 of the Act, NTIA has the authority to consider applications which further the delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means. NTIA recognizes that the issue of conversion to advanced digital technologies is of great importance for the future viability of public broadcasting facilities in the United States. NTIA believes that public broadcasters must adequately plan for the transition to advanced digital technologies and will therefore welcome applications which will assist in planning for the digital conversion of public broadcasting facilities.

The following reviews each section of the Proposed Rules and compares it with similar sections in the 1991 Rules.

Section 2301.1 Program Purposes

The new § 2301.1 *Program Purposes* replaces § 2301.2 *Program Purposes* in the 1991 Rules. This section of the 1991 Rules for the most part repeated the language contained in § 393(b) of the Act. NTIA believes that the overall purposes of the PTFP are better expressed in § 390 of the Act. This

[1] See 47 U.S.C. 390–393, and 397–399b (1988), The Communications Act of 1934, as amended. Unless otherwise noted, all statutory citations are to title 47 of the United States Code.

[2] See 15 CFR Part 2301, published in the Federal Register, Vol. 56, No. 226, p. 59168. (November 22, 1991).

section of the Act, restated in the new § 2301.1, now serves as an introduction to the PTFP Regulations.

Section 2301.2 Definitions

The new § 2301.2 *Definitions* repeats for the most part § 2301.1 *Definitions* in the 1991 Rules. The definition for the term ''Non-Federal financial support'' has been deleted. The term is no longer used since the requirement to report on three years of Non-Federal financial support (§ 2301.5(d)(2)(viii) of the 1991 Rules) has been deleted.

Three new definitions have been added. A new definition for the term ''planning'' has been added to complement the definition for the term ''construction,'' and a new definition has been added for ''closing date'' since the term is used throughout the Proposed Rules. Further, the definition of ''Federal interest period'' has been expanded to clarify that limitations on the use of Federally-funded public telecommunications facilities, such as the prohibition on the use PTFP funded equipment for the broadcast of advertisements (see § 2301.19(a)(5)) or the restrictions on sectarian use (see § 2301.19(b)) extend for the useful life of the equipment, whether or not this period extends beyond the 10 year Federal interest period. We are also adopting the definition of ''minorities'' which was previously set forth in our policy statement printed in the Federal Register, Vol. 44, No. 111, p. 33032.

Section 2301.3 Applicant Eligibility

The new § 2301.3 *Applicant Eligibility* was contained as a part of §§ 2301.4(a), (b) and (e) *Eligible Organizations and Projects* of the 1991 Final Rules. On December 22, 1995, NTIA issued a notice and an amendment to the PTFP regulations in the Federal Register (60 FR 66491, Dec. 22, 1995) on its policy with regard to sectarian activities. The December 22, 1995 Notice revised the previous § 2301.4 on eligibility. The revisions outlined in that Notice are included in the Proposed Rules in § 2301.3. The process of obtaining preliminary eligibility determinations (§ 2301.3(d)) has been simplified and much of the prior language specifying this procedure (§ 2301.4(f) in the 1991 Rules) has been eliminated.

Section 2301.4 Scope of Projects

The new § 2301.4 *Scope of Projects* contains the material included in the Appendix to the 1991 Rules dealing with Special Applications and Priorities. This section replaces § 2301.4(c) of the 1991 Rules, which for the most part was another paraphrase of § 393(b) of the Act. We believe that it is more useful to applicants that this new § 2301.4 contain the scope of eligible projects developed by NTIA to achieve the objectives of § 393(b) of the Act. Significant changes in § 2301.4(a) Special Applications and § 2301.4(b)(4) Priority 4 applications were discussed earlier in this document. § 2301.4(b)(1)(iv) adds language to clarify how PTFP considers the presence of AM daytime only stations in determining the Priority for proposed FM facilities serving a similar coverage area. § 2301.4(c) parallels § 2301.3(d) of the Proposed Rules in permitting potential applicants to obtain preliminary eligibility determinations. § 2301.4(d) maintains the intent of § 2301.4(f)(3) of the 1991 Rules that the Agency will review all applications after the closing date and that a preliminary eligibility determination does not guarantee that the Agency will accept a future application.

Section 2301.5 Special Consideration

The new § 2301.5 *Special Consideration* is based in part on § 2301.3 *Special Consideration* in the 1991 Rules. The section has been revised to reflect language in the Act (§ 392(f)). The sentence regarding a requirement for special consideration of a minimum 50% level of control of the applicant by women and minorities has been deleted.

Section 2301.6 Amount of Federal Funding

The new § 2301.6 *Amount of Federal Funding* is based upon § 2301.16 *Amount of the Federal Grant* in the 1991 Rules. Several sentences in this section have been rearranged within the section to group similar issues and increase the clarity of the regulation. We are also taking this opportunity to clarify PTFP's position on the level of matching funds required for broadcast equipment replacement, improvement and augmentation projects and to make it more consistent with treatment of non-Federal cost share under OMB Circular A–110 and 15 CFR Part 24. The new § 2301.6(b)(ii) is a restatement of NTIA policy previously published on November 22, 1991 (Fed. Reg. Vo. 56, No. 226, p. 59191) which indicates the presumption of 50% Federal participation for equipment replacement, improvement and augmentation projects. New language in § 2301.6(b)(2) clarifies NTIA's existing policy that obligating funds for equipment before the closing date is considered ownership or acquisition of equipment and is not normally permitted. However, NTIA will now consider on a case-by-base basis inclusion of equipment as matching funds purchased prior to the closing date due to unusual circumstances when a clear and compelling showing is made. § 2301.6(d) has been revised to indicate that if a grantee obligates Federal funds before the project start date, those costs may be disallowed. This revision replaces language in the 1991 Rules (§ 2301.23(a)–(c)) which gave the Department the option of terminating the entire grant.

Section 2301.7 Eligible and Ineligible Project Costs

The new § 2301.7 *Eligible and Ineligible Project Costs* is based on § 2301.17 *Items and Costs Ineligible for Federal funds* from the 1991 Rules. Specific information on the eligible and ineligible costs has been deleted from this section. The new language formalizes a procedure that NTIA has been following in recent years, which is to annually publish a list of eligible and ineligible costs in the Federal Register as part of the solicitation of applications. The list will be distributed as part of the application materials. § 2301.7(c) has been revised to reflect the change noted in the prior section regarding § 2301.6(b)(2).

Section 2301.8 Submission of Applications

Section 2301.9 Deferred Applications

Section 2301.10 Applications Resulting From Catastrophic Damage or Emergency Situations

The new §§ 2301.8 *Submission of Applications*, 2301.9 *Deferred Applications* and 2301.10 *Applications Resulting From Catastrophic Damage or Emergency Situations* are all derived from § 2301.5 *Application Procedures* in the 1991 Rules. The former § 2301.5 has been divided into three sections for clarity, but the application procedures contained in the three new sections are similar to that of the 1991 Rules. Lengthy sections from the old § 2301.5 regarding the specific requirements to be submitted in a new or deferred application have been deleted (e.g. §§ 2301.5(d)(2)(i–xxii)) and 2301.5(e)(4)(i–xi). Removing the specific requirements from the Rules will give NTIA the flexibility of future reductions in requirements on the application form to lessen the burden on applicants. For example, in FY 1997, NTIA will, under the Proposed Rules, delete the requirement to submit the three year report on Non-Federal Financial Support (Exhibit B) now required by the 1991 Rules and contained in the current application form. Specific requirements of the application are now and will

continue to be contained in the application form that will be distributed as part of application materials.

The Proposed Rules drop the specific requirement in the 1991 Rules (§ 2301.5(d)(2)) that an applicant submit ''an original and one copy of the Agency application form'' but now specifies at the new § 2301.8(d) that the applicant submit ''the number of copies specified by the Agency.'' This will permit NTIA to be flexible, within OMB guidelines, on the number of applications forms required in order to complete processing of the applications in a timely manner.

Two paragraphs from the *Additional Information* section in the 1991 Rules (§ 2301.6(d)(1) and (2)) were relocated to the new *Submission of Applications* section (§ 2301.8(g) and (h)) to notify potential applicants of the use of Name Check forms and financial responsibility determinations in the application review process. In §§ 2301.8(g) and(h), the Proposed Rules clarify the uses of these reports in the application review process. The new § 2301.8(i) is Department of Commerce policy.

The new § 2301.10 *Applications Resulting From Catastrophic Damage or Emergency Situations* contains one significant change from § 2301.5(g) of the 1991 Rules. Under § 2301.10(a), NTIA proposes to consider the complete failure of basic equipment essential to a station's continued operation, even if the failure is not the result of a natural or manmade disaster, as an emergency situation which may warrant immediate consideration of an application.

Section 2301.11 Service of Applications

The new § 2301.11 *Service of Applications* was the former § 2301.7 *Service of Applications* in the 1991 Rules. Section § 2301.11(c) has been clarified to indicate that applicants must notify the State Single Points of Contact (SPOC) in each state relevant to the project that an application for funding has been submitted to PTFP. In the opening sentence to this section, we further clarify that the notification to the SPOC, the FCC and the state telecommunications agencies need only be a summary of the application, rather than the full application required in prior PTFP Rules. Future application materials will provide guidance as to what should be included in the summary to provide adequate notification to the requisite agencies while reducing the notification burden on all applicants.

Section 2301.12 Federal Communications Commission Authorizations

The new § 2301.12 *Federal Communications Commission Authorizations* was the former 2301.8 *Federal Communications Commission* in the 1991 Rules. The section contains a few minor editorial improvements in (a), (c), and (g) with no change in intent.

Section 2301.13 Public Comments

The new § 2301.13 *Public Comments* is based on the former § 2301.11 *Public Comments* in the 1991 Rules. Under the new § 2301.13(a), NTIA intends to publish a list of all applications received. This replaces the publishing of a list of applications accepted for filing (§ 2301.9(a) contained in the 1991 Rules.) The former listing of applications accepted for filing was often incomplete, as determinations of eligibility were sometimes made after the publication of the notice. NTIA believes that publication of a full listing of applications received can be done soon after the closing date, and better serves the public by permitting a longer period of time for receipt of public comments. § 2301.13(c) clarifies that copies of the applications are available for public inspection in the NTIA offices. The new § 2301.13(d) has been modified to clarify that only those public comments which oppose an application must be served on the applicant. § 2301.13(e) clarifies the use of the public comments.

Section 2301.14 Supplemental Application Information

The new § 2301.14 *Supplemental Application Information* is based on § 2301.6 *Additional Information* from the 1991 Rules. Paragraph (b)(4) of this section has been revised to reduce the burden on applicants. Where the 1991 rules require notification to NTIA of *any* changes in the applicants ''board structure, in the applicant's 501(c)(3) status, or in the applicant's Articles of Incorporation or Bylaws,'' the Proposed Rules only require notification to NTIA of changes ''that affect the applicant's eligibility.'' In the new organization of the Proposed Rules, several paragraphs have been moved into or out of this section. § 2301.15(f)(1) of the 1991 Rules was moved into this section and is now contained in the new § 2301.14(d). As previously noted, two paragraphs from the *Additional Information* section in the 1991 Rules (§§ 2301.6(d) (1) and (2)) were relocated to the new *Submission of Applications* section (§§ 2301.5 (h) and (i)).

Section 2301.15

Withdrawal of Applications

The new § 2301.15 *Withdrawal of Applications* is taken from § 2301.9(g) of the 1991 Rules and placed in this separate section for clarity. The section has been slightly revised with no change in intent.

Section 2301.16 Technical Evaluation Process

The new § 2301.16 *Technical Evaluation Process* combines elements from several sections in the 1991 Rules. The new § 2301.16(a) is based on § 2301.13 of the 1991 Rules. §§ 2301.16 (c), (d), and (e) parallel the procedures currently used by NTIA in the review of the PTFP applications and are similar to the information contained in the Notice of Closing Date for the FY 1996 Grant Cycle, published in the Federal Register on February 22, 1996 (FR xxx). The new § 2301.16(d) is also based on §§ 2301.12 (b) and (c) of the 1991 Rules.

Section 2301.17 Evaluation Criteria for Construction and Planning Applications

The new § 2301.17 *Evaluation Criteria for Construction and Planning Applications* is totally new and replaces § 2301.13 *Funding Criteria for Construction Applications* and § 2301.14 *Funding Criteria for Planning Applications* in the 1991 Rules. The new § 2301.17 proposes six broad criteria upon which the applications will be evaluated. These are: Project Objectives, Applicant Qualifications, Urgency, Financial Qualifications, Special Consideration, and either Technical Qualifications (for construction projects) or Planning Qualifications (for planning projects). This new section combines the evaluation criteria for planning and construction applications in one place, reduces redundancy and clarifies the evaluation criteria. The Agency will provide each applicant with guidance in the application materials on the appropriate type of documentation to meet each of the evaluation criteria which reflects the type and priority of the application being proposed. We have not assigned a weight to each of the criterion. In prior years, we have weighted all criteria equally. We are soliciting comment on the appropriate weights to be assigned.

Section 2301.18 Selection Process

The new § 2301.18 *Selection Process* is a new section which serves to distinguish the evaluation factors used in § 2301.17 from those additional factors used in the selection of the grant. §§ 2301.18 (a) and (b) parallel the procedures currently used by NTIA in

the selection of the PTFP applications for funding and are similar to the information contained in the Notice of Closing Date for the FY 1996 Grant Cycle, published in the Federal Register on February 22, 1996 (Fed. Reg. Vol. 61, No. 36, p. 6912). The new § 2301.18(c) is the same as § 2301.8(h) of the 1991 Rules. The new §§ 2301.16 (d) and (e) are based on § 2301.15 (a) and (b) of the 1991 Rules.

Section 2301.19 General Conditions Attached to the Federal Award

The new § 2301.19 *General Conditions Attached to the Federal Award* is the first of several new sections which are derived from § 2301.22 *Conditions Attached to the Federal Award* in the 1991 Rules. The new § 2301.19 combines, in order, the following paragraphs from § 2301.22 of the 1991 Rules, (b)(1), (2), (3), (16), (4), (5), (11), and 2301.22(d). The remainder of § 2301.22 in the 1991 Rules has been included in other sections as discussed below or deleted as unnecessary. The new § 2301.19(c) is based on § 2301.23(c)(1) of the 1991 rules with the last two sentences of the new § 2301.19(c) added for clarity.

Section 2301.20 Schedules and Reports

The new § 2301.20 *Schedules and Reports* is based on §§ 2301.22(b) (8) and (12) *Conditions Attached to the Federal Grant* in the 1991 Rules. These two paragraphs have been given their own section for clarity. Several adjoining paragraphs, including §§ 2301.22(b) (9)–(11) and (13)–(17) have been deleted as unnecessary as they are redundant with other sections of the Proposed Rules or restate other law or OMB circulars.

Section 2301.21 Payment of Federal Funds

The new § 2301.21 *Payment of Federal Funds* is based on § 2301.18 *Payment of the Federal Grant* of the 1991 Rules. § 2301.18(c) was removed from this section of the 1991 Rules and was relocated to the new § 2301.20(c) as more appropriate.

Section § 2301.22 Protection, Acquisition and Substitution of Equipment

The new § 2301.22 *Protection, Acquisition and Substitution of Equipment,* is based on §§ 2301.22(a) and 2301.22(b)(7) of the 1991 Rules. Several portions of these paragraphs have been deleted as redundant with other sections of the Proposed Rules. The new § 2301.22 includes several changes designed to provide the Agency with flexibility in administering the program and to lessen the regulatory impact on grantees. These changes deal with the conditions under which a grantee is required to provide evidence of liens, insurance and leases sufficient to protect the Federal government's 10 year reversionary interest in the PTFP funded equipment. The 1991 Rules do not provide NTIA with any flexibility in requiring these items. The Proposed Rules discuss the requirements that a grantee protect the Federal government's interest in PTFP funded equipment by obtaining insurance, having sufficient lease/ownership rights to property, and securing the Federal interest by a lien. However, the Proposed Rules delete specific ways that these items must be documented to the Agency. For example, the new § 2301.22(a) reduces a prior ''The grantee shall'' in the 1991 Rules (§ 2301.18(a)) to the lesser ''The Agency may require a grantee to'' provide liens within 90 days after a grant award is received. Language reflecting this approach also appears in §§ 2301.22(g)(4), 2301.23((b)(8) and 2301.25(b). Likewise, specific requirements for an attorney's letter of certification on property lease/ ownership right is also deleted from the regulations. NTIA would like to explore alternate ways to protect the Federal interest which will reduce the burden on grantees. We are therefore proposing to revise these sections of the Proposed Rules to permit this future flexibility.

The new § 2301.22(e) replaces § 2301.22(c) of the 1991 Rules. NTIA is proposing to delete several restrictions on the lease of equipment, specifically the former § 2301.22(c)(1), which required that the lease be for ''not less than the (10) years,'' and § 2301.22(c)(2), which limited the cost of the lease to ''not be more than the total of the non-Federal share of the matching funds.'' NTIA believes that these statements were overly restrictive and now proposes to consider any lease that is to the ''benefit to the Federal government'' (new § 2301.22(e)(1)).

The new §§ 2301.22 (f)–(h) are based on § 2301.23 (c) and (d) *Grant Suspension, Terminations and Transfers* in the 1991 Rules and have been revised for clarity.

Section 2301.23 Completion of Projects

The new § 2301.23 *Completion of Projects* is based on § 2301.20 *Completion of Projects* in the 1991 Rules. Several paragraphs have been renumbered and minor changes have been made in §§ 2301.23(a)(4) and (b)(1) to improve clarity. The requirement in § 2301.23(b)(4) to provide a copy of the insurance policy has been dropped inasmuch as the same paragraph requires that the grantee must certify its insurance coverage. Paragraph § 2301.24(c) was contained in § 2301.18 in the 1991 Rules and is more appropriate in this section. This sentence has been revised to clarify that the project completion date is usually the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the project is complete.

Section 2301.24 Final Federal Payment

The new § 2301.24 *Final Federal Payment* is a revision of § 2301.16(d) of the 1991 Rules. This paragraph was given its own section in the Proposed Rules for clarity. The language of the section has been simplified without changing the intent.

Section 2301.25 Retention of Record and Annual Status Reports

The new § 2301.25 *Retention of Records and Annual Status Reports* is based on § 2301.19 *Retention of Records* and § 2301.21 *Annual Status Reports for Construction Projects* in the 1991 Rules. The section was shortened and the language retained notifies applicants and grantees of NTIA's basic record keeping requirements. Further information on records retention will be included in materials sent to grantees at the time an award is made. The detailed procedural information that is required in the annual status report has been deleted from the proposed rule and will be provided to grantees at the time a project is closed out.

Section 2301.26 Waivers

The new § 2301.26 *Waivers* is based on § 2301.25 *Waivers* in the 1991 Rules. A sentence was added to clarify the Administrator's waiver authority.

One significant section of the 1991 Rules has been deleted in its entirety. This is § 2301.10 *Appeals.* Applicants are given the opportunity to request a preliminary determination of eligibility, and are provided written notice. The Appeals process was rarely used.

We are also taking this opportunity to restate several long standing PTFP policies which were published in the preambles of previous PTFP rules. The following policies remain in effect:

Evidence of Tax-Exempt Status

Applicants who are eligible for a Section 501(c)(3) exemption from the IRS or the equivalent exemption from the Commonwealth of Puerto Rico must

submit a copy of that exemption. Applicants who are ineligible for Section 501(c)(3) exemption but who can demonstrate nonprofit status by showing an applicable State tax exemption will be considered on a case-by-case basis. They must submit: (a) evidence of their State tax-exempt status; (b) citation to, and a copy of, the State statutory provisions governing that exemption; and (c) a brief statement explaining why they lack a Section 501(c)(3) exemption. (Fed. Reg. Vol. 44, No. 104, p. 30899)

Equipment Which Becomes Obsolete Before the end of the 10 Year Period of Federal Interest

In the case of equipment which become obsolete or wears out before the 10-year period of Federal interest expires, we will permit the trade-in or sale of the equipment and application of the remaining portion of the 10-year period to the new equipment. (Fed. Reg. Vol. 44, No. 104, p. 30910)

Selection of Priority

In preparing the narrative portions of its application, each applicant should state under which priority it desires NTIA to consider its application. In doing so, each applicant makes sure that its application contains sufficient documentation to justify its qualification under the selected priority. NTIA will then evaluate the application with the selected priority unless the Agency determines that the priority selected by the applicant is not supported by the documentation provided. Each applicant will be notified of any change in the priority under which its application is to be considered. Such notifications will be in writing and will not be subject to appeal. (Fed. Reg. Vol. 47, No. 228, p. 53653)

Award of Deferred Applications

The Administrator retains the discretion to award grants to deferred applications at any time where the Administrator can determine with reasonable certainty that the particular project is exceptionally meritorious (on the basis of the Agency's preliminary determination of all other applications within the priority) and that the Agency would fund the project after completing the evaluation of all the application in the priority (on the basis of the Agency's prior experience in making grants.) Under this process, the Agency will be able to fund applications that the Agency had deferred in the prior year because of technical problems (such as the inability to obtain the necessary FCC authorizations) which have since been eliminated. (Fed. Reg. Vol. 47. No. 50, p. 11232.)

Support for Salary Expenses

NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily the funding of salary expenses, even when allowed by law. Moreover, NTIA notes that the competition for PTFP funding remains intense. To ensure that PTFP monies are distributed as effectively as possible in this competitive atmosphere, NTIA must weigh carefully its support for any project cost not directly involved with the purchase of equipment.

Therefore, NTIA generally will not fund salary expenses, including staff installation costs, pre-application legal and engineering fees, and pre-operational expenses of new entities. NTIA will support such costs only when the applicant demonstrates that exceptional need exists or that substantially greater efficiency would result from the use of staff installation instead of contractor installation.

As regards the installation of transmission equipment, NTIA strongly favors the use of either manufacturer or professional contractor personnel and commonly funds these costs. NTIA believes that the value of transmission equipment and the complicated nature of its installation require expertise beyond that normally found on station staffs.

NTIA will rarely support requests for assistance for the installation of studio and test equipment, whether that installation is by staff or by contract employees. Such installation is normally of minimum difficulty, and the associated installation costs should be absorbed in the recipient's normal operating budget. Again, NTIA will take into account demonstrations of exceptional need. (Fed. Reg. Vol. 56, No. 226, p. 59172)

It has been determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

A Regulatory Flexibility Analysis is not required under The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rules were not required to be promulgated as proposed rules before issuance as final rules by § 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that these rules will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared. Notwithstanding any other provision of law, no person is required to respond to nor shall a 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 of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements contained in these rules pursuant to the Paperwork Reduction Act under OMB Control Nos. 0660–0003, 0660–0001 and 0605–0001. The public reporting burden for the application requirements vary from 16 hours to 200 hours with an estimated average of 125 hours per application, including associated exhibits; the reporting and record keeping burden for the grant monitoring reports vary from 1 to 24 hours depending on the respective requirement; and, the reporting burden for the name-check form (CD–346) is estimated at 15 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing this burden, to the Office of Policy and Coordination and Management, NTIA, U.S. Department of Commerce, Washington, D.C. 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NTIA Desk Officer).

(Catalogue of Federal Domestic Assistance No. 11.550)

List of subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting requirements, Telecommunications.

Larry Irving,

Administrator.

Part 2301 of Title 15, Code of Federal Regulations, is proposed to be revised to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—General

Sec.

2301.1 Program purposes.
2301.2 Definitions.

Subpart B—Application Requirements

2301.3 Applicant eligibility.
2301.4 Scope of projects.
2301.5 Special consideration.
2301.6 Amount of Federal funding.
2301.7 Eligible and ineligible project costs.
2301.8 Submission of applications.
2301.9 Deferred applications.
2301.10 Applications resulting from catastrophic damage or emergency situations.
2301.11 Service of applications.
2301.12 Federal Communications Commission authorizations.
2301.13 Public comments.
2301.14 Supplemental application information.
2301.15 Withdrawal of applications.

Subpart C: Evaluation and Selection Process

2301.16 Technical evaluation.
2301.17 Evaluation criteria for construction and planning applications.
2301.18 Selection process.

Subpart: D: Post-Award Requirements

2301.19 General conditions attached to the Federal Award.
2301.20 Schedules and reports.
2301.21 Payment of Federal funds.
2301.22 Protection, acquisition and substitution of equipment.

Subpart E: Completion of Projects

2301.23 Completion of projects.
2301.24 Final Federal payment.
2301.25 Retention of records and annual status reports.

Subpart F: Waivers

2301.26 Waivers.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. §§ 390–393 (Act). (Catalog of Federal Domestic Assistance No. 11.550)

Subpart A—General

§ 2301.1 Program Purposes.

Pursuant to section 390 of the Act, (The Communications Act of 1934, as amended), the purpose of the Public Telecommunications Facilities Program (PTFP) is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(a) Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(b) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(c) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

§ 2301.2 Definitions.

Act means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–393 and 397–399b, as amended.

Administrator means the Assistant Secretary for Communications and Information of the United States Department of Commerce who is also Administrator of the National Telecommunications and Information Administration.

Agency means the National Telecommunications and Information Administration of the United States Department of Commerce.

Broadcast means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

Closing date means the date which the Administrator sets as the deadline for the receipt of applications during a grant cycle.

Construction (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

Department means the United States Department of Commerce.

FCC means the Federal Communications Commission.

Federal interest period means the period of time during which the Federal government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project. Although OMB Circular A–110 §§ ____.33 and ____.34 and 15 CFR 24.31 and 24.32, specify that the Federal government maintains a reversionary interest in the facilities for as long as the facilities are needed for the originally authorized purpose, PTFP's authorizing statute (47 U.S.C. 392(g)) limits the reversionary period for ten years for purposes of this program. However, Federal limitations on the use of the facilities survive for the useful life of the facilities whether or not this period extends beyond the ten year Federal interest period.

Minorities means American Indians, Alaska Natives, Asian or Pacific Islanders, Hispanics, and Blacks, not of Hispanic Origin.

Nonbroadcast means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast technologies are Instructional Television Fixed Service (ITFS), satellite systems, and coaxial or fiber optic cable.

Noncommercial educational broadcast station or public broadcast station means a television or radio broadcast station that is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

Noncommercial telecommunications entity means any enterprise that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and that has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

Nonprofit (as applied to any foundation, corporation, institution, or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operational cost means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

Planning (as applied to public telecommunications facilities) means activities to form a project for which PTFP construction funds may be obtained.

Pre-operational costs means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such costs shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

PTFP means the Public Telecommunications Facilities Program, which is administered by the Agency.

PTFP Director means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

Public telecommunications entity means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

Public telecommunications facilities means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

Public telecommunications services means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

Sectarian means that which has the purpose or function of advancing or propagating a religious belief.

State includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

System of public telecommunications entities means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Subpart B—Application Requirements

§ 2301.3 Applicant eligibility.

(a) To apply for and receive a PTFP Construction or Planning Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

(b) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(c) If an applicant does not meet the eligibility requirements of this section, the application may be rejected and returned without further consideration.

(d) An applicant may request a preliminary determination of eligibility any time prior to the closing date.

§ 2301.4 Scope of projects.

An eligible applicant may file an application with the Agency for a planning or construction grant. To achieve the objectives set forth at 47 U.S.C. 393(b), the Agency has developed the following categories. Each application shall be identified as a broadcast or nonbroadcast project and must fall within at least one of the following categories:

(a) *Special applications.* NTIA possesses the discretionary authority to recommend awarding grants to eligible nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed in paragraph (b) of this section. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to the blind or deaf and nonbroadcast projects offering educational or instructional services).

(b) *Priorities.* (1) Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area. Within this category, NTIA establishes three subcategories:

(i) Priority 1A. Projects that include local origination capacity. This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs, including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

(ii) Priority 1B. Projects that do not include local origination capacity. This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks, and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

(iii) Priority 1C. Projects that provide first nationally distributed programming. This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally distributed programming to a geographic area for the first time.

(iv) Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, *i.e.*, areas that do not receive public telecommunications services (It should be noted that television and radio are considered separately for the purposes of determining coverage. In reviewing applications from FM stations that propose to serve, or that already serve, areas covered by AM-daytime only stations, PTFP will evaluate the amount of service provided via the AM-daytime only station in determining whether the FM proposal qualifies for a Priority 1 or Priority 2, as appropriate.)

(v) An applicant proposing to plan or construct a facility to serve a geographical area that is presently unserved should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.

(2) Priority 2—Replacement of Basic Equipment of Existing Essential Broadcast Stations.

(i) Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment at ''essential stations'' (*i.e.*, existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area).

(ii) To show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting

non-availability of parts). Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

(iii) The distinction between Priority 2 and Priority 4 is that Priority 2 is for the urgent replacement of basic equipment for essential stations. Where an applicant seeks to ''improve'' basic equipment in its station (*i.e.*, where the equipment is not ''worn out''), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority 4.

(3) Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area.

(i) Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters, or cable systems,

(ii) Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.

(4) Priority 4—Improvement of Public Broadcasting Services:

(i) Projects eligible for consideration under this category are intended to improve the delivery of public broadcasting services to a geographic area. These projects include the establishment of a public broadcast facility to serve a geographic area already receiving public telecommunications services, projects for the replacement of basic obsolete or worn-out equipment at existing public broadcasting facilities and the upgrading of existing origination or delivery capacity to current industry performance standards (*e.g.*, improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority 2, applicants seeking to replace or improve basic equipment under Priority 4 should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records). Within this category, NTIA establishes two subcategories:

(ii) Priority 4A.

(A) Applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria because they do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

(B) The establishment of public broadcasting facilities to serve a geographic area already receiving public telecommunications services. The applicant must demonstrate that it will address underserved needs in an area which significantly differentiates its service from what is already available in its service area.

(C) The acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

(D) The acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This is intended to assist stations that went on the air with a complement of equipment well short of what the Agency considers as the basic complement.

(iii) Priority 4B. The improvement and non-urgent replacement of equipment at any public broadcasting station.

(5) Priority 5 Augmentation of Existing Broadcast Stations. Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

(i) Priority 5A. Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities. An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios, or facilities in other locations within a station's service area that would make participation in local programming accessible to additional segments of the population.

(ii) Priority 5B. Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution. This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

(c) An applicant may request a preliminary determination of whether a proposed project fits within at least one of the categories listed in this section any time prior to the closing date.

(d) All applications will be reviewed after the closing date. If an application does not fall within one of the listed categories, it may be rejected and returned without further consideration.

§ 2301.5 Special consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. The special consideration element is provided as one of several funding criteria contained in the regulations, specifically, at 15 CFR section 2301.17(b)(6).

§ 2301.6 Amount of Federal funding.

(a) *Planning grants.* The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(b) *Construction grants.* (1) A Federal grant for the construction of a public telecommunications facility may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(i) Seventy-five (75) percent Federal funding will be the general presumption for projects to activate stations or to extend service.

(ii) Fifty (50) percent Federal funding will be the general presumption for the replacement, improvement or augmentation of equipment. A showing of extraordinary need (*i.e.* small community-licensee stations or a station that is licensed to a large institution [*e.g.*, a college or university] documenting that it does not receive direct or in-kind support from the larger institution), or an emergency situation will be taken into consideration as justification for grants of up to 75% of the total project cost for such proposals.

(2) Since the purpose of the PTFP is to provide financial assistance for the acquisition of public telecommunications facilities, Total Project Costs do not normally include the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justifications are provided to PTFP. Obligating funds—either in whole or in part—for equipment before the closing date is considered ownership or acquisition of equipment. In like manner, accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

(c) No part of the grantee's matching share of the eligible project costs may be met with funds:

(1) Paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute, or

(2) Supplied to an applicant by the Corporation for Public Broadcasting, except upon a clear and compelling showing of need.

(d) No funds from the Federal share of the total project cost may be obligated until the award period start date. If an applicant or recipient obligates anticipated Federal Award funds before the start date, the Department may refuse to offer the award or, if the award has already been granted, disallow those costs of the grant. After the closing date, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment.

§ 2301.7 Eligible and ineligible project costs.

(a) Each year the Agency reviews its list of eligible and ineligible equipment, supplies, and costs. The list is published in the Federal Register as part of the solicitation for applications and a copy is provided with every application package for PTFP grants.

(b) All broadcast equipment that a grantee acquires under this program shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

(c) Total project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date unless approved by PTFP on a case-by-case basis in writing pursuant to § 2301.6(b)(2).

§ 2301.8 Submission of applications.

(a) Applications can be obtained from the following address: Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., Room H–4625, Washington, DC 20230.

(b) The Administrator shall select and publish in the Federal Register a closing date by which applications for funding in a current fiscal year are to be filed.

(c) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in the annual Federal Register announcement requesting applications at or before 5:00 p.m. on the closing date. Applications received after the closing date shall be rejected and returned without further consideration.

(d) A complete application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) Each copy of the Agency application must contain an original signature of an officer of the applicant who is legally authorized to sign for the applicant.

(f) Applicants must certify whether they are delinquent on any Federal debt.

(g) Applicants may be required to submit Name Check forms (Form CD–346) which may be used to ascertain background information on key individuals associated with potential grantees as part of the application, per Department Pre-Award Administrative Requirements and Policies.

(h) Applicant organizations may also be subject to a responsibility determination by the Department which may include, but not be limited to reviews of financial and other business activities. Responsibility determinations are intended to ascertain whether potential grantee organizations or their key personnel have been involved in or are facing any matters that might significantly and negatively impact on their business honesty, financial integrity and/or ability to successfully perform the proposed grant activities.

(i) Unsatisfactory performance by the applicant under prior Federal awards may result in the application not being funded.

§ 2301.9 Deferred applications.

(a) An applicant may reactivate an application deferred by the Agency during the prior year if the applicant has not substantially changed the stated purpose of the application.

(b) An applicant may reactivate a deferred application only during the two consecutive years following the application's initial filing with the Agency.

(c) To reactivate a deferred application, the applicant must file an updated application, whether mailed or hand delivered, at or before 5:00 p.m. on the closing date.

(d) An updated application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) Deferred applications that are resubmitted under this section and contain substantial changes will be considered as new applications.

(f) All deferred applications may be subject to a determination of eligibility during subsequent grant cycles.

§ 2301.10 Applications resulting from catastrophic damage or emergency situations.

(a) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.26, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of complete equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment.

(b) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(c) A waiver will be granted only if it is determined that the applicant either carried adequate insurance or had acceptable self-insurance coverage.

(d) Applications filed and accepted pursuant to this section must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) The application will be subject to the same evaluation and selection process followed for applications received in the normal application cycle, although the Administrator may establish a special timetable for evaluation and selection to permit an appropriately timely decision.

§ 2301.11 Service of applications.

On or before the closing date all new or deferred applicants must serve a summary copy of the application on the following agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554;

(b) The state telecommunications agency(-ies), if any, having jurisdiction

over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and

(c) The state office established to review applications under Executive Order 12372, as amended by Executive Order 12416, in all states where equipment requested in the application will be located and where the state has established such an office and wishes to review these applications.

§ 2301.12 Federal Communications Commission authorizations.

(a) Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. NTIA recommends that its applicants submit PTFP-related FCC applications to the FCC at least 60 days prior to the PTFP closing date. The applicant should clearly identify itself to the FCC as a PTFP applicant.

(b) In the case of FCC authorizations where it is not possible or practical to submit the FCC license application with the PTFP application, such as C-band satellite uplinks, low power television stations and translators, remote pickups, studio-to-transmitter links, and Very Small Aperture Terminals, a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.

(c) Applications requesting C-band downlinks are not required to submit the FCC application or equivalent engineering data as part of the PTFP application. When such a project is funded, however, grantees will be required to submit evidence of FCC registration of the C-band downlink prior to the release of Federal funds.

(d) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(e) If the project is to be associated with an existing station, the FCC operating authority for that station must be current and valid.

(f) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(g) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may reject and return the application.

(h) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.13 Public comments.

(a) After the closing date, the Agency will publish a list of all applications received.

(b) The applicant shall make a copy of its application available at its offices for public inspection during normal business hours.

(c) A copy of the application will be available in the PTFP offices for public inspection during normal business hours.

(d) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Any opposing comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.8(a).

(e) The Agency shall incorporate all comments from the public and any replies from the applicant in the applicant's official file for consideration during the evaluation of the application.

§ 2301.14 Supplemental application information.

(a) The Agency may request from the applicant any additional information that the Agency deems necessary to clarify the application. Applicants must provide to the Agency additional information that the Agency requests within fifteen (15) days of the date of the Agency's notice. Applicants must submit a copy of the requested information for each copy of the application submitted by the Closing Date.

(b) Applicants must immediately provide to the Agency information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receipt (or denial) of a proposed substantial matching gift;

(4) Changes that affect the applicant's eligibility under § 2301.3;

(5) Changes in the status of proposed production, participation, or distribution agreements (if relevant to the proposed project);

(6) Changes in lease or site rights agreements; and

(7) Complete failure of major items of equipment for which replacement costs have been requested or changes in the status of the need for the equipment requested.

(c) Applicants must place copies of any additional information submitted to the Agency in the copy of the application made available for public inspection pursuant to § 2301.13.

(d) Applicants may not contact the Department to discuss the merits of an application when it is under review.

§ 2301.15 Withdrawal of applications.

(a) Applicants may request withdrawal of an application from consideration for funding without affecting future consideration. Withdrawn applications will be returned by the Agency.

(b) A request that the Agency defer an application for consideration in a subsequent year will be treated as a request for withdrawal.

Subpart C: Evaluation and Selection Process

§ 2301.16 Technical evaluation.

(a) In determining whether to approve or defer a construction or planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file.

(b) PTFP grants are awarded on the basis of a competitive review process. The evaluation of the applications is based upon the evaluation criteria provided under § 2301.17.

(c) The competitive review process may include the following: evaluation by PTFP staff; technical assessment by engineers; an evaluation by outside reviewers, all of whom have demonstrated expertise in either public broadcasting or distance learning; and rating by a national advisory panel, composed of representatives of major national public radio and television organizations.

(d) In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult (as appropriate) with the FCC, the Corporation for Public Broadcasting, state telecommunications agencies, public broadcasting agencies, organizations, and other agencies administering programs that may be coordinated effectively with Federal assistance provided under the Act; and, the state office established to review applications under Executive Order 12372, as amended by Executive Order 12416,

(e) Based upon the evaluation criteria contained in § 2301.17, the PTFP

program staff will prepare summary evaluations. These will incorporate the outside reviewers' recommendations, engineering assessments, and program staff evaluations.

§ 2301.17 Evaluation criteria for construction and planning applications.

(a) For each application that is filed in a timely manner by an eligible applicant, is materially complete, and proposes an eligible project, the Agency will consider the following factors:

(1) *Project Objectives:* The degree to which the application documents that the proposed project fulfills the objectives and specific requirements of one or more of the categories set forth in § 2301.4.

(2) *Applicant Qualifications:* Documentation that the applicant has or will have sufficient qualified staff to complete the project, operate and maintain the facility, and provide services of professional quality.

(3) *Urgency:* Documentation that justifies funding the proposed project during the current grant cycle.

(4) *Financial Qualifications:* Documentation reflecting the applicant's ability to provide non-Federal funds required for the project, including funds for the local match and funds to cover any ineligible costs required for completion of the project; to ensure long-term financial support for the continued operation of the facility during the Federal interest period; to adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(ii)), if requested for equipment replacement, improvement, or augmentation projects; and, in the case of planning, provide non-Federal support and resources (if proposed by the applicant), including matching or in-kind support for the project.

(5)(i) *Technical Qualifications* (construction applicants only): Documentation that the eligible equipment requested is necessary to achieve the objectives of the project; that the proposed costs reflect the most efficient use of Federal funds in achieving project objectives; that the equipment requested meets current industry performance standards (and FCC standards, if appropriate); that the condition of existing equipment justifies its prompt replacement; and that an evaluation of alternative technologies has been completed that justifies the selection of the requested technology (where alternative technologies are possible).

(ii) *Planning Qualifications* (planning applicants only): Documentation : of the feasibility of the proposed planning process and timetable for achieving the expected results; that costs proposed reflect the most efficient use of Federal funds; that the applicant has sufficient qualified staff or consultants to complete the planning project with professional results; and that an evaluation of alternative technologies will be incorporated into the plan, if appropriate.

(6) *Special Consideration:* Documentation of the extent to which broadcast applications would increase minority and women's ownership of, operation of, and participation in public telecommunications entities, as stated in § 2301.5

(b) The Agency will provide each applicant with guidance in the application materials on the type of documentation necessary to meet each of the above evaluation criteria.

§ 2301.18 Selection process.

(a) The PTFP Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the Selecting Official, the NTIA Administrator, taking into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers.

(2) The scope of projects set forth at § 2301.4.

(3) Whether the application is for broadcast or a nonbroadcast project.

(4) The geographic distribution of the proposed grant awards.

(5) The availability of funds.

(b) The Administrator makes final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at § 2301.1.

(c) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

(d) After final award selections have been made, the Agency will notify the applicant of one of the following actions:

(1) Selection of the application for funding, in whole or in part;

(2) Deferral of the application for subsequent consideration;

(3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within at least one of the categories enumerated at § 2301.4; or,

(4) Return of applications that were deferred by the Agency after consideration during three grant cycles.

(e) The Agency will notify the following organizations of those applications selected for funding:

(1) The state educational telecommunications agency(-ies), if any, in any state any part of which lies within the service area of the applicant's facility;

(2) The FCC; and,

(3) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

Subpart D—Post-Award Requirements

§ 2301.19 General conditions attached to the Federal award.

(a) During the project award period and the remainder of the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.3;

(2) Obtain and continue to hold any necessary FCC authorization(s);

(3) Use the Federal funds for which the grant was made for the equipment and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project if approved in advance by the agency in writing. These changes include but are not limited to the following:

(i) Costs (including planning costs),

(ii) Essential specifications of the equipment,

(iii) The engineering configuration of the project,

(iv) Extensions of the approved grant award period, and

(v) Transfers of a grant award to a successor in interest, pursuant to § 2301.19(c).

(4) Use the facilities and any monies generated through the use of the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public, of any advertisement, unless such broadcast or transmission is expressly and specifically permitted by law or authorized by the FCC; and

(6) State when advertising for bids for the purchase of equipment that the Federal government has an interest in facilities purchased with Federal funds under this program that begins with the purchase of the facilities and continues

for ten (10) years after the completion of the project.

(b) During the period in which the grantee possesses or uses the Federally funded facilities, the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian for the useful life of the equipment even when this extends beyond the ten (10) year Federal interest period.

(c) If necessary to further the purpose of the Act, the Agency may reassign a grant to a successor in interest or subsidiary corporation of a grantee in cases where a similar operational entity remains in control of the grant and the original objectives of the grant remain in effect. Each party must provide, in writing, its assent to the substitution. Any substituted party must meet the eligibility requirements.

§ 2301.20 Schedules and Reports.

(a) Within thirty (30) calendar days of the award date the grantee shall submit to the Agency, in duplicate, a construction schedule or a revised planning timetable that will include the information requested in the grant terms and conditions in the award package.

(b) During the project period of this grant, the grantee shall submit performance reports, in duplicate, on a calendar year quarterly basis for the period ending March 31, June 30, September 30, and December 31, or any portions thereof. The Quarterly Performance Reports should contain the following information:

(1) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;

(2) A description of any problems that have arisen or reasons why established goals have not been met;

(3) Actions taken to remedy any failures to meet goals; and

(4) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description, number and date of the items purchased, and cost.

§ 2301.21 Payment of Federal funds.

(a) The Department will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this Part. Additionally:

(1) The Department will not make any payment until it receives confirmation that the FCC has granted any necessary authorization;

(2) The Department may not make any payment under an award unless and until all special award conditions stated in the award documents that condition the release of Federal funds are met; and

(3) An agreement to share ownership of the grant equipment (*e.g.*, a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

(b) As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.

§ 2301.22 Protection, acquisition and substitution of equipment.

(a) To assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the Federal interest period, the Agency may require a grantee to:

(1) Execute and record a document establishing that the Federal government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located; and

(2) File a certified copy of the recorded lien with the Administrator ninety (90) days after the grant award is received.

(b) The grantee shall maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project. The grantee shall purchase flood insurance (in communities where such insurance is available) if the facilities will be constructed in any area that has been identified by the Secretary of Health and Human Services as having special flood hazards.

(c) The grantee shall not dispose of or encumber its title or other interests in the equipment acquired under this grant during the Federal interest period.

(d) The grantee shall demonstrate that the grantee has obtained appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated. The grantee must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment to assure the sufficient continuity of operation of the facility; and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property.

(e) The Agency will allow the acquisition of facilities by lease; however, the following requirements apply:

(1) The lease must be of benefit to the Federal government;

(2) The actual amount of the lease must not be more than the outright purchase price would be; and

(3) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal government has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(f) *Transfer of equipment.* Where the grant equipment is no longer needed for the original purposes of the project, the Agency may transfer the equipment to the Federal government or an eligible third party, in accordance with Office of Management and Budget guidelines.

(g) *Transfer of Federal interest to different equipment.* The Agency may transfer the Federal interest in PTFP-funded equipment to other eligible equipment presently owned or to be purchased by the grantee with non-Federal monies, provided the following conditions are met:

(1) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in the new equipment must be at least equal to the Federal interest in the original equipment.

(2) Equipment previously funded by PTFP that is within the Federal interest period may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(3) The same item can be used only once to substitute for the Federal interest. However, the Federal interest in several items of equipment from different grants may be transferred to a single item if the request for all such transfers is submitted at the same time.

(4) A lien on equipment transferred to the Federal interest may be required by PTFP and must be recorded in accordance with § 2301.23(b)(8). A copy of the lien document must be filed with the PTFP within sixty (60) days of the date of approval of the transfer of Federal interest.

(h) *Termination by buy-out.* A grantee may terminate the Federal revisionary interest in a PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

Subpart E—Completion of Projects

§ 2301.23 Completion of projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any report or study conducted in whole or in part with funds provided under this program by sending the copies to the Agency.

(1) This report shall meet the goals and objectives for which the grant is awarded and shall follow the written instructions and guidance provided by the Agency. The grant award goals and objectives are stated in the planning narrative as amended and are incorporated by reference into the award agreement.

(2) The Agency shall review this report for the extent to which those goals and objectives are addressed and met, for evidence that the work contracted for under the grant award was in fact performed, and to determine whether the written instructions and guidance provided by the Agency, if any, were followed.

(3) If the Agency determines that the report fails to address or meet any grant award goals or objectives, or if there is no evidence that the work contracted for was in fact performed, or if this report clearly indicates that the written instructions and guidance provided by the Agency, if any, were disregarded, then the Agency may pursue remedial action.

(4) An unacceptable final report may result in the disallowance of claimed costs and the establishment of an account receivable by the Department.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has acquired, installed, and begun operating the project equipment in accordance with the project as approved by the Agency, and has complied with all terms and conditions of the grant as specified in the Grant Award document;

(2) Certify that the grantee has obtained any necessary FCC authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same;

(3) Certify and document that the facilities have been acquired, that they are in operating order, and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency;

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty;

(5) Certify, if not previously provided, that the grantee has acquired all necessary leases or other site rights required for the project;

(6) Certify, if appropriate, that the grantee has qualified for receipt of funds from the Corporation for Public Broadcasting;

(7) Provide a complete and accurate final inventory of equipment acquired under the project and a final accounting of all project expenditures, including non-equipment costs (e.g., installation costs); and

(8) Execute and record a final priority lien, if required by PTFP, reflecting the completed project and assuring the Federal government's reversionary interest in all equipment purchased under the grant project for the duration of the Federal interest period.

(c) When an applicant completes a construction project, the Agency will assign a completion date that the Agency will use to calculate the termination date of the Federal interest period. The completion date will usually be the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.23(b)(1). If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.

§ 2301.24 Final Federal payment.

If the total allowable, allocable, and reasonable costs incurred in completing the planning or construction project are less than the total project award amount, the Agency shall reduce the amount of the final Federal share on a pro rata basis. If, however, the actual costs incurred in completing the project are more than the estimated total project costs, then in no case will the final Federal funds paid exceed the initial grant award.

§ 2301.25 Retention of records and annual status reports.

(a) All grantees shall keep intact and accessible all records specified in Office of Management and Budget Circular A–110 (for educational institutions, hospitals, and nonprofit organizations), or 15 CFR part 24 (for State and Local Governments), and 15 CFR part 29a (Audit Requirements for State and Local Governments) or 15 CFR part 29b (Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations), as appropriate.

(b) Recipients of construction grants:

(1) Are required to submit an Annual Status Report for each grant project that is in the Federal interest period. The Reports are due no later than April 1 in each year of the period. Information about what is to be included in the Annual Status Report is supplied to grant recipients at the time grants are closed out.

(2) Shall retain an inventory of the equipment for the duration of the ten year Federal interest period and shall mark project apparatus in a permanent manner to assure easy and accurate identification and reference to inventory records. The marking shall include the PTFP grant number and an inventory number assigned by the grantee.

(3) May also be required to take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

Subpart F: Waivers

§ 2301.26 Waivers.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act. Waivers may only be granted for regulatory requirements that are discretionary and not statutorily mandated.

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REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Printing and publishing industry operations; published 5-30-96

Air quality implementation plans; approval and promulgation; various States:
- Iowa; published 4-30-96

Clean Air Act:
- Fuel and fuel additives--
  - Federal gasoline Reid Vapor Pressure volatility standard (1996 and 1997); relaxation; published 4-15-96
- State operating permits programs--
  - Tennessee; published 4-30-96

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:
- Private land mobile services--
  - Automatic vehicle monitoring systems; published 4-30-96

FEDERAL TRADE COMMISSION

Industry guides:
- Metallic watch band industry; CFR part removed; published 5-30-96

INTERIOR DEPARTMENT

National Park Service

National Park System:
- Glacier Bay National Park, AK; vessel management plan; published 5-30-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- Columbia River, WA; safety zone; published 4-30-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Societe Nationale Industrielle Aerospatiale and Eurocopter France; published 4-25-96

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:
- Nonpayroll withheld tax liabilities; reporting; published 5-30-96

Income taxes:
- Meals and entertainment, club dues, and spousal travel; expenses paid by employer; published 5-30-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in Florida; comments due by 6-3-96; published 5-2-96

Onions (sweet) grown in Washington and Oregon; comments due by 6-5-96; published 5-6-96

Onions grown in--
- Idaho et al.; comments due by 6-5-96; published 5-6-96

Potatoes (Irish) grown in--
- Washington; comments due by 6-5-96; published 5-6-96

Spearmint oil produced in Far West; comments due by 6-5-96; published 5-6-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Garbage that can introduce diseases or pests of livestock, poultry, or plants; disposal by cruise ships in landfills at Alaskan ports; comments due by 6-4-96; published 4-5-96
- Hog cholera and swine vesicular disease; disease status change--
  - Netherlands; comments due by 6-3-96; published 4-4-96
- Horses; permanent private quarantine facilities; comments due by 6-3-96; published 5-6-96

Interstate transportation of animals and animal products (quarantine):
- Tuberculosis in cervids; identification requirements; comments due by 6-3-96; published 4-4-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery management councils; hearings:
- New England; comments due by 6-4-96; published 5-10-96

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
- Fee revisions; comments due by 6-5-96; published 5-1-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Clothes washers; test procedures, etc.; comments due by 6-6-96; published 4-22-96

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Oil pipelines:
- Cost-of-service filing requirements; comments due by 6-3-96; published 5-3-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification--
  - Detroit Diesel Corp.; comments due by 6-3-96; published 4-17-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-3-96; published 5-2-96
- Illinois; comments due by 6-5-96; published 5-6-96
- Ohio; comments due by 6-5-96; published 5-6-96
- Utah; comments due by 6-5-96; published 5-6-96

Clean Air Act:
- Consumer products; national volatile organic compound emission standards; comments due by 6-3-96; published 4-2-96
- State operating permits programs--
  - Rhode Island; comments due by 6-5-96; published 5-6-96
  - Rhode Island; comments due by 6-5-96; published 5-6-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Chloroxuron, etc.; comments due by 6-3-96; published 4-3-96

Superfund program:
- National oil and hazardous substances contingency plan--
  - National priorities list update; comments due by 6-5-96; published 5-6-96
  - National priority list update; comments due by 6-3-96; published 5-3-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Wireless services; cellular spectrum priority access; national security/emergency preparedness responsiveness; rulemaking petition; comments due by 6-3-96; published 4-26-96

FEDERAL TRADE COMMISSION

Magnuson-Moss Warranty Act interpretations, etc.; comments due by 6-3-96; published 4-3-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Color additives:
- Color additive lakes; safe use in food, drugs, and cosmetics; permanent listing; comments due by 6-3-96; published 3-4-96

GRAS or prior-sanctioned ingredients:
- Meat and poultry products; substances approved; comment period reopening; comments due

by 6-3-96; published 4-3-96

Human drugs:

Antiflatulent products (OTC); monograph amendment; comments due by 6-3-96; published 3-5-96

Medical devices:

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Neodymium: yttrium:aluminum:garnet (Nd:YAG) laser; reclassification from Class III to Class II; comments due by 6-6-96; published 3-8-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

National Environmental Policy Act; implementation; comments due by 6-4-96; published 4-5-96

INTERIOR DEPARTMENT

Land Management Bureau

Marginal gas producers; production incentives through royalty reductions; comment request; comments due by 6-3-96; published 3-5-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Northern spotted owl; comments due by 6-3-96; published 4-8-96

Endangered Species Convention:

River otters taken in Missouri; export; comments due by 6-3-96; published 4-2-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Federal lands program:

State-Federal cooperative agreements; Federal regulatory review; comments due by 6-3-96; published 4-4-96

Permanent program and abandoned mine land reclamation plan submissions:

Arkansas; comments due by 6-3-96; published 5-3-96

Virginia; comments due by 6-3-96; published 5-3-96

JUSTICE DEPARTMENT

Persons of Japanese ancestry; redress provisions; comments due by 6-6-96; published 4-22-96

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Interpretive bulletins and regulations removed; comments due by 6-3-96; published 4-3-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

Acquisition of securities during existence of underwriting syndicate; comments due by 6-3-96; published 3-27-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Tampa Bay, Hillsborough Bay and approaches, FL: safety zone; comments due by 6-3-96; published 4-2-96

Regattas and marine parades:

First Coast Guard District fireworks displays; comments due by 6-6-96; published 5-23-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airports:

National Capital airports; CFR part removed; comments due by 6-3-96; published 5-2-96

Airworthiness directives:

de Havilland; comments due by 6-3-96; published 4-23-96

Empressa Brasileira de Aeronautica, S.A.; comments due by 6-3-96; published 4-23-96

McDonnell Douglas; comments due by 6-4-96; published 4-10-96

Class E airspace; comments due by 6-3-96; published 4-9-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Parts and accessories necessary for safe operation--

Television receivers and data display units; comments due by 6-3-96; published 4-3-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

National Driver Register transition procedures; comments due by 6-3-96; published 4-17-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Interlocking rail officers and directors; authorization; comments due by 6-3-96; published 5-13-96

Tariffs and schedules:

Pipeline common carriage; change of rates and other service terms; disclosure and notice; comments due by 6-4-96; published 5-15-96

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Federal Unemployment Tax Act (FUTA) and Federal Insurance Contributions Act (FICA); taxation of amounts under employee benefit plans

Hearing; comments due by 6-3-96; published 5-8-96

Income taxes:

Foreign corporations--

Determination of interest expense deduction and branch profits tax; comments due by 6-6-96; published 3-8-96

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. 1743/P.L. 104–147

To amend the Water Resources Research Act of 1984 to extend the authorizations of appropriations through fiscal year 2000, and for other purposes. (May 24, 1996; 110 Stat. 1375)

H.R. 1836/P.L. 104–148

To authorize the Secretary of the Interior to acquire property in the town of East Hampton, Suffolk County, New York, for inclusion in the Amagansett National Wildlife Refuge. (May 24, 1996; 110 Stat. 1378)

Last List May 23, 1996