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Presidential Documents

Title 3—

The President

Proclamation 6909 of July 18, 1996

Captive Nations Week, 1996

By the President of the United States of America

A Proclamation

This year marks the 38th commemoration of Captive Nations Week—a national expression of solidarity and support for all those around the globe who suffer the harshness of oppressive rule. Democracy and human rights have made great advances in recent years, thanks to the courageous efforts of determined men and women. Yet, despite these strides, far too many people throughout the world live without the benefits of freedom. As this century draws to a close, we must remember the millions who still live in fear and the countless children denied the prospect of a bright future by authoritarian regimes.

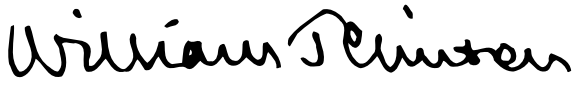
The United States' commitment to liberty has ensured over 200 years of justice and individual rights for our citizens. We have worked hard to realize our founders' vision of independence, and we cherish our proud history of offering support and encouragement to others who share that dream. In this post-Cold War era, when ethnic, racial, and religious conflicts pose new challenges to the global community, we must honor that legacy and continue to build a future of international stability and peace.

This week and throughout the year, let us rededicate ourselves to the promotion of liberty and universal human rights for those who suffer under the yoke of tyranny in other lands. The United States will continue to champion political freedom for all races, religions, creeds, and nationalities, pledging to keep faith with people everywhere who cherish the fundamental values that Americans have always held dear.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 21 through July 27, 1996, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities celebrating the principles on which this Nation was established and by which it will forever prosper.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of July, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



[FR Doc. 96–18859
Filed 7–22–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13012 of July 18, 1996

Establishing an Emergency Board To Investigate a Dispute Between the Southeastern Pennsylvania Transportation Authority and Their Employees Represented by the Brotherhood of Locomotive Engineers

A dispute exists between the Southeastern Pennsylvania Transportation Authority and its employees represented by the Brotherhood of Locomotive Engineers.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*)(the ''Act'').

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me as President, by the Constitution and the laws of the United States, including Section 9A of the Act, it is hereby ordered as follows:

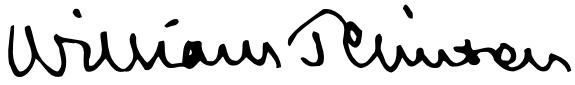
Section 1. *Establishment of the Board.* There is established effective July 19, 1996, a Board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, from the date of the creation of the Board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
July 18, 1996.

[FR Doc. 96–18846
Filed 7–22–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 96–39 of July 6, 1996

Assistance to Bosnia and Herzegovina

Memorandum for the Secretary of State [and] the Secretary of Defense

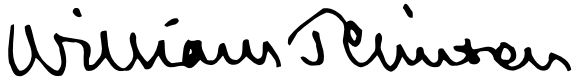
Pursuant to Section 540(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (the ''Act''), I hereby:

1) certify that the transfer of defense articles from stocks of the Department of Defense and defense services of the Department of Defense to Bosnia and Herzegovina will assist that country in self-defense, thereby promoting security and stability of the Balkan region;

2) direct the transfer of up to $100 million in defense articles and defense services from the Department of Defense to assist Bosnia and Herzegovina;

3) delegate to the Secretary of Defense the reporting functions contained in Section 540(c) of the Act.

The Secretary of State is authorized and directed to transmit this determination and certification to the appropriate committees of the Congress and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, July 6, 1996.

[FR Doc. 96–18755
Filed 7–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

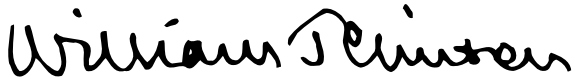
Presidential Determination No. 96–40 of July 8, 1996

Assistance for Bosnia and Herzegovina

Memorandum for the Secretary of State

Pursuant to section 2 of Public Law 104–122 (''the Act''), I hereby determine and certify that the aggregate bilateral contributions pledged by non-United States donors for economic revitalization are at least equivalent to the U.S. bilateral contributions for economic revitalization made by the Act and in Public Law 104–107.

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



THE WHITE HOUSE,
Washington, July 8, 1996.

[FR Doc. 96–18756
Filed 7–22–96; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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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

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB59

General Administrative Regulations; Food Security Act of 1985, Implementation; Denial of Benefits

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations located at 7 CFR part 400. The intended effect of this interim rule is to remove restrictions mandated by the Food Security Act of 1985 that preclude eligibility for crop insurance for any person who in any crop year produces an agricultural commodity on a field which is classified as predominantly highly erodible land (sodbuster provision) or converted wetland (swampbuster provision). The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) amends the crop insurance restriction, so producers who are in violation of the sodbuster/swampbuster provisions will be eligible for crop insurance coverage on or after July 3, 1996.

DATES: Effective July 3, 1996. Written comments, data, and opinions on this rule will be accepted until close of business September 20, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC., 8:15 a.m.–4:45 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under USDA procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1.

This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 30, 2001.

This rule has been determined to be significant for the purposes of Executive Order No. 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the removal of sanctions affecting a producer's eligibility for Federal crop insurance as specified in the sodbuster and swampbuster provisions will result in two types of costs. First, environmental costs, in some cases, will be incurred as the elimination of crop insurance from the list of denied benefits reduces the sanctions associated with violating sodbuster/swampbuster provisions. Second, if acres affected by the sodbuster/swampbuster provisions are increasingly planted and insured, the costs to the Federal Crop Insurance Corporation will rise. The environmental and Federal costs associated with elimination of crop insurance as a sodbuster/swampbuster sanction are, however, largely unknown.

Environmental costs will depend on the extent farmers produce insurable crops (or alter practices or structures) on sodbuster/swampbuster acreage when such activity would not otherwise occur. Many variables will affect a producer's decision, including the amount of land affected by sodbuster/swampbuster relative to the producer's total acreage receiving benefits, expected prices and yields, the loss of USDA benefits (other than crop insurance), expected crop insurance benefits, and the expected environmental impact.

Federal costs associated with the elimination of crop insurance as a sodbuster/swampbuster sanction are unknown because the number of producers who will violate sodbuster/swampbuster provisions, and insure crops produced on their farms, is impossible to judge. The actual realized cost will depend to a large extent on FCIC's appropriately rating sodbuster and swampbuster acreage that is planted and insured. Between $500,000 and $1 million in crop insurance benefits were denied annually due to sodbuster/swampbuster violations in recent years. Benefits of a similar magnitude to the recent denials will probably be paid in future years.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in these regulations have been previously approved by OMB and assigned OMB control numbers 0563–0003, 0563–0016 and 0560–0004. Copies of the information collections may be obtained from Bonnie Hart, USDA, FSA, Advisory and Corporate Operations Staff, Regulatory Review Group, PO Box 2415, Ag Box 0572, Washington, DC 20013–2415, 8:15 a.m.–4:45 p.m., Monday through Friday, except holidays, telephone (202) 690–2857.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 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, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and

adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete a crop insurance acreage report, an insurance application and a continuous contract. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured may use actual records of production or receive a transitional yield which does not require the maintenance of production records. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured must report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This final rule amends the General Administrative Regulations (7 CFR part 400) as mandated by the Federal Agriculture Improvement and Reform Act of 1996. The 1996 Act removes the sodbuster/swampbuster restrictions of Title XII of the Food Security Act of 1985 (Pub. L. 99–198) which preclude eligibility for crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), to any person who in any crop year produces an agricultural commodity on highly erodible land or converted wetland. On or after the effective date of July 3, 1996, a person who produces an agricultural commodity on a field which is classified as predominantly highly erodible land or a converted wetland may apply for crop insurance if the sales closing date has not passed. Until the effective date, crop insurance policyholders must remain in compliance with the sodbuster/swampbuster provisions. Since these provisions are mandated by statute and planting decisions for the 1996 crop year have been or will shortly be made, it is impracticle and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the Federal Register and will be considered by FCIC before this rule is made final.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations, (7 CFR part 400), effective July 3, 1996, to read as follows:

PART400—[AMENDED]

1. The authority citation for 7 CFR part 400, subpart F, continues to read as follows:

Authority: Secs, 1506, 1516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 et seq.); sec. 1244, Pub. L. 99–198.

§ 400.47 [Amended]

2. Section 400.47, *Denial of crop insurance*, is amended by removing paragraphs (b), (c), and (e) and redesignating paragraph (d) as paragraph (b), paragraph (f) as paragraph (c), and paragraph (g) as paragraph (d);

§ 400.48 [Amended]

3. Section 400.48, *Protection of interests of tenants landlords, or producers*, is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b);

§ 400.49 [Removed and Reserved]

4. Section 400.49, *Certification*, is removed and reserved; and

§ 400.50 [Removed and Reserved]

5. Section 400.50, *Graduated sanctions*, is removed and reserved.

Signed in Washington, DC, on July 16, 1996.

Suzette M. Dittrick,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–18615 Filed 7–22–96; 8:45 am]

BILLING CODE 3410–FA–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AA95

Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Uniform Administrative Requirements (OMB A–110 Implementation)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This rule revises NASA's grant regulations in order to adopt

uniform administrative requirements. Institutions that receive grants from more than one Federal agency may find it easier to follow the format of these uniform requirements.

DATES: This rule is effective August 22, 1996. All comments on this interim rule should be in writing and must be received by September 23, 1996.

ADDRESSES: Rich Kall, Code HK, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Rich Kall, (202) 358–0459.

SUPPLEMENTARY INFORMATION:

Background

This rule revises 14 CFR part 1260 to adopt the language of OMB Circular No. A–110 by using a format similar to the Department of Energy's regulation at 10 CFR part 600. A new subpart A provides the text of provisions and special conditions for grants and cooperative agreements and addresses NASA's authority, definitions, applicability, amendments, publications, deviations, pre-award requirements, and post-award requirements currently covered by 14 CFR part 1260. A new subpart B adopts the uniform administrative requirements of OMB Circular No. A–110 and includes NASA's choices in alternatives offered by A–110. Because A–110 was already published for public comment, NASA's adoption of the language is being done as an interim rule. NASA has added subpart C, Administrative Requirements for State and Local Governments (formerly in OMB Circular A–102 and currently in the agencies' Grants Management Common Rule), which has been codified at 14 CFR part 1273, FR 33694, 6–29–95.

Procedural Requirements

Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that display requirement by providing the following statement: information collection under 14 CFR part 1260 is not changed by this rule and was previously approved under OMB Control Numbers 2700–0047, 2700–0048, and 2700–0049.

Executive Order 12866

NASA has determined that this rule is significant under E.O. 12866. This regulation is needed because OMB Circular No. A–110 encourages agencies to adopt uniform administrative requirements for grants. The regulation meets that need by adopting the requirements of A–110. The potential costs and benefits of the regulatory action are that institutions that receive grants from more than one Federal agency may find it easier to follow the format of these uniform requirements. These requirements implement several Federal statutes applicable to grants, e.g., civil rights, clean air and water, and drug-free workplace.

List of Subjects in 14 CFR Part 1260

Grant programs.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR part 1260 is revised to read as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

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1260.1 Authority.
1260.2 Definitions.
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1260.5 Publication.
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1260.12 Choice of award instrument.
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Provisions

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1260.25 Allowable costs.
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1260.29 Rights in data.
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1260.31 Nondiscrimination.
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Appendix to Subpart A to Part 1260—Listing of Exhibits

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

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Pre-Award Requirements

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Post-Award Requirements

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1260.150 Purpose of reports and records.
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1260.160 Purpose of termination and enforcement.
1260.161 Termination.
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1260.170 Purpose.
1260.171 Closeout procedures.
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Appendix A to Subpart B of Part 1260—Contract Provisions

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.), and OMB Circular A–110.

Subpart A—General

§ 1260.1 Authority.

(a) The National Aeronautics and Space Administration (NASA) awards grants and cooperative agreements under the authority of 42 U.S.C. 2473(c)(5), the Space Act. This part 1260 is issued under the authority of 42 U.S.C. 2473(c)(1).

(b) The Office of Management and Budget (OMB) approved information collection under the Paperwork Reduction Act through September 30, 1998 and assigned OMB control numbers 2700–0047, Property Management and Control; 2700–0048, Patents; and 2700–0049, Financial Management and Control. OMB control number 2700–0047 applies to grants subject to subparts A and B of this part.

§ 1260.2 Definitions.

Additional definitions can be found in § 1260.102.

Administrative grant officer. A Federal employee delegated responsibility for grant administration; e.g., under a delegation from a NASA grant officer.

Effective date. The date work can begin and the recipient can start spending grant funds. The effective date could be earlier or later than the date of signature on a basic award or modification.

Extension. A modification of an award, which would otherwise expire, to provide additional time, and if appropriate, additional funds for completion of project activities.

Grant specialist. A Government employee who is assigned the responsibility of negotiating and/or administering grants.

Historically Black Colleges and Universities. Institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority educational institution. An institution determined by the Secretary of Education to meet the requirements of 34 CFR 637.4.

Multiple year grant. A grant for which NASA obligates funds for an initial period and states an intention to obligate funds for one or more additional periods. The initial period together with the unfunded periods exceeds one year (see § 1260.13(b)).

Non-profit organization. An organization that qualifies for the exemption from taxation under § 501 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 501.

Performance Report. A concise statement of work accomplished during the report period (see § 1260.75(e)).

Provision. A term or condition applicable to grants awarded under this part 1260 (see § 1260.20).

Recipient acquired equipment. Equipment purchased or fabricated with grant funds by a recipient for the performance of work under its grant.

Small business concern. A concern, including its affiliates, which is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business concern. A small business concern owned and controlled by individuals who are both socially and economically disadvantaged (within the meaning of § 8(a (5) and (6) of the Small Business Act, as amended; 15 U.S.C. 637(a (5) and (6); and 13 CFR 24).

Special condition. A term or condition that is not applicable to all grants or is temporary in nature (see § 1260.50).

Summary of Research. A document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed (see § 1260.75(f)(1)).

Supplement. The document NASA uses to effect changes and renewals to grants and cooperative agreements. They can be awarded unilaterally at the discretion of the grant officer.

Women-owned small business concern. A small business concern that is at least 51 percent owned by women who are U.S. citizens and who also control and operate the business (15 U.S.C. 637(d)).

§ 1260.3 Applicability.

Subparts A and B of this part 1260 establish policies and procedures for all grants and cooperative agreements awarded by NASA to educational institutions and other non-profit organizations.

§ 1260.4 Amendment.

This part 1260 will be amended by publication of changes in the Federal Register. Changes that require immediate dissemination may be issued as Grant Notices.

§ 1260.5 Publication.

(a) The NASA Grant and Cooperative Agreement Handbook is published as part 1260 of title 14 of the Code of Federal Regulations (CFR).

(b) Subscriptions to the NASA Grant and Cooperative Agreement Handbook may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, telephone number (202) 512–1800. Requests should cite GPO Subscription Stock No. 933–001–00000–8. A subscription consists of the basic edition, plus all changes issued for an indefinite period.

§ 1260.6 Deviations.

(a) A deviation is required for any of the following.

(1) When a prescribed provision (but not a special condition) set forth verbatim in this part 1260 is modified or omitted.

(2) When a provision is set forth in this part 1260, but not for use verbatim, and the Center substitutes a provision which is inconsistent with the intent, principle, and substance of the provision.

(3) When a form prescribed by this part 1260 is altered or another form is used in its place.

(4) When limitations, imposed by this handbook upon the use of a grant provision, form, procedure, or any other grant action, are changed.

(5) When a form is created for recipient use that constitutes a ''Collection of Information'' within the meaning of the Paperwork Reduction Act (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) Requests for authority to deviate from this part 1260 shall be submitted to the Office of Procurement, NASA Headquarters, Contract Management Division (Code HK). Requests, signed by the Procurement Officer, shall contain:

(1) A full description of the deviation, the circumstances in which it will be used, and identification of the requirement from which a deviation is sought;

(2) The rationale for the request, pertinent background information, and the intended effect of the deviation;

(3) The name of the recipient, identification of the grant affected, and the dollar value;

(4) A statement as to whether the deviation has been requested previously, and, if so, details of that request; and

(5) A copy of legal counsel's concurrence or comments.

(c) Where it is necessary to obtain a deviation on OMB Circular A–110 (Subpart B of this part), Code HK will process all necessary documents in accordance with § 1260.104.

Pre-Award Requirements

§ 1260.10 Proposals.

(a) A grant can result from:

(1) *An NRA, AO, CAN or BAA.* A proposal submitted in response to a broad agency announcement (BAA) such as a NASA Research Announcement (NRA), Announcement of Opportunity (AO), Cooperative Agreement Notice (CAN), an agencywide program announcement such as the Graduate Student Research Program, or after approval by the Associate Administrator for Procurement or designee. NRA's and BAA's are described in the NASA FAR Supplement (NFGS) 48 CFR part 1835. AO's are described in 48 CFR part 1870, subpart 1870.1.

(2) *An unsolicited proposal.* Guidance on unsolicited proposals is contained in the Federal Acquisition Regulation (FAR) 48 CFR subpart 15.5 and NFS 48 CFR subpart 1815.5. The synopsis requirement in FAR 48 CFR 15.507(b)(4), however, does not apply to the grant process. Contact with NASA technical personnel prior to proposal submission is encouraged to determine if preparation of a proposal is warranted. These discussions should be limited to understanding NASA research needs and do not jeopardize the unsolicited status of any subsequently submitted proposal.

(b) The proposal shall contain a detailed narrative description of the work to be undertaken, including the objectives of the project and the applicant's plan for carrying it out.

(1) *Budget content.* All proposals shall include budget data as prescribed in the Budget Summary in Exhibit C of the appendix to this subpart A of this part 1260. Narrative detail must support the budgets as designated in Exhibit C to Appendix to this subpart.

(i) *Cost issues.* The recipient institution is responsible for ensuring that costs charged are allowable, allocable, and reasonable under the applicable cost principles governed by OMB Circular Nos. A–21 and A–122. For other details see § § 1260.25 and 1260.127.

(ii) *Indirect Costs.* Subject to applicable cost principles, rates are negotiated between recipients and the cognizant agencies assigned under OMB Circular No. A–21. NASA is required to apply the negotiated rate for all grants awarded.

(iii) *Cost sharing.* NASA may accept cost sharing when voluntarily offered, and all awards including cost-sharing are subject to § § 1260.13(c) and 1260.123. The amount of cost sharing will not be a factor in determining whether to select a proposal for award. However, recipients may be requested to secure nonfederal matching funds equal to the program portion to training and education grants.

(2) *Multiple year grants.* In accordance with NASA policy to foster continuity of research, multiple year grant proposals are encouraged, where appropriate, for a period generally up to three years. Continuing research programs will be subject to peer evaluation at least once every three years. Proposals for multiple year grants shall describe the entire research project and include a complete budget for year one and separate estimates for each subsequent year (see § 1260.13(b)).

(c) *Certifications and assurances* shall be made in accordance with § 1260.117, as follows.

(1) *Civil rights requirements.* Annually, recipients must furnish assurances on NASA Form 1206 of compliance with civil rights statutes specified in 14 CFR parts 1250 through 1252.

(2) *Debarment and suspension, drug-free workplace, and lobbying.* NASA grants are subject to the provisions of: 14 CFR part 1265, Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide requirements for Drug-Free Workplace (Grants), unless excepted by § 1265.110 or § 1265.610; and 14 CFR part 1271 ''New Restrictions on Lobbying.'' These certifications are required to be submitted with each proposal, including extensions. NASA does not require any particular form or format, but does require specific language.

§ 1260.11 Evaluation and selection.

(a) *General.* Technical evaluation of proposals will be conducted by the cognizant NASA technical office and may be based on peer reviews.

(b) *Under NRA's, AO's, CAN's, and other BAA's.* The selecting official will furnish the grant officer a signed selection statement and a technical evaluation based on the evaluation criteria stated in the NRA, AO, CAN, or BAA. If a proposal is not selected, the proposer will be notified in accordance with the NRA, AO, CAN, or BAA.

(c) *Under unsolicited proposals.* (1) The evaluation of unsolicited proposals must consider:

(i) If the subject of the proposal is available to NASA from another source without restriction.

(ii) If the proposal closely resembles a pending competitive acquisition or a current, open BAA's under which the unsolicited proposal could be evaluated.

(iii) If the research proposed demonstrates an innovative and unique method, approach, or concept.

(iv) The proposals overall scientific or technical merit.

(v) The potential contribution to NASA's mission.

(vi) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(vii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(2) An unsolicited proposal recommended for acceptance shall be supported by a Justification for Acceptance of an Unsolicited Proposal (JAUP) prepared by the cognizant technical office. The JAUP shall be submitted for the approval of the grant officer after review and concurrence at a level above the technical officer. The grant officer's signature on the award document will indicate approval.

(3) NASA will promptly notify in writing each organization that submitted a proposal that will not be funded.

Proposals will be returned only when requested.

(d) *Equipment justification or travel justification.* These documents will be submitted by the technical office for grant officer approval when more than half of the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary.

(3) *Proposal budget evaluation.* (1) The technical officer will review the budget for conformance to program requirements and fund availability, indicating the results of this review in Column B of the proposed budget.

(2) The grant officer will review the budget, and any changes made by the technical officer, to identify any item which may be unallowable under the cost principles, or which appear unreasonable or unnecessary. The grant officer will complete Column C of the proposed budget after discussing significant changes with the recipient. Any request for details should be limited.

(f) *Incremental funding.* NASA reserves the right to either fully fund or incrementally fund grants. Grants with anticipated annual funding exceeding $50,000 may be funded for less than the amount stated in the proposal, provided:

(1) Two increments per grant year are authorized. The second increment will be the balance of funding for the year.

(2) The special condition § 1260.53, Incremental Funding, is included in the grant.

(g) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the Government Printing and Binding Regulations, No. 26, February 1990, S. Pub. 101–9, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800, published by the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO). The grant officer will be advised in writing of the results of the ICPMO review.

(h) *Rights in data.* Section 1260.29 is adequate only for grants for basic or applied research where the principal purpose (or only expected NASA involvement) is the publication or dissemination of the results, such as in journals or NASA publications (see § 1260.21).

(i) *Clean Air and Federal Water Pollution Control Acts.*

(1) By accepting a grant that contains § 1260.33, the recipient agrees that the expenditure of grant funds is in compliance with the Acts.

(2) The Administrator may approve exemptions from this prohibition under certain circumstances under E.O. 11738. Requests for exemptions or renewals thereof shall be made to the Office of Procurement, NASA Headquarters, Contract Management Division (Code HK), Washington, DC 20546.

§ 1260.12 Choice of award instrument.

(a) This section and § 1260.111 provide guidance on the appropriate choice of award instruments consistent with 31 U.S.C. 6301 to 6308. Throughout § 1260.12, the term ''grant'' does not include ''cooperative agreements.''

(b) A procurement contract is a mutually binding legal relationship obligating the seller to furnish supplies or services (including construction), and the buyer pays for them.

(1) The principal purpose of a procurement contract is to acquire, for NASA's direct use or benefit, a well-defined, specific effort clearly required for the accomplishment of a scheduled NASA mission or project.

(2) If it is determined that a procurement contract is the appropriate type of funding instrument to meet NASA's purposes, the procurement shall be conducted under the FAR and the NFS.

(c) A grant shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever the principal purpose is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. The following general characteristics meet the statutory criteria for use of a grant:

(1) Substantial involvement is not expected between NASA and the recipient when carrying out the activity.

(2) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified.

(3) Simplicity and economy in execution and administration are mutually desirable.

(4) Grants are distinguished from contracts in that grants provide financial or other tangible assistance to the recipient to carry on a fairly autonomous research program.

(d) The following defines various types of NASA grants:

(1) A research grant is used to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study, or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art.

(i) The research requires long term support (i.e., in excess of one year) for the study to mature to maximum scientific effectiveness (this does not preclude shorter-term grants;

(ii) NASA desires, or the nature of the proposed investigation is such, that the recipient will bear prime responsibility for the conduct of research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the resources provided;

(iii) Meaningful technical reports (as distinguished from Performance Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

(2) An education grant is an agreement that provides funds to an educational institution or other nonprofit organizations within one or more of the following areas:

(i) Capturing student interest and/or improving student performance in science, mathematics, technology, or related fields;

(ii) Enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics, or technology;

(iii) Supporting national educational reform movements;

(iv) Conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and

(v) Developing instructional materials (e.g., teacher guides, printed publications, computer software, and videotapes) or networked information services for education.

(3) A training grant is an agreement that provides funds to an educational institution or other non-profit organization solely by providing scholarships, fellowships, or stipends to students, teachers, and/or faculty.

(i) NASA training grants are awarded to colleges, universities, or other non-profit organizations; not to individual students, teachers, or faculty members. It is the responsibility of the institution receiving the grant to approve the faculty, teachers, and/or students who will participate in the specific program, in cooperation with NASA. If a student, teacher, or faculty member ceases to participate in the program for any reason, the institution, with prior NASA approval, may appoint another student, teacher, or faculty member to complete

the remaining portion of the grant period. Replacement students, teachers, and/or faculty electing to apply for the following program year are not automatically entitled to an award and are subject to the evaluation/selection procedures administered to new applicants. Any participant receiving support under a NASA training grant may not concurrently hold another Federal fellowship or traineeship.

(ii) No applicant shall be denied consideration or appointment on the grounds of race, creed, color, national origin, age, sex, or disability.

(iii) Students and faculty receiving direct support under a NASA training grant must be U.S. citizens.

(iv) Duration of the award is program specific. Refer to program policies and procedures for details. Renewal is contingent upon a successful performance evaluation as prescribed by the program, concurrence by the NASA technical officer, and the availability of funds.

(v) No substantial involvement is expected between NASA and the recipient. A student or faculty member receiving support under a NASA training grant does not incur any formal obligation to the Government.

(vi) Unused funds may be carried over into the following program year without further NASA approval. This carry-over amount need not be shown in the budget for the next program year.

(vii) The use of training grant funds to acquire equipment, passenger carrying vehicles, land (or any interest therein), or to acquire or construct facilities will not be permitted. Government furnished equipment will not be provided.

(viii) All foreign travel must be clearly essential to the research effort and must, to be charged to a grant, have the prior written approval of the NASA technical officer and the grant officer for each trip, regardless of its inclusion in the proposal budget.

(ix) An Administrative Report must be submitted under the guidelines described by the specific program policies and procedures.

(4) A facilities grant can be issued by NASA under the authority of the Space Act, 42 U.S.C. 2473(c)(5). It is used to provide for the acquisition, construction, use, maintenance, and disposition of facilities. Facilities, as used in this subpart, means property used for production, maintenance, research, development, or testing.

(i) Prior approval by the Associate Administrator of Procurement and a review by legal counsel to assure legal sufficiency are required. It is unlikely an award will be made unless Congressionally mandated.

(ii) To obtain approval, prior to proceeding with the award a package will be forwarded to the Director, Contract Management Division (HK), that includes pertinent background information, detailed rationale for the request, dollar value, and name of the recipient.

(e) A cooperative agreement shall be used as the legal instrument to reflect a relationship between NASA and a recipient whenever the principal purpose is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial involvement is expected between NASA and the recipient during performance of the contemplated activity. Under 31 U.S.C. 6305, characteristics inherent in a cooperative agreement include those that apply to a grant, plus the following:

(1) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This could involve an active NASA role in collaborative relations, access to a NASA site or equipment, or sharing NASA facilities and personnel;

(2) The project, conducted as proposed, would not be possible without extensive NASA-recipient technical collaboration;

(3) The nature of the collaboration can be clearly defined and specified in advance (special provision § 1260.51 shall be used). Cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA Center (or a NASA investigator works at a university), or when the collaboration is such that a jointly authored report or education curriculum product is appropriate.

(f) Grants and cooperative agreements with foreign organizations are awarded under the authority of the Space Act, 42 U.S.C. 2473(c)(5).

(1) Before initiating action, the grant officer shall coordinate with the Headquarters Office of External Relations, International Relations Division (Code IR). Grants to other than foreign government institutions require a review by the Office of General Counsel.

(2) It is NASA policy that, in general, research will be accomplished on a no-exchange-of-funds basis with foreign entities. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

§ 1260.13 Award procedures.

(a) *Multiple year grant.* NASA policy is to make maximum use of multiple year grants to support research projects that may span several years.

(1) At the time a research proposal is recommended for award, a decision will be made whether to award a multiple year grant. Special condition § 1260.52, Multiple Year Grant, would be included at award.

(i) For the periods approved in § 1260.52, neither a new proposal nor another technical evaluation is required unless a special need for review is indicated through monitoring the project and its reports, by the introduction of work outside the scope of the approved proposal, or by the need for substantial unanticipated funding.

(ii) A funded extension beyond the period listed in § 1260.52 may be made by using the provision § 1269.22, Extensions. This requires the submission of a new proposal, subject to full review as discussed in §§ 1260.11 and 1260.71(b), plus consideration of the timely submission of reports as required in § 1260.21.

(2) Normally, each year of a multiple year grant will be funded at the approximate level in the original award instrument. However, NASA program constraints and developments within the project may dictate adjustment in the originally anticipated level. When the actual differs from the planned funding, the technical officer shall mark up Column B of the budget summary and send it to the grant officer with an explanation. The recipient may rebudget under the grant provisions to keep the project within the funding actually provided.

(b) *Annual grant.* Grants may be awarded for a short term (e.g., on an annual basis) and may be extended, if appropriate, as described in § 1260.71. Extensions should be executed prior to the grant expiration date.

(c) *Cost sharing.* NASA grant recipients usually gain no measurable benefit from grants, other than conducting the research. Cost sharing based on mutuality of interest applies to NASA grants where the grant officer has reason to believe that the recipient will benefit from the research results through sales to non-Federal entities (see § 1260.123) When cost sharing is used, the grant officer shall use a Special Condition substantially as shown in § 1260.54.

(d) *Partial support.* NASA may provide partial support for a research project or conference where additional funding may be provided by other Federal agencies. If the grant also involves cost sharing by the recipient,

the grant officer will ensure that § 1260.54 applies only to the non-Federal funding.

§ 1260.14 Limitations.

(a) As a matter of policy, NASA does not award grants to commercial firms. However, Cooperative Agreements may be awarded to commercial firms in accordance with § 1260.300.

(b) NASA does not award grants for donative assistance purposes, but only to meet program objectives. Research in any academic discipline related to NASA interests normally will qualify. However, advice of legal counsel should be sought in unusual situations, or when unusual project activities or organizational attributes are evident.

(c) It is NASA's policy that non-monetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost extensions). Loans of Government personal property not associated with a contract, grant, or cooperative agreement under 31 U.S.C. 6301 to 6308, and made under the Space Act of 1958, should be consummated as loan agreements.

(d) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements (see 48 CFR subpart 37.2 (FAR) and 48 CFR subpart 18237.2 (NFS)).

§ 1260.15 Format and numbering.

(a) *General,* A grant shall be brief, containing only those provisions and special conditions necessary to protect the interests of the Government.

(b) *Formats.* Those shown in Exhibit B of the appendix to this subpart A shall be used for the award of all NASA grants and cooperative agreements. Computer-generated versions are allowed. Provisions for grants with U.S. organizations shall be incorporated by reference, and preprinted checklists may be used. Special conditions and provisions for grants with foreign organizations will be printed in full text. An acceptance block may be added when the grant officer finds it necessary to require bilateral execution of the grant. When attaching detailed budgets, salaries will not be revealed.

(c) *The identification numbering system.* (1) For research, education, and facilities grants, numbering shall conform to NFS 48 CFR 1804.7102–3, except that a NAG prefix will be used in lieu of the NAS prefix The prefix designation will include the Center Identification Number; e.g., NAG5 would be the Goddard prefix designation. They will be sequentially numbered.

(2) Cooperative agreements will use the prefix NCC plus the Center Identification Number. They will be sequentially numbered.

(3) Training grants will use the prefix NGT plus the Center Identification Number. They will be sequentially numbered.

(4) The Catalog of Federal Domestic Assistance (CFDA) Numbers does not apply to NASA grants.

§ 1260.16 Distribution.

Copies of grants and supplements will be provided to: payment offices (original copy); technical officers; administrative grant officers when delegated; the NASA Center for AeroSpace Information (CASI), Attn: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934; and other appropriate offices. The statement of work accepted by NASA and a copy of the approved budget will be provided to the administrative grant officers. CASI will also receive the statement of work. The file will record the addresses for distribution.

Provisions

§ 1260.20 Provisions.

(a) The provisions set forth in §§ 1260.21 through 1260.37 shall be incorporated by reference and made a part of NASA research grants, education grants, and cooperative agreements with U.S. educational institutions and nonprofit organizations.

(b) In training grants, the provisions of the following section will be incorporated: §§ 1260.22, 1260.23, 1260.25, 1260.26, 126.28, 1260.29, 1260.31, and 1269.35.

(c) In facilities grants, provisions will be selected on a case-by-case basis.

(d) In research grants awarded to foreign organizations, the provisions of the following sections, modified as necessary, will be in full text: §§ 1260.21, 1260.22, 1260.23, 120.24, 1260.26, 1260.27, 1260.32, and 1260.36. References will not be used to handbooks, statutes, or other regulations which the recipient may neither have access to or can realistically be expected to comply.

(e) Whenever the word ''grant'' appears in sections §§ 1260.21 through 1260.38, it shall be deemed to include, as appropriate, the term ''cooperative agreement''.

(f) Section 1260.148 and Appendix A to subpart B to part 1260 address provisions to be used in contracts awarded by recipients.

§ 1260.21 Publications and reports.

Publications and Reports (July 1996)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation. All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (e.g., ''The material is based upon work supported by NASA under award No(s) _____'').

(b) Reports shall be in the English language, informal in nature, and ordinarily not exceed three pages (not counting bibliographies, abstracts, and lists of other media). The recipient shall submit the following reports:

(1) A Performance Report for all but the final year of the grant. Each report is due 60 days before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period as outlined in § 1260.151(d). A special provision specifying more frequent reporting may be required.

(2) A Summary of Research (or Educational Activity Report in the case of Education Grants) is due within 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report shall be comprehensive summary of significant accomplishments during the duration of the grant.

(c) Performance Reports, Summaries of Research, and Education Activity Reports shall include the following on the first page:

(1) Title of the grant.

(2) Type of report.

(3) Name of the principal investigator.

(4) Period covered by the report.

(5) Name and address of the recipient's institution.

(6) Grant number.

(e) Performance Reports, Summaries of Research, and Education Activity Reports shall be distributed as follows:

(1) The Original to the administration grant officer, with a notice to the grant officer that a report was sent.

(2) One copy, in both hard copy and electronic format, to the technical officer.

(f) For Summaries of Research and published reports, one Micro-reproducible copy shall be sent to the NASA Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, Maryland 21090–2934.

§ 1260.22 Extensions.

Extensions (July 1996)

(a) It is NASA policy to provide maximum possible continuity in funding grant—supported research and educational activities, therefore, grants may be extended for additional periods of time. Any extension requiring additional funding should be supported by a proposal submitted at least three months is advance of the expiration date of the grant.

(b) Recipients may extend the expiration date of a grant if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, in accordance with § 1260.125(e)(2), the recipient may unilaterally make a one-time no-cost

extension, not to exceed 12 months, prior to the established expiration date. Written notification of such an extension, with the supporting reasons, must be received by the grant officer at least ten days prior to the expiration of the award.

(c) Requests for approval for all other extensions (in excess of 30 days) must be submitted in writing to the grant officer.

§ 1260.23 Termination and Enforcement.

Termination and Enforcement (July 1996)

Termination and enforcement conditions of this award are specified in §§ 1260.160 through 1260.162. If NASA determines that the recipient has materially failed to comply with the terms and conditions of the grant, NASA may suspend or terminate the grant in whole or in part after consultation with the recipient. However, NASA may immediately suspend or terminate the award without prior notice when it believes such action is necessary to protect the interest of the Government.

§ 1260.24 Change in principal investigator or scope.

Change in Principal Investigator or Scope (July 1996)

The recipient organization and the principal investigator are responsible for the effective conduct of the project or activity supported by this award.

(a) The recipient shall obtain the approval of the NASA grant officer to change the principal investigator or to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument could be grounds for termination, unless alternatives arrangements are made and approved in writing by the grant officer.

(b) Prior written approval is required from NASA if there is to be a significant change in the objective or scope.

§ 1260.25 Allowable costs.

Allowable Costs (July 1996)

(a) The recipient institution is responsible for ensuring that costs charged to this award are allowable, allocable, and reasonable under the applicable cost principles defined in § 1260.127. Sections 1260.24, 1260,27, 1260.32, and requests for additional funding require prior approvals.

(b) Payments to individuals for consultant services under a NASA grant shall not exceed the daily equivalent of the maximum rate paid for Level IV of the Executive Schedule, exclusive of expenses and indirect cost.

(c) Recipients may incur pre-award costs 90 calendar days prior to award, provided the costs are necessary for the effective and economical conduct of the project and are otherwise allowable under the terms of the grant. All preaward costs are incurred at the recipient's risk. NASA is under no obligation to reimburse such costs if an award is not subsequently made, or if an award is made for a lesser amount than the recipient anticipated and is insufficient to cover the pre-award costs.

(d) Comptroller General decisions govern allowability of costs for international air transportation (see § 1260.37).

§ 1260.26 Financial management.

Financial Management (July 1996)

(a) *Payment.* Advance payments by electronic funds transfer will be made by the Financial Management Office of the NASA Center which issued the grant in accordance with procedures provided to the recipient. The recipient shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office and, if NASA has delegated administration, to the administrative grant officer, within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported. The final SF 272 is due within 90 days after the expiration date of the grant.

(b) *Management and records.* Financial and program management requirements of §§ 1260.120 through 1260.128 apply to all recipients. Financial records, supporting documents, statistical records, and all other records pertinent to this award shall be retained in accordance with § 1260.153. Provisions of § 1260.26(c) shall apply to subcontractors performing substantive work under this grant.

(c) *Unexpended balances.* Any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. The estimated amount of unexpended funds shall be identified in the grant budget section of the recipient's renewal proposal.

(d) *Program income* will be subject to § 1260.124.

(e) Provisions of § 1260.26(c) shall apply to subcontractors performing substantive work under this grant.

§ 1260.27 Equipment and other property.

Equipment and Other Property (July 1996)

(a) NASA permits acquisition of special purpose equipment (as defined in OMB Circulars A–21 and A–122) specifically required and only used for research, medical, scientific or other technical activities.

(1) Acquisition of special purpose equipment, costing in excess of $5,000 and not included in the approved proposal budget, requires the prior approval of the administrative grant officer (unless the item is merely a different model of an item in the approved proposal budget).

(2) Title to special purpose equipment acquired by the recipient with grant funds, valued under $5,000 in acquisition cost, shall vest in the recipient and will be considered ''exempt'' in accordance with § 1260.133(b).

(3) NASA may elect to take title to items of special purpose equipment valued at more than $5,000 (acquisition cost each) or when fabricated into a single coherent system (aggregate acquisition cost). The recipient will be advised of the Government's intention to take title in writing if the item is approved for recipient purchase. If the Government does not exercise its right to take title to property acquired by the recipient with grant funds at the time of approval, the property will be considered exempt according to § 1260.133(b). The recipient shall hold title without further obligation to the Federal Government.

(b) General purpose equipment items require the prior approval of the Grant Officer to be a direct charge, shall be titled to NASA, managed in accordance with § 1260.134(f), and reported in accordance with § 1260.27(e).

(c) Grant funds may be expended for the acquisition of land or interests therein or for the acquisition and construction of facilities *only* under a facilities grant, as defined in § 1260.12(g).

(d) The recipient shall maintain a property management system which meets the requirements of §§ 1260.130 through 1260.137. The cognizant property administration officer or property administrator shall be notified of any major change to an approved system.

(e) The recipient shall submit an Inventory Report, to be received no later than October 31 of each year, which lists all Federally owned property in its custody as of September 30. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the recipient no later than 60 days after the expiration date of the grant.

(1) All reports will include the information listed in paragraph (f)(1) of § 1260.134, Equipment.

(2) Negative responses in the Final Inventory Report, when there is no reportable equipment, are required.

(3) The original of each report shall be submitted to the Center Deputy Chief Financial Officer (Finance). Copies shall be furnished to the Center industrial property officer and to ONR .

§ 1260.28 Patent rights.

Patent Rights (July 1996)

This award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 ''Patent Rights (Small Business Firms and Nonprofit Organizations)'' and the following:

(a) Where the term ''contract'' or ''contractor'' is used in the ''Patent Rights'' clause, the term shall be replaced by the term ''grant'' or ''recipient,'' respectively.

(b) In each instance where the term ''Federal Agency,'' ''agency,'' or ''funding Federal agency'' is used in the ''Patent Rights'' clause, the term shall be replaced by the term ''NASA.''

(c) The NASA regulation applicable to paragraph (e) of the ''Patent Rights'' clause is at 37 CFR Part 404, Licensing of Government-owned Inventions.

(d) The following item is added to the end of paragraph (f) of the ''Patent Rights'' clause:

(5) The recipient shall include a list of all Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal, and a complete list (or a negative statement)

for the entire award period shall be included in the summary of research.

(e) The term ''subcontract'' in paragraph (g) of the ''Patent Rights'' clause shall include purchase orders.

(f) The NASA implementing regulation for paragraph (g)(2) of the ''Patent Rights'' clause is at 48 CFR 1827.373(b).

(g) The following requirement constitutes paragraph (1) of the ''Patent Rights'' clause:

(1) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the administrative grant officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a ''subject invention'' for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the recipient identify the information and the ''subject invention'' to which it relates at the time of submittal. If required by the administrative grant officer, the recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any ''subject invention'' in any country in which the recipient has applied for patents.

h. *NASA Inventions.* NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

i. In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by contractor employees, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

§ 1260.29 Rights in data.

Rights in Data (July 1996)

(a) *Fully Funded Efforts.*

(1) ''Data'' means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant.

(2) The recipient grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only. Federal purposes include competitive procurement but do not include the right to have or permit others to use data for commercial purposes.

(3) In order that the Federal Government may exercise its license rights in data, the Federal Government, upon request to the recipient, shall have the right to review and/or obtain delivery of data resulting from the performance of work under this grant, and authorize others to receive data to use for Federal purposes.

(4) If information which recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into data as defined herein), identified and marked with a suitable notice or legend and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(b) *Cost Sharing and/or Matching Efforts.* When the recipient cost shares with the Government on the effort, the following is added:

(5) In the event data first produced by recipient in carrying out recipient's responsibilities under an agreement is furnished to NASA, and recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1260.29(a)(2).

c. *Add the following paragraph in Cooperative Agreements.* (#) As to data first produced by NASA in carrying out NASA's responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the recipient, such data will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ____ years (*insert a period of up to 5 years.*) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such data to any third party without NASA's written approval until the aforementioned restricted period expires.

§ 1260.30 National security.

National Security (July 1996)

Normally, NASA grants do not involve classified information. However, if information is sought or developed by the recipient that should be classified in the interests of national security, the NASA grant officer who issued the grant shall be notified immediately.

§ 1260.31 Nondiscrimination.

Nondiscrimination (July 1996)

(a) To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title IX of the Education amendments of 1972 (Pub. L. 92–318), 20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (Pub. L. 94–135), the implementing regulations issued pursuant thereto by NASA, and the assurance of compliance which the recipient has filed with NASA.

(b) The recipient shall obtain from each organization that applies or serves as a subrecipient, contractor or subcontractor under this award (for other than the provision of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by NASA regulations.

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR parts 1250, 1251, and 1252).

§ 1260.32 Subcontracts.

Subcontracts (July 1996)

(a) For all subcontracts over $25,000 awarded by the recipient, the recipient shall provide the following to the NASA grant office for approval.

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) The subcontract budget and basis for subcontract cost or price.

(b) The recipient (with the exception of foreign organizations) shall utilize small business concerns, small disadvantaged business concerns, Historically Black Colleges and Universities, minority educational institutions, and women-owned small business concerns as subcontractors to the maximum extent practicable.

(c) All contracts awarded by a recipient, including small purchases, shall contain the provisions found in appendix A to subpart B of part 1260, as applicable.

§ 1260.33 Clean Air and Water.

Clean Air and Water (July 1996)

(Applicable only if the award exceeds $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and 9s listed by EPA, or if the award is not otherwise exempt).

The recipient agrees to he following:

(a) Comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. 7401, et seq.) and of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(b) That no portion of the work under this award will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date that this award was effective unless and until the EPA eliminates the name of such facility or facilities from such listings.

(c) Use its best efforts to comply with clear air standards and clean water standards at the facility in which the award is being preformed.

(b) Insert the substance of the provisions of this clause into any nonexempt subward or contract under the award.

(e) Report violations to NASA or to EPA.

§ 1260.34 Procurement standards.

Procurement Standards (July 1996)

a. The recipient shall maintain a procurement system which, at a minimum, meets the requirements set forth in §§ 1260.140 through 1260.148.

b. Procurement programs funded with Federal funds shall give preference to he purchase of recycled products pursuant to EOA guidelines.

§ 1260.35 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (July 1966)

(a) The recipient agrees to provide the information requested by NASA to allow the recipient's access to a NASA Center for performance of this grant. All visit requests must be submitted in a timely manner in accordance with instructions provided by the Center(s) to be visited.

(b) The recipient acknowledges that NASA reserves the right to perform security checks on foreign national visitors, and to deny or restrict access to a NASA Center, facility, computer system, or technical information in the interest of national security.

§ 1260.36 Travel and transportation.

Travel and Transportation (July 1996)

(a) The Fly America Act, 49 U.S.C. 40118, requires the recipient to use U.S. flag air carriers for international air transportation of personnel and property to he extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern recipient shipment of hazardous materials and other items.

Special Conditions

§ 1260.50 Special conditions.

(a) In addition to the provisions set forth in §§ 1260.21 through 1260.37, NASA grants are subject to special conditions, which either are not applicable to all awards or are temporary in nature. Examples are found in §§ 1260.51 through 1260.66, but NASA may impose other conditions as discussed in § 1260.114 or as the requirements dictate. A deviation to this handbook is not required for changes to special conditions.

(b) Special conditions will be printed in full text.

(c) For training grants, use § 1260.57 plus any other special conditions necessary.

(d) In facilities grants, special conditions will be selected on a case-by-case basis. As appropriate, the requirements of the following sections will apply: §§ 1260.132, Real property; 1260.123(c), Cost sharing or matching; and 1260.125(h), Revision of budget and program plans.

(e) Research grants with foreign organizations will include special conditions §§ 1260.58 through 1260.62, modified as necessary, when not covered under a Memorandum of Agreement (MOA). In addition, other clauses (e.g., §§ 1260.63 through 1260.66) will be written with the aid of General Counsel, and added when necessary.

§ 1260.51 Cooperative agreement special condition.

Cooperative Agreement Special Condition (July 1996)

(a) This award is a cooperative agreement as it is anticipated there will be substantial NASA involvement during performance of the effort. NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort:

(Reference the approved proposal that contains a detailed description of the work and insert a concise statement of the exact nature of the cooperative interactions that deals with existing facts and not contingencies.)

(b) The terms ''grant'' and ''recipient'' mean ''cooperative agreement'' and ''recipient of cooperative agreement,'' respectively, wherever the terms appear in provisions and special conditions included in this agreement.

(c) NASA's ability participate and perform its collaborative effort under this cooperative agreement is subject to the availability of appropriated funds and nothing in this cooperative agreement commits the United States Congress to appropriate funds therefor.

§ 1260.52 Multiple year grant.

Multiple Year Grant (July 1996)

This is a multiple year grant. Contingent on the availability of funds, scientific progress of the project, an continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $_____, Anticipated funding date _____.

Third year $_____, Anticipated funding date _____.

(Periods may be added or omitted, as applicable).

§ 1260.53 Incremental funding.

Incremental Funding (July 1996)

Only $_____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making an additional allotment in the amount of $_____ by _____. These funds will be obligated as appropriated funds become available without any action required by the recipient. The recipient will be given written notification by the NASA grant officer. NASA is not obligated to reimburse the recipient for the expenditure of amounts in excess of the total funds allotted by NASA.

§ 1260.54 Cost sharing.

Cost Sharing (July 1996)

(a) NASA and the recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the recipient's cash and/or non-cash contribution will be on a ____ percent NASA; ____ percent recipient basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by § 1260.123, Cost Sharing or Matching. The applicable Federal cost principles are cited in § 1260.127.

(b) The recipient's share shall not be charged to the Government under this agreement or under any other contract, grant, or cooperative agreement.

§ 1260.55 Reports substitution.

Reports Substitution (July 1996)

Technical Reports may be substituted for the required Performance Reports. The title page of such reports shall clearly indicate that the substitution has been made and will show the period covered by the originally required Performance Report.

§ 1260.56 Withholding.

Withhold (July 1996)

Pending receipt of a satisfactorily completed Summary of Research and/or other reports required under NASA grant No. _____, the Financial Management Office will withhold all payments under this grant (including advance payments). The grant officer will notify the NASA Financial Management Office when payments can resume.

§ 1260.57 Training grant reports.

Training Grant Reports (July 1996)

No later than 60 days after the ending date of the grant, the recipient will provide the NASA Headquarters Office of Human Resources and Education an *Administrative Report* that details the fellow's research and academic progress. Pertinent information relating to the student, including the degree granted and employment plans, are to be included. Students are required to submit a

Student Evaluation Form to the administrative contact at the Center monitoring the work 90 days prior to the ending date of the fellowship.

§ 1260.58 Interest bearing accounts.

Interest Bearing Accounts (July 1996)

Advances of federal funds shall be maintained in interest-bearing accounts. Interest earned on federal advances deposited in such accounts shall be remitted to DHHS at least quarterly, as instructed by the Financial Management Office of the NASA Center which issued the grant. Interest amounts up to $250 per year may be retained by the recipient.

§ 1260.59 Choice of law.

Choice of Law (July 1996)

The rights and obligations of the parties to the grant (or cooperative agreement) shall be ascertainable by recourse to the laws of the United States of America. However, it is understood that the laws of the recipient's country will generally apply to recipient activities within that country.

§ 1260.60 Invention reporting and rights.

Invention Reporting and Rights (July 1996)

(a) As used in this provision:

(1) The term ''invention'' means any invention, discovery or improvement:

(2) The term ''made'' means the conception or first actual demonstration that the invention is useful and operable.

(b) The recipient shall report promptly to the grant officer each invention made in the performance of work under this grant. The report of such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The recipient hereby grants to the Government of the United States of American, as represented by the Administrator of the National Aeronautics and Space Administration, the full rights, title, and interest in and to each such invention throughout the world except _____.

§ 1260.61 Public information.

Public Information (July 1996)

Information regarding this grant (including a copy of this award document) may be released by the recipient without restriction. However, technical information relating to work performed under this grant where there was a NASA contribution should be released by the recipient only after consultation with the NASA Technical Officer.

§ 1260.62 Allocation of risk/liability.

Allocation of Risk/Liability (July 1996)

a. With respect to activities undertaken under this agreement, the recipient agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its contractors and subcontractor employees, or to the loss of its property or that of its contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

b. In addition, the recipient agrees to indemnify and hold the U.S. Government and its contractors and subcontractors harmless from any third party claim, judgment, or cost arising from the injury to or death of any person, or for damage to or loss of any property, arising as a result of its possession or use of any U.S. Government property.

§ 1260.63 Payment—to foreign organizations.

Payment—To Foreign Organizations

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.64 Customs clearance and visas.

Customs Clearance and Visas

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.65 Taxes.

Taxes

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

§ 1260.66 Exchange of technical data and goods.

Exchange of Technical Data and Goods

(For grants or cooperative agreements with foreign organizations, this clause will be developed on a case-by-case basis.)

Post-Award Requirements

§ 1260.70 Delegation of administration.

(a) Pursuant to the Government-wide ''cross-servicing'' policy, NASA grants and cooperative agreements shall be delegated for full administration (including property and closeout) to the Office of Naval Research (ONR). Exceptions to this policy must be approved by the Procurement Officer, documented, and made part of the file.

(b) Delegations will be made by using NASA Form NF 1671. The grant officer will strike out any parts of the form that do not apply and write in specific instructions regarding actions requiring ONR involvement. The grant officer will inform the recipient, in writing, that a delegation has been made.

(c) ONR will acknowledge this delegation by returning a NF 1431 to the grant officer within five days of receipt.

§ 1260.71 Supplements and renewals.

(a) A NASA grant officer can unilaterally make minor or administrative changes to a grant; e.g., Reports Substitution (§ 1260.55), Withholding (§ 1260.56), and Novations (§ 1260.74). Renewal of grant (§ 1260.22) is a unilateral decision by NASA based upon availability of funds, continued research relevance, and progress made by the recipient.

(b) To eliminate the paperwork burdens associated with closeout and negotiations for a new grant, ongoing efforts to continue the same effort at the same institution will be accomplished by modifying the current instrument, unless there is a significant change in the nature of the work or closure would be in the best interest of the Government.

(1) Grants should be renewed prior to their expiration date. When possible, the period of performance should be continuous with the prior grant. If otherwise acceptable, NASA may fund an extension through a multiple year grant (§ 1260.13(a)) or by extending the existing grant. Such extensions (other than no-cost extensions) must be supported by a new proposal from the recipient.

(2) To insure continuation, the technical office should forward to the grant office a complete technical evaluation, support documentation, and/or a funded Procurement Request at least 45 days before the expiration of the funded period.

Although the grant officer has little control over the timely receipt of purchase requests, he/she is responsible for informing the technical officer of current lead-time requirements and for timely processing continuation agreements.

(3) The technical office will notify the recipient if the grant is to be funded or if additional information is required. Alternatively, if a grant is not to be renewed, the program office should give the grant officer and the recipient 30-day notice.

(c) Requests by the recipient to modify a grant must be in writing to the grant officer. Examples might include changes in principal investigator or additional funding. After concurrence by the program manager, a grant supplement will be unilaterally issued at the discretion of the grant officer.

(d) A single no-cost extension for up to 12 months can be unilaterally issued by the recipient as detailed in paragraph (b) of the provision § 1260.22, Extensions.

(e) When two or more actions are completed on a single supplement, the supplement will reflect the effective date of the earliest action.

§ 1260.72 Adherence to original budget estimates.

(a) Although NASA assumes no responsibility for budget overruns, the recipient may spend grant funds without strict adherence to individual allocations within the proposed budgets, except as provided in §§ 1260.27 and 1260.32.

(b) The revision of budgets and program plans are covered in § 1260.125.

§ 1260.73 Transfers, novations, and change of name agreements.

(a) *Transfer of grants.* Novation as provided in § 1260.73(b), is the only means by which a grant may be transferred from one institution to another. When the principal investigator changes organizational affiliation and desires support for the research at a new location and novation is not used, a new proposal must be submitted to NASA via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

(b) *Novation and change of name.* All novation agreements and change of name agreements of the recipient, prior to execution, shall be reviewed by legal counsel for legal sufficiency. When a change in principal investigator from one institution to another occurs, novation of the grant is preferable to termination.

§ 1260.74 Property use, disposition, and vesting of title.

(a) Administrative grant officers shall not approve the expenditure of grant funds for the acquisition of general purpose equipment as defined by OMB Circulars A–21 and A–122 unless the recipient's justification for the equipment demonstrates that the equipment will be used exclusively for research.

(b) Property administration and plant clearance for all grants and cooperative agreements will be delegated to the appropriate DoD property administration office.

(c) Administrative grant officers will provide copies of property related grant documentation to the Center industrial property officer (prior to award or modification) when the program office elects to retain title to an existing item of Government property, to furnish the property to the recipient in lieu of donation or to take title to property acquired by the recipient. When NASA acquires title to items of recipient acquired equipment or when NASA transfers an item of Government property to a recipient as Federally owned property, the administrative grant officer shall notify both the cognizant NASA Center financial management officer and the equipment management officer to ensure proper entries in financial and property accounting records.

(d) NASA policy encourages titling as ''exempt'' all property acquired by a nonprofit organization whose primary purpose is the conduct of scientific research, without further obligation to the Federal Government. Unless NASA takes title, equipment purchased with grant funds vests in the recipient subject to § 1260.134.

(1) If NASA elects to take title to recipient acquired property, said decision will be subject to § 1260.132(b)(3).

(2) Title to individual items or coherent systems (as defined in § 1260.74(f)) of recipient acquired equipment purchased at a cost of more than $5,000 may revert back to NASA at NASA's discretion, subject to the following conditions.

(i) NASA shall notify the recipient in writing as part of the approval for retaining the item. If the item was requested as part of the original budget, the award must specify NASA's intention to take title.

(ii) Government titled property will be subject to the provisions for other Federally owned property as stated in § 1260.133.

(3) Title to equipment costing $5,000 or less is not subject to transfer to the agency, except under the conditions of § 1260.74(f).

(e) Title to Federally-owned property remains with the Government.

(1) In accordance with Pub. L. 94–519, NASA will not acquire property from other agencies for use on NASA grants.

(2) When Federally-owned property is reported excess by a recipient, the administrative grant officer will report the equipment to the Center property disposal officer.

(3) NASA policy encourages the donation of existing, excess NASA property to nonprofit organizations whose primary purpose is the conduct of scientific research.

(f) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities, and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes recipient-owned components, the property will be considered to be exempt. The requirement for agreement regarding NASA's retention of its option to take title shall further apply where it is expected that one or more recipient-acquired components costing $5,000 or less will be fabricated into a single coherent system costing in excess of $5,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

§ 1260.75 Reports.

(a) The grant officer is responsible for submitting the Individual Procurement Action Report (NASA Form 507) for all grant actions.

(b) The Committee on Academic Science and Engineering (CASE) Report (NASA Form 1356), for research grants awarded to educational institutions, is submitted with the basic award procurement request. In the case of certain non-funded actions for educational institutions, the NF 1356 is initiated by the grant officer.

(c) The Federal Cash Transactions Report (SF 272) shall be submitted by the recipient within 15 working days following the end of each Federal fiscal quarter, as a condition of receiving advance payments. Instructions and answers to payment questions will be provided by the Financial Management Office of the Center that issued the grant. (see § 1260.152.)

(d) The annual Inventory Report of Federally Owned Property in Custody of the Recipient will be submitted by the recipient by October 31, as required by § 1260.27(e). The listing shall include information specified in § 1260.134(f) together with beginning and ending dollar value totals for the reporting period.

(e) A Performance Report shall be submitted in accordance with §§ 1260.21 and 1260.151(d). Recipients shall not be required to submit more than the original and two copies of performance reports (§ 1260.151(e)). At the request of the technical officer, this requirement may be modified by use of special condition § 1260.55 entitled ''Reports Substitution''.

(f) Final reports are as follows.

(1) A Summary of Research for research grants, an Education Activity Report for education grants, or an Administrative Report for training grants, shall be submitted as required by § 1260.21 or § 1260.57. Citation of publications resulting from research, or abstracts thereof, may serve as all or part of the summary. A separate report is required if inventions and patents

resulted from the work. In addition, students are required to submit a Student Evaluation Form to the administrative contact at the Center monitoring the work 90 days prior to the ending date of a fellowship.

(2) A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, shall be submitted by the recipient no later than 60 days after the end of the grant, as required by § 1260.27.

(3) A properly certified Final Federal Cash Transactions Report, SF 272, is required from the recipient for each grant, as addressed in § 1260.26(a).

(g) One copy of each Disclosure of Lobbying Activities (SF LLL), under 14 CFR 1271.110, shall be provided by the grant officer to the Procurement Officer for transmittal to the Director, Contract Management Division (Code HK). Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to Code HK.

(h) The Director, Program Operations Division (Code HS), shall provide to the General Services Administration information concerning all NASA debarments, suspensions, determinations of ineligibility, and voluntary exclusions of persons in accordance with 14 CFR 1265.505.

(i) Remedies for Noncompliance are delineated in § 1260.162.

(1) Failure of the recipient to provide a required grant report can result in the Agency and the public being denied information about grant activities, NASA officials having less information for making decisions, grant closeout being delayed, and confidence being undermined as to whether the recipient will meet the requirements under other grants. Because NASA grants provide for advance payments, a recipient could be fully paid before final reports are due. At this point, it is too late to withhold payment on the existing grant.

(2) Consistent with §§ 1260.122(h) and 1260.162(a), NASA does not withhold payment until a recipient has failed to comply with report requirements for more than 90 days. To remedy failure to furnish reports, special condition § 1260.56, Withholding, should be used when awarding a new grant or modifying an existing grant with non-responsive organizations.

(i) Special condition § 1260.56 instructs the Financial Management Office to withhold payment pending receipt of the satisfactorily completed reports required in § 1260.75.

(ii) The grant officer may waive the withholding requirement when the recipient has taken corrective action that makes withholding unnecessary. To release for payment the amount withheld, grant officers shall send a memorandum to their Financial Management Office.

§ 1260.76 Suspension or termination.

Suspension of termination of a grant prior to the planned expiration date must be reserved for exceptional situations that cannot be handled any other way (see §§ 1260.23 and 1260.160). Before suspending or terminating any grant with a university, the NASA grant officer and technical officer shall take into account the consequences to graduate students working under the grant.

§ 1260.77 Closeout procedures.

The closeout of a grant is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by both the recipient and NASA and no further action is necessary (see § 1260.171).

(a) *Initiation.* The NASA grant officer shall determine from the technical officer that work under a particular grant will not be continued or is completed. The NASA grant officer will promptly notify ONR to begin closeout within 90 days of this determination. ONR will inform the recipient of pending closeout and the final documentation required, to the extent practicable, prior to the grant's expiration date.

(1) To expedite closeout, NASA grant officers shall respond to ONR inquiries within 30 days. The use of E-mail communication between ONR and NASA is encouraged.

(2) Recipients shall not be requested to complete forms or supply information other than discussed in § 1260.75(c) through (f), except in unusual situations.

(b) *Reports submission.* ONR will ensure that all reports required from the recipient (see § 1260.75) have been received by the appropriate NASA offices.

(c) *Reports certification.* ONR will obtain from those that receive NASA reports, written certification that the reports have been satisfactorily completed. The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.135). In reviewing the certifications, see §§ 1260.171 and 1260.172.

(d) *Administrativly complete.* A grant is administratively complete when

(1) All reports have been received;

(2) All certifications have been received;

(3) Payments have been made for allowable reimbursable costs and refunds have been received for any balance of unobligated cash advanced that is not authorized to be retained for use on other grants; and

(4) A DD Form 1594 has been provided by ONR to the NASA grant officer.

(e) *Retention of documents.* Records will be retained in accordance with § 1260.153.

Appendix to Subpart A to Part 1260—Listing of Exhibits

Exhibit A—Delegation of Administration

Exhibit B—Formats

Example 1—Research Grant
Example 2—Cooperative Agreement
Example 3—Training Grant
Example 4—Education Grant
Example 5—Grant or Cooperative Agreement with Foreign Organizations

Exhibit C—Budget Summary

Note: Exhibits are available at NASA Headquarters, Code HK, Washington, DC 20546.

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

General

§ 1260.101 Purpose.

This subpart implements OMB Circular No. A–110 and establishes uniform administrative requirements for NASA grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. NASA shall not impose additional or inconsistent requirements, except as provided in §§ 1260.104 and 1260.114 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 1260.102 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subcontractors, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means a grant or cooperative agreement that provides support or stimulation to accomplish a public purpose. Awards include research grants, training grants, facilities grants, educational grants, and cooperative agreements in the form of money or property in lieu of money, by NASA to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind of individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

(h) *Contract* means a procurement contract under an award, and a procurement subcontract under a recipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by NASA.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

(k) *Disallowed costs* means those charges to an award that NASA determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where a Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *NASA* means the National Aeronautics and Space Administration (NASA), including its authorized representatives.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when NASA funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* mean the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subcontractors. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for good and other property received, for services performed by employees, contractors, subcontractors and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 1270.24(e) and (h). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of NASA funds is not program income. Except as otherwise provided in these regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document

during which NASA sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intellectual property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving an award directly from NASA to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subcontractors, or contractors or subcontractors of recipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also included activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold.

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

(hh) *Supplies* means all personal property excluding equipment, intellectual property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ii) *Suspension* means an action by NASA that temporarily withdraws NASA sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by NASA. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by NASA that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 1260.103 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1260.104.

§ 1260.104 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this subpart when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this subpart shall be permitted only in unusual circumstances. NASA may apply more restrictive requirements to a class of recipients when approved by OMB. NASA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by NASA. See § 1260.6(c).

§ 1260.105 Subawards.

Unless sections of this subpart specifically exclude subrecipients from coverage, the provisions of this subpart shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 14 CFR part 1273, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

Pre—Award Requirements

§ 1260.110 Purpose.

Sections 1260.111 through 1260.117 prescribe forms and instructions and other pre-award matters to be used in applying for NASA awards.

§ 1260.111 Pre-award policies.

(a) Use of grants and cooperative agreements, and contracts. In each instance, NASA shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or

contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. NASA shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 1260.112 Forms for applying for Federal assistance.

(a) NASA shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the NASA in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use those forms and instructions prescribed by NASA in § 1260.

§ 1260.113 Debarment and suspension.

NASA and recipients shall comply with the nonprocurement debarment and suspension rule, 14 CFR part 1265, ''Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants),'' implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This rule restricts contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 1260.114 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this subpart, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, NASA may impose additional requirements as needed. Such applicant or recipient will be notified in writing as to the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 1260.115 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. NASA shall follow the provisions of Executive Order 12770, ''Metric Usage in Federal Government Programs.''

§ 1260.116 Resource Conservation and Recovery Act (RCRA).

Under the RCRA (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002 of the RCRA (42 U.S.C. 6962). Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 1260.117 Certifications and representations.

Unless prohibited by statute or codified regulation, NASA will allow recipients to submit certain certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipient's compliance with the pertinent requirements.

Post Award Requirements

Financial and Program Management

§ 1260.120 Purpose of financial and program management.

Sections 1260.121 through 1260.128 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 1260.121 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 1260.152. If NASA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, NASA, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) NASA may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the Unites States.''

§ 1260.122 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 1260.121.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by NASA to the recipient.

(1) Advance payments will be made by electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(d) [Reserved. Not used by NASA.]

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. NASA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project. When the reimbursement method is used, NASA shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(f) If a recipient cannot meet the criteria for advance payments and NASA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, NASA may provide cash on a working capital advance basis. Under this procedure, NASA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, NASA shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subcontractor to meet the subcontractor's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, NASA will not withhold payments for proper charges made by recipients at any time during the project period unless the conditions in paragraph (h) (1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or NASA reporting requirements.

(2) The recipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, NASA may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, NASA shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the conditions in paragraph (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonable available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) Interest earned on Federal advances deposited in interest-bearing accounts in excess of $250 per year shall be remitted annually to Department of Health and Human Services (DHHS), Payment Management System,

Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In accordance with 31 CFR part 206, interest should be remitted electronically through the Automated Clearing House (ACT) to DHHS. Recipients without this capability may make the remittance by check. In either case, the remittance should be payable to DHHS and should indicate the recipient's Entity Identification Number (EIN) and reason, i.e., ''Interest earned.''

(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. [Reserved. Not used by NASA.]

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. The SF–271 may be used for requesting reimbursement for NASA construction programs.

§ 1260.123 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by NASA.

(7) Conform to other provisions of this subpart, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of NASA.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If NASA authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, NASA may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if the conditions in paragraph (g) (1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that NASA has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 1260.124 Program income.

(a) The standards set forth in this section shall be used to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by NASA and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When NASA authorizes the disposition of program income as

described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the program regulations or the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 1260.114.

(e) Unless program regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 1260.130 through 1260.137).

(h) Unless program regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 1260.125 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon requirements in these regulations. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from NASA for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by NASA.

(6) The inclusion, unless waived by NASA, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education;'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations;'' 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals;'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, NASA is authorized, at its option, to waive cost-related and administrative prior written approvals required by this Part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of NASA. All pre-award costs are incurred at the recipient's risk (i.e., NASA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipate and inadequate to cover such costs).

(2) Initiated a non-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify NASA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless NASA provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) Program regulations may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which NASA's share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by NASA. However, no program regulation shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from NASA for budget revisions whenever the conditions in paragraphs (h)(1), (2) or (3) or this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 1260.127.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When NASA makes an award that provides support for both construction and nonconstruction work, NASA may require the recipient to request prior approval from NASA before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, NASA shall require recipients to notify NASA in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless NASA indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, NASA shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, NASA shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 1260.126 Non-Federal audits.

(a) Recipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and NASA regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of NASA.

(d) Commercial organizations shall be subject to the audit requirements of NASA or the prime recipient as incorporated into the award document.

§ 1260.127 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 1260.128 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by NASA.

Property Standards

§ 1260.130 Purpose of property standards.

Sections 1260.131 through 1260.137 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards and NASA will not impose additional requirements, unless specifically required by Federal statue. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 1260.131 through 1260.137.

§ 1260.131 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided for property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 1260.132 Real property.

Unless otherwise provided by statue, the requirements concerning the use and disposition of real property acquired in whole or in part under awards are as follows:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of NASA.

(b) The recipient shall obtain written approval by NASA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by NASA.

(c) When the real property is no longer needed as provided in paragraph (a) and (b), the recipient shall request disposition instructions from NASA or its successor Federal awarding agency. NASA shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for the percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by NASA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 1260.133 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to NASA. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to

NASA for further Federal agency utilization.

(2) If NASA has no further need for the property, it shall be declared excess and reported to the General Services Admiration, unless NASA has statutory authority to dispose of the property by alternative methods (e.g, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by NASA.

(b) *Exempt property.* Title to nonexpendable personal property acquired with grant funds shall be vested in the recipient upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of NASA. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in § 1260.27.

§ 1260.134 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether nor not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of NASA. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by NASA, then

(2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by NASA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by NASA. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of NASA.

(f) The recipients's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates NASA for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify NASA.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from NASA. NASA shall determine whether the equipment can be used to meet NASA's requirements. If no requirement exists within NASA, the availability of the equipment shall be reported to the General Services Administration by NASA to determine whether a requirement for the equipment exists in other Federal agencies. NASA shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse NASA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's

participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by NASA for such costs incurred in its disposition.

(4) NASA may reserve the right to transfer the title to the Federal Government or to a third party named by NASA when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) NASA shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If NASA fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 1260.135 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 1260.136 Intangible property.

(a) The recipient may assert copyright in any work that is subject to copyright and was created, or for which copyright ownership was purchased, under an award. NASA is granted a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) NASA has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intellectual property and debt instruments acquired under an award or subcontract vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of NASA. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 1260.134(g).

(e) Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the cooperative agreement by NASA or its contractors will initially vest with the creating party. Certain rights may be exchanged with the recipient.

§ 1260.137 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. NASA may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 1260.140 Purpose of procurement standards.

Sections 1260.141 through 1260.148 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by NASA upon recipients, unless specifically required by Federal statute or executive order or approved in accordance with the deviation procedures of § 1260.6.

§ 1260.141 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to NASA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 1260.142 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 1260.143 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 1260.144 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that the conditions in paragraphs (a) (1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive Order 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for NASA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this Regulation.

(2) The procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 1260.145 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1260.146 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum.

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 1260.147 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 1260.148 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, NASA may accept the bonding policy and requirements of the recipient, provided the NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this subpart, as applicable.

Reports and Records

§ 1260.150 Purpose of reports and records.

Sections 1260.151 through 1260.153 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 1260.151 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subcontract, function or activity supported by the award. Recipients shall monitor subcontracts to ensure subcontractors have met the audit requirements as delineated in § 1260.126.

(b) The terms and conditions of the award shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 1260.151(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. NASA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify NASA of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) NASA may make site visits, as needed.

(h) NASA shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 1260.152 Financial reporting.

(a) When funds are advanced to recipients, each recipient is required to submit the SF–272, Report of Federal Cash Transactions, and, when necessary, its continuation sheet, SF 272a. NASA uses this report to monitor cash advanced to the recipient and obtain disbursement information for each agreement with the recipient.

(b) NASA requires forecasts of the recipient's cash requirements for each of the four months following the quarter being reported, in the ''Remarks'' section of the report.

(c) Recipients are required to submit the original of the report for the Financial Management Office of the NASA Center which issued the agreement 15 working days following the end of each Federal fiscal quarter. Copies will be furnished to the appropriate grants officer (see § 1260.26(c)).

§ 1260.153 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. NASA shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by NASA. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transfered to or maintained by NASA, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in section 1260.153(g).

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall place no restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records have belonged to NASA.

(g) Indirect cost rate proposals, cost allocations plan, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to NASA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 1260.160 Purpose of termination and enforcement.

Sections 1260.161 and 1260.162 set forth uniform suspension, termination and enforcement procedures.

§ 1260.161 Termination.

(a) Awards may be terminated in whole or in part only if the conditions in paragraph (a)(1), (2) or (3) of this section apply.

(1) By NASA, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By NASA with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to NASA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if NASA determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) or this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 1260.171(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 1260.162 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, NASA may, in addition to imposing any of the special conditions outlined in § 1260.114, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by NASA.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, NASA shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statue or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless NASA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the conditions in paragraphs (c) (1) and (2) of this section apply.

(1) The costs results from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.'s 12549 and 12689 and 14 CFR part 1265 (see Section 1260.113).

After-The Award Requirements

§ 1260.170 Purpose.

Sections 1260.171 through 1260.173 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1260.171 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. NASA may approve extensions when requested by the recipient.

(b) Unless NASA authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) NASA shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that NASA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, NASA shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § § 1260.131 through 1260.137.

(g) In the event a final audit has not been performed prior to the closeout of an award, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 1260.172 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of NASA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 1260.126.

(4) Property management requirements in §§ 1260.131 through 1260.137.

(5) Records retention as required in § 1260.153.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the NASA and the recipient, provided the responsibilities of the recipient referred to in § 1260.173(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 1260.173 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, NASA may reduce the debt by the provisions of paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, NASA shall charge interest on an overdue debt in accordance with 4 CFR chapter II, ''Federal Claims Collection Standards.''

Appendix A to Subpart B of Part 1260—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with Executive Order 11246; ''Equal Employment Opportunity,'' as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts in excess of $2,000 for construction or repair awarded by recipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the NASA.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of

experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 96–18363 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[T.D. ATF–382; (95R–0360)]

RIN 1512–AB61

Commerce in Explosives; Implementation of Provisions of Public Law 104–132, the Antiterrorism and Effective Death Penalty Act of 1996, Relating to Plastic Explosives

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements certain provisions of Public Law 104–132, the Antiterrorism and Effective Death Penalty Act of 1996. These regulations implement the law by requiring that all persons possessing plastic explosives on the date of enactment report the quantity of such explosives possessed and certain other information to the Director within 120 days after the date of enactment.

EFFECTIVE DATE: The regulations are effective on July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Gail E. Hosey, Firearms and Explosives Regulatory Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Background

Public Law 104–132, 110 Stat. 1214, the ''Antiterrorism and Effective Death Penalty Act of 1996'' (hereafter ''the Act'') was enacted on April 24, 1996. The Act amended a number of provisions of the Federal explosives laws in 18 U.S.C. Chapter 40. Title VI of the Act, ''Implementation of Plastic Explosives Convention'', added new requirements to 18 U.S.C. Chapter 40 to implement the ''Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.'' In general, the amendments make it unlawful to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. A number of exceptions are provided in the law, including an exception for possession of plastic explosives imported into or manufactured in the United States prior to April 24, 1996. This exception expires at the end of the 3-year period beginning April 24, 1996. *See* 18 U.S.C. 842(n)(2)(A).

Section 607 of the Act provides that, except as otherwise provided, the amendments made by Title VI shall take effect 1 year after the date of enactment. Accordingly, the majority of the amendments made by Title VI do not take effect until April 24, 1997.

However, section 603 added a new section 842(o) to Title 18, U.S.C., which provides that any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment, shall report to the Secretary within 120 days after the date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation.

This Treasury Decision adds a new Subpart J to the regulations in 27 C.F.R. Part 55 titled ''Marking of Plastic Explosives.'' All regulations relating to Title VI of the Act will be in this subpart. A new section 55.181 implements the reporting requirement of section 842(o). This section requires that any person, other than an agency of the United States or the National Guard, possessing plastic explosive on April 24, 1996, submit a report to the Director, ATF, no later than August 22, 1996. The report must be written and shall include the quantity of explosives possessed, the name and address of the manufacturer or importer, any marks of identification, the location where the explosives are stored, and the name and address of the possessor.

The regulation adds two items of information to be reported in addition to the information required by statute, *i.e.*, storage location and name and address of the possessor. All information required by this final rule will assist ATF in determining whether plastic explosives are possessed in compliance with the law. Specifically, the information will assist in determining whether plastic explosives possessed after April 24, 1997, were imported into or manufactured in the United States prior to April 24, 1996 and are lawfully possessed under the 3-year exception.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action, because the economic effects flow directly from the underlying statute and not from this final rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the one-time reporting requirement of section 842(o) that must

be met on or before August 22, 1996, and because immediate guidance is necessary for possessors of plastic explosives to comply with the requirement, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0535. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Comments concerning the collection of information should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

The estimated average annual burden associated with the collection of information in this regulation is 1.0 hour per respondent or recordkeeper.

The collection of information in this regulation is in section 27 CFR 55.181. This information is required by 18 U.S.C. 842(o) which requires that any person possessing plastic explosives on April 24, 1996, report the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation within 120 days of the date of enactment. The likely respondents are Federal explosives licensees, and State, and local governmental entities. Estimated total annual reporting and recordkeeping burden: 1,000 hours. Estimated number of respondents and recordkeepers: 1,000. Estimated annual frequency of responses: One time only.

Drafting Information. The author of this document is Gail E. Hosey, Firearms and Explosives Regulatory Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

27 CFR part 55 is amended as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR part 55 is revised to read as follows:

Authority: 18 U.S.C. 842, 843, 845, 846, 847.

Par. 2. Section 55.11 is amended by adding the term ''plastic explosive'' to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Plastic explosive. An explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25° C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.

* * * * *

Par. 3. Subpart J consisting of § 55.181 is added to read as follows:

Subpart J—Marking of Plastic Explosives

§ 55.181 Reporting of plastic explosives.

All persons, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on April 24, 1996, shall submit a report to the Director no later than August 22, 1996. The report shall be in writing and mailed by certified mail (return receipt requested) to the Director at P.O. Box 50204, Washington, DC 20091–0204. The report shall include the quantity of plastic explosives possessed on April 24, 1996; any marks of identification on such explosives; the name and address of the manufacturer or importer; the storage location of such explosives, including the city and State; and the name and address of the person possessing the plastic explosives.

Signed: June 20, 1996.

John W. Magaw,

Director.

Approved: July 3, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 96–18617 Filed 7–19–96; 9:57 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

28 CFR Part 82

[OJP (BJA) No. 1010]

RIN 1121–AA24

State Criminal Alien Assistance Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Interim final rule.

SUMMARY: This document removes the rule governing the State Criminal Alien Assistance Program (SCAAP). Congress changed the authorization for SCAAP in Fiscal Year 1996 and, as such, the program as set forth in this interim final rule is no longer in effect or necessary.

EFFECTIVE DATE: Interim Rule Removal effective on July 23, 1996.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center or Linda McKay, SCAAP Coordinator, at 1–800-421–6770.

SUPPLEMENTARY INFORMATION: This notice is to announce the removal of the Interim Final Rule, 28 CFR part 82, which was promulgated as a result of a directive in the Fiscal Year 1995 Department of Justice Appropriations Act, Title VIII of Public Law 103–317, and was published on October 6, 1994, 59 FR 50830. The Fiscal Year 1995 Appropriations Act allocated $130 million to 8 U.S.C. 1365 to create the State Criminal Alien Assistance Program (SCAAP) to provide assistance to states for costs associated with incarcerating illegal criminal aliens. No

funds were appropriated under the authority of 8 U.S.C. § 1365 this Fiscal Year and therefore, this interim rule is no longer in effect and is being removed. SCAAP will be continued by the Bureau of Justice Assistance under the authority of 8 U.S.C. 1252(j) to which Congress appropriated a total of $500 million in Fiscal Year 1996. An announcement of funding and guidance availability for the Fiscal Year 1996 program is being published concurrently with this notice in the Federal Register.

List of Subjects in 28 CFR Part 82

Grant programs—aliens, Prisons.

Under the general program and rulemaking authority of 42 U.S.C. 3742 and 3782 and for the reasons set out in the preamble, title 28, chapter I of the Code of Federal Regulations is amended by removing part 82.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 96–18670 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA43–7116a; FRL–5514–4]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: In this action, EPA is approving the Inspection and Maintenance (I/M) State Implementation Plan (SIP), for Washington State. On August 21, 1995, Washington submitted SIP revision requests to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended and Federal I/M rule 40 CFR part 51, subpart S. These SIP revisions will require vehicle owners to comply with the Washington I/M program in the two Washington ozone nonattainment areas classified as ''marginal'' and in the three carbon monoxide nonattainment areas classified as ''moderate''. This revision applies to the Washington counties of Clark, King, Pierce, Snohomish, and Spokane.

DATES: This action is effective on September 23, 1996, unless adverse or critical comments are received by August 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to Montel Livingston SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Office of Air Quality, (OAQ–107), 1200 6th Avenue, Seattle, WA 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAA or Act), requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any ozone nonattainment area which has been classified as ''marginal'' (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, any ozone nonattainment area classified as moderate or worse must implement a basic or an enhanced I/M program depending upon its classification, regardless of previous requirements.

Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program. Ozone nonattainment areas classified as ''serious'' or worse with populations of 200,000 or more, and CO nonattainment areas with design values above 12.7 ppm and populations of 200,000 or more, and metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet EPA guidance for enhanced I/M programs.

The EPA has designated two areas as ozone nonattainment in the State of Washington. The Puget Sound ozone nonattainment area is classified as marginal and contains King, Pierce, and Snohomish counties. The Vancouver Air Quality Maintenance Area is classified as marginal and contains Clark county. Additionally, three areas in Washington state are designated as CO nonattainment areas. Both the Spokane Carbon Monoxide Nonattainment area (Spokane County) and the Puget Sound Carbon Monoxide Nonattainment area (King, Pierce, and portions of Snohomish Counties) have design values greater than 12.7 ppm and are designated as ''moderate plus''. The Vancouver Air Quality Maintenance Area is a ''moderate'' carbon monoxide nonattainment area, with a design value below 12.7 ppm. The central Puget Sound has an urbanized area population of 1,793,612, and Spokane has an urbanized area population of 266,709. Based on these nonattainment designations and populations, a basic I/M program is required in the Vancouver and Puget Sound ozone nonattainment area, while enhanced I/M programs are required in the Puget Sound, and Spokane carbon monoxide nonattainment areas.

By this action, the EPA is approving the submittal of the Washington I/M SIP. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA regulations. A summary of the EPA's analysis is provided below. In addition, a history and a summary to support approval of the State submittal is contained in a TSD, dated May 10, 1996, which is available from the Region 10 Office (address provided above).

II. I/M Regulation General SIP Submittal Requirements

The original I/M regulation was codified at 40 CFR part 51, Subpart S, and required States to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993. On September 18, 1995, the EPA published a final regulation establishing the ''low enhanced'' I/M requirements, pursuant to section 182 and 187 of the Act (40 CFR part 51). These low enhanced I/M requirements superseded the former enhanced I/M requirements. The State has met the low enhanced I/M requirements established by the September 18, 1995 rulemaking.

III. State Submittal.

On August 21, 1995, the State of Washington submitted the I/M SIP for its three nonattainment areas. Public hearings for the submittal were held in Vancouver, Bellevue, and Spokane on June 6, 7, and 8, 1995, respectively.

The submittals provide for the continued implementation of I/M programs in the Puget Sound, Spokane, and Vancouver areas. Inspection and Maintenance programs have been running in the Puget Sound area since 1982, in Spokane since 1985, and in Vancouver since 1993. Washington's centralized, test only, biennial program meets the requirements of EPA's low enhanced performance standard and other requirements contained in the Federal I/M rule in the applicable nonattainment counties. Testing will be overseen by the Washington State Department of Ecology and its I/M contractor, Systems Control. Other aspects of the Washington I/M program include: testing of 1968 and later light duty vehicles and trucks and heavy duty trucks, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration denial, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, reporting, test equipment and test procedure specifications, public information and consumer protection, and inspector training and certification. In addition, the low enhanced I/M programs will include: a two-speed (2500 and idle) test or a loaded idle test, and a program to evaluate on-road testing. An analysis of how the Washington I/M program meets the EPA's I/M regulation is provided below.

A. Applicability

The SIP needs to describe the applicable areas in detail and, consistent with 40 CFR 51.372, needs to include the legal authority or rules necessary to establish program boundaries.

The Washington I/M regulations specify that I/M programs be implemented in the counties as described above. Although Vancouver requires only the basic I/M program for both its ozone and carbon monoxide nonattainment areas, the state is implementing one ''low enhanced'' program in all areas that require I/M programs. In the SIP, however, the performance standard for Vancouver is compared to EPA's basic performance standard.

B. Enhanced and Basic I/M Performance Standard

The I/M programs provided for in the SIP are required to meet a performance standard, either basic or low enhanced as applicable, for the pollutants that caused the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5ah showing that the low enhanced performance standard is met for Puget Sound and Spokane. The State has also submitted modeling for the basic I/M area of Vancouver to demonstrate that the program meets EPA's basic performance standard.

C. Network Type and Program Evaluation

The SIP needs to include a description of the network to be employed, and the required legal authority. For enhanced I/M areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The Washington program has chosen to implement a test only I/M network program design which will utilize operating contractors to implement the inspection portion of the program. The Washington State Department of Ecology describes and commits, in its SIP narrative, to institute a continuous ongoing evaluation program consistent with the low enhanced I/M rule. The results of the evaluation program will be reported to EPA on a biennial basis. Legal authority which is contained in the Revised Code of Washington section 70.120.170 allows the WDOE to authorize, through contracts, the establishment and operation of inspection stations to conduct vehicle inspections. Washington commits to an ongoing evaluation to quantify the emission reduction benefits of the program.

D. Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation, and discuss how the performance standard will be met which includes: (1) A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The Emission Check program is funded by a biennial appropriation from the state general fund. The fee will be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program (RCW 70.120.170(4)(a)). Currently, the inspection fee is $12 and the administrative cost per vehicle is $3.90 for the 1993–1995 biennium.

In May, 1996, Ecology submitted a supplement to the SIP providing more detail on budget and staffing levels. The I/M program has a General Fund budget of $3,861,939 for the 1995–97 biennium, and that budget will likely be carried into the 1997–99 biennium. Ecology dedicates a staffing level of 31 full-time equivalent employees (FTEs) to support the program.

E. Test Frequency and Convenience

The SIP needs to include the test schedule in detail including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in low enhanced I/M programs the SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The Washington SIP requires biennial inspections for all privately owned vehicles within the subject area, and annual tests for state and local government vehicles. The inspections will be conducted so that odd model year vehicles must test in the odd calendar year and even model year vehicles must test in the even calendar year. The authority for the enforcement of the testing frequency is contained in the Washington I/M rule. Short waiting

times are addressed the contracts between the State and its managing contractors. In terms of driving distances, 95% of the subject public are within ten minutes of most test facilities.

F. Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The Washington program includes coverage of all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks up to 8,500 GVWR, registered or required to be registered within the nonattainment areas and fleets primarily operated within an I/M program area. The starting model year of a vehicle testing program may be changed each year to include the most recent 24 model years. I/M testing exemptions are granted for change of ownership, alternative fuel vehicles, electric vehicles, and motorcycles.

All subject fleets must complete the emission inspection process, without a waiver option being available. Fleets may be inspected in facilities other than Systems Control facilities provided that Ecology approves the alternative tests. Vehicles operated on federal installations are required to be tested regardless of whether the vehicles are registered in the state or local I/M area. Legal authority for the vehicle coverage is contained in the Washington I/M rule.

G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

The Washington I/M SIP establishes test vehicle procedures and standards that at a minimum are consistent with EPA regulations. Test procedures and standards are specified in WAC 173–422–070. In Washington, all 1968 and newer gasoline or diesel-fueled vehicles are tested. The State will test vehicles on a steady-state dynamometer or by a two-speed idle and 2500 RPM unloaded test. Diesel vehicles are tested for exhaust opacity only. Specified vehicles are tested using a transient emissions test.

H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Washington I/M SIP describes the performance features of computerized test systems, gasoline exhaust gas analyzer specifications, and exhaust gas analyzer specifications. For transient emissions tests, EPA's ''High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications'' Final Technical Guidance is followed.

I. Quality Control

The SIP needs to include a description of quality control and recordkeeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control.

The Washington I/M SIP includes a Quality Control Plan that specifies quality control and periodic maintenance procedures. Quality control procedures are specified in WAC 173–422–120 and authorized by RCW 70.120. The Department of Ecology's Emission Check staff performs inspections to ensure that operation of the emission testing facilities, calibration and maintenance of exhaust analyzers and test procedures, training of management and inspection personnel meet the standards as outlined in WAC 173–422.

J. Waivers and Compliance via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waivers must be in accordance with the CAA and Federal I/M rule. To receive a waiver within basic and enhanced areas within Washington, vehicle owners are required to spend at least $100 or more on 1968 to 1980 vehicles, and at least $150 or more on 1981 and newer vehicles in an attempt to correct applicable emission failure(s). The SIP pledges that by 1998, these limits will be adjusted to $450 in the enhanced I/M areas, and in basic areas, to $200. Washington's waiver rates (as percentages of initially failed vehicles) are, for Central Puget Sound and Vancouver, 15% for 1980 and older vehicles, and 14% for 1981 and newer vehicles; and for Spokane, 13% for 1980 and older vehicles, and 12% for 1981 and newer vehicles. These waiver rates are used in the modeling demonstration. Ecology states in the SIP that if the waiver rates are higher than estimated, the State will take corrective action to address the deficiency so that compliance with the performance standard is assured. In Washington, a waiver, or ''Certificate of Acceptance'', (COA) is issued by the contractor through authority granted by the Department of Ecology. These waivers are consistent with the low-enhanced I/M rule.

K. Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g. those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. In addition, the SIP needs to include the legal authority to implement and enforce the

program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to use registration denial as its primary enforcement mechanism in both basic and enhanced I/M areas. Motorists will be denied vehicle registration unless the vehicle has complied with the I/M program requirements. The motorist licensing compliance enforcement program will be implemented by the Washington State Department of Licensing (DOL). The DOL will deny registration unless the vehicle owner demonstrates proof of having passed an emissions test, or has a waiver. Persons who reside in emissions-contributing areas and who register their vehicle outside of that area are subject to a $250 fine. A $250 fine will also be given to citizens who obtain a vehicle license without having an emissions test. The legal authority to implement and enforce the program is in Chapter 173–422 WAC.

L. Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

The Washington I/M SIP provides for monthly reviews of exemptions and waivers conducted by I/M field staff. Additionally, the SIP provides for the implementation of procedures to ensure effective overall performance of the enforcement system. Examples include verification of exempt vehicle status by inspecting and confirming such vehicles by the program or its delegate, and maintenance of an audit trail to allow for assessment of enforcement effectiveness. Ecology will establish an information base used to evaluate and enforce the program. As part of this effort, the testing database will be reviewed for accuracy and compared to the registration database to determine program effectiveness, and establish compliance rates. Noncomplying motorists will have to pay a $250 fine.

M. Quality Assurance

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The Washington I/M SIP includes a description of its quality assurance program. The goal of the quality assurance program is to discover, correct, and prevent fraud, waste and abuse within the Emission Check program, including the accuracy of equipment and the adequacy of procedures. The administration of quality assurance is performed by the Emission Check staff and the Department of Ecology's DOL liaison. The SIP text describes the performance audits, overt performance audits, covert performance audits, record audits, and equipment audits to occur under the quality assurance plan.

N. Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds.

The Washington I/M SIP includes specific penalties in its enforcement against contractors, stations and inspectors. The SIP includes the State's enforcement procedures which can be pursued through either contractual (Systems Control Contract #99–92) or regulatory action (WAC 173–422). Specific penalties are outlined against the contractor, fleet testers, and emission specialists. Emission Check personnel have authority under the Systems Control contract to stop inspections if invalid inspections are a possibility. Inspectors may be suspended if the Emission Check Program staff determines that they are not qualified. Legal authority is contained in WAC 173–422–120.

O. Data Analysis and Reporting

The SIP needs to describe the types of data to be collected.

The Washington I/M SIP commits the Department of Ecology to provide to EPA annual reports containing basic statistics on the program for the previous year. The state commits to providing all area specific applicable data as required, including computerized test data, quality assurance data, quality control, and enforcement data. Ecology's Information Data Services maintains the data and evaluates it for inclusion in yearly and biennial reports. The biennial reports will discuss any changes to the program design or implementation, program weaknesses, and cures for those weaknesses.

P. Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The Department of Ecology has a formal training and certification program for fleet and centralized contractor testing facilities. Washington's program includes training, certification, test procedures, and public relations. Certification occurs after an inspector has passed an approved Department of Ecology written test with a score of 80% or better, and after a hands-on test. The legal authority for inspectors to attend and pass a course of study and become certified is established by RCW 70.120.020.

Q. Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented to improve repair effectiveness, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

Washington has several facets to its repair effectiveness program. Technician training is an ongoing element of the Emission Check Program, and technical colleges, independent training facilities, etc, are working to assess and improve the current program. Emission system diagnosis and repair curriculum will be consistent with 40 CFR 51.369 (c). Also, performance monitoring and evaluation of the repair facilities will help to identify the most effective repair shops and the emission reductions obtained through these facilities. A list of the most effective repair shops will be provided to the public through Systems Control. Also, repair shops are visited during audits, and technicians are notified of information regarding effective repairs via a Department of Ecology newsletter. Technician assistance is available through a 1–800 number; the same

service is available to the public at another 1–800 number.

R. Compliance With Recall Notices

The SIP needs to describe the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The Washington I/M SIP states that vehicles that were not repaired as required by an emission recall for which owner notification was attempted after January 1, 1995 will not be inspected until compliance with that recall is established. Information on recall notification is intended to remind the vehicle owner or operator that an emission test is required and that manufacturers recalls must be completed before tabs will be renewed. Thereby, notification of recall can be directly referenced during the inspection.

S. On-Road Testing

The SIP needs to include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing, and the portion of the program budget to be dedicated to on-road testing.

The Washington SIP includes a description of its on-road testing program. The Department of Ecology will conduct an evaluation of on-road testing options beginning in 1996. This testing should involve the required .5 percent of the subject fleet. The State did not include additional modeling credit for this program in their modeling demonstration needed to meet EPA's performance standard.

T. Concluding Statement

The criteria used to review the submitted SIP revision are based on the requirements stated in Section 182 of the CAA and the most recent FederalI/M regulations (September 18, 1995). EPA has reviewed the Washington I/M SIP revision. The Washington regulations and accompanying materials contained in the SIP represent an acceptable approach to the I/M requirements and meet the criteria required for approvability.

IV. Today's Action

The EPA is approving the Washington I/M SIP as meeting the requirements of the CAA and the Federal I/M rule. All required SIP items have been adequately addressed as discussed in this Federal Register action.

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. 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.

The 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, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 23, 1996 unless, by August 22, 1996 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 23, 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 September 23, 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).

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: May 24, 1996.

Jane S. Moore,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(61) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(61) SIP revisions received from WDOE on August 21, 1995, requiring vehicle owners to comply with its I/M program in the two Washington ozone nonattainment areas classified as ''marginal'' and in the three carbon monoxide nonattainment areas classified as ''moderate''. This revision applies to the Washington counties of Clark, King, Pierce, Snohomish, and Spokane.

(i) Incorporation by reference.

(A) July 26, 1995 letter from Director of WDOE to the Regional Administrator of EPA submitting revisions to WDOE's SIP consisting of the July 1995 *Washington State Implementation Plan for the Motor Vehicle Inspection and Maintenance Program* (including Appendices A through F), adopted August 1, 1995, and a supplement letter and ''Tools and Resources'' table dated May 10, 1996.

[FR Doc. 96–18199 Filed 7–22–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of

September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Chatham (FEMA Docket Areas No. 7173).	Unincorporated Areas	December 27, 1995, January 3, 1996, *Savannah News-Press*.	Mr. Joseph Mahany, Chairman of the Chatham County Board of Commissioners, 124 Bull Street, P.O. Box 8161, Savannah, Georgia 31412.	April 3, 1996	130030C
Illinois:					
Cook (FEMA Docket No. 7150).	City of Country Club Hills.	July 27, 1995, August 3, 1995, *The Daily Southtown* and *The Star*.	The Honorable Dwight W. Welch, Mayor of the City of Country Club Hills, 3700 West 175th Place, Country Club Hills, Illinois 60478.	July 20, 1995	170078 C
DeKalb (FEMA Docket No. 7173).	City of DeKalb	December 8, 1995, December 15, 1995, *Daily Chronicle*.	The Honorable Greg Sparrow, Mayor of the City of DeKalb, 200 South 4th Street, DeKalb, Illinois 60115.	December 4, 1995	170182 B
DuPage County (FEMA Docket No. 7137).	Unincorporated Areas	March 20, 1995, March 27, 1995, *Chicago Tribune*.	Mr. Gayle M. Franzen, DuPage County Board Chairman, 421 North County Farm Road, Wheaton, Illinois 60187.	March 15, 1995	170197 B
New Jersey: Hunterdon (FEMA Docket No. 7173).	Township of Delaware	December 28, 1995, January 4, 1996, *Hunterdon County Democrat*.	The Honorable Robert Reed, Mayor of the Township of Delaware, Township Hall, Sergeantville, New Jersey 08557.	April 4, 1996	340506 B
Ohio: Lorain (FEMA Docket No. 7173).	City of Avon	December 28, 1995, January 4, 1996, *The Morning Journal*.	The Honorable James A. Smith, Mayor of the City of Avon, 36774 Detroit Road, Avon, Ohio 44011.	December 15, 1995	390348 C
Wisconsin: La Crosse (FEMA Docket No. 7173).	Unincorporated Areas	January 4, 1996, January 11, 1996, *La Crosse Tribune*.	Mr. James A. Ehrsam, La Crosse County Board Chairman, 400 North Fourth Street, La Crosse, Wisconsin 54601.	December 28, 1995	550217 A

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 10, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–18662 Filed 7–22–96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7186]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

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

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

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

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

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

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Lauderdale	City of Florence	May 24, 1996, May 31, 1996, *Times Daily*.	The Honorable Eddie Frost, Mayor of the City of Florence, 110 West College Street, Florence, Alabama 35630.	August 29, 1996	010140 C
Illinois:					
Tazewell	Village of Morton	June 5, 1996, June 12, 1996 *Tazewell News*.	Dr. Robert D. Hertenstein, President of the Village of Morton, P.O. Box 28, 120 North Main Street, Morton, Illinois 61550.	May 28, 1996	170652D
LaSalle and Livingston.	City of Streator	May 7, 1996, May 14, 1996, *The Times Press*.	The Honorable Robert Lee II, Mayor of the City of Streator, 204 South Bloomington Street, P.O. Box 517, Streator, Illinois 61364.	May 2, 1996	170408 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Porter	Town of Porter	May 28, 1996, June 4, 1996, *Chesterton Tribune*.	Ms. Charlene Hauber, Porter Town Clerk/Treasurer,303 Franklin Street, Porter, Indiana 46304.	May 21, 1996	180208 B
Massachusetts:					
Barnstable	Town of Barnstable	May 13, 1996, May 20, 1996 *Cape Cod Times*.	Mr. Warren J. Rutherford, Town of Barnstable Manager, Town Hall, 367 Main Street, Hyannis, Massachusetts 02601.	May 1, 1996	250001 D
Do.	do	May 28, 1996, June 4, 1996, *Cape Cod Times*.	do	May 17, 1996	250001 D
Michigan: Wayne	Township of Canton	May 30, 1996, June 6, 1996, *Canton Observer*.	Mr. Thomas Yack, Canton Township Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188.	May 21, 1996	260219 B
Ohio:					
Lorain	City of Avon	April 30, 1996, May 7, 1996, *The Morning Journal*.	The Honorable James A. Smith, Mayor of the City of Avon,36774 Detroit Road, Avon, Ohio 44011.	April 18, 1996	390348C
Fairfield	Unincorporated Areas	May 7, 1996, May 14, 1996, *Eagle-Gazette*.	Mr. Allan Reid, President of the Fairfield County Board of Commissioners, Fairfield County Courthouse, 210 East Main Street, Room 301, Lancaster, Ohio 43130.	April 30, 1996	390158 D
Montgomery	do	May 29, 1996, June 5, 1996, *Dayton Daily News*.	Ms. Vicki Pegg, Montgomery County Commissioner, 451 West Third Street,Dayton, Ohio 45422–1260.	May 24, 1996	390775 C
Tennessee: Shelby	City of Germantown	May 2, 1996, May 9, 1996, *Germantown News*.	The Honorable Sharon Goldsworthy, Mayor of the City of Germantown, 1930 South Germantown Road, P.O. Box 38809, Germantown, Tennessee 38183–0809.	April 23, 1996	470353 E

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 10, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–18664 Filed 7–22 –96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations; Alabama, Et Al.

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final

determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

Regulatory Flexibility Act. The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

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

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

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Valley Head (Town), De Kalb County (FEMA Docket No. 7172)	
Big Wills Creek (With Southern Railway):	
At upstream side of Southern Railway	*1014
Approximately 1,175 feet upstream of State Highway 117	*1049
Big Wills Creek (Without Southern Railway):	
Approximately 1,500 feet downstream of City Park Bridge	*977
Approximately 1,625 feet upstream of State Highway 117	*1053
Maps available for inspection at the Valley Head Town Hall, 41 Anderson Avenue, Valley Head, Alabama.	
ILLINOIS	
Village of Aroma Park, Kankakee County (FEMA Docket No. 7175)	
Iroquois River:	
At the confluence with Kankakee River	*608
Approximately 0.3 mile upstream of the confluence with Kankakee River	*608
Kankakee River:	
Approximately 0.5 mile downstream of the confluence of Iroquois River	*608
At the confluence of Spring Creek	*608
Maps available for inspection at the Aroma Park Village Hall, 108 West Front Street, Aroma Park, Illinois.	
Momence (City), Kankakee County (FEMA Docket No. 7175)	
Kankakee River (Main Channel):	
Approximately 0.52 mile downstream of Dixie Highway	*615
Approximately 625 feet upstream of Union Pacific Railroad	*620
Kankakee River North Channel:	
Just upstream of spillway	*618
Approximately 475 feet upstream of Union Pacific Railroad	*620
Maps available for inspection at the City Hall, 123 West River Street, Momence, Illinois.	
MASSACHUSETTS	
Nantucket (Town), Nantucket County (FEMA Docket No. 7168)	
Atlantic Ocean:	
At Great Point	*10
Approximately 0.2 mile southeast of Great Point	*7
At the shoreline approximately 160 feet south of the intersection of Clifford Street and Nonatum Avenue	*9
Approximately 150 feet east of the intersection of Adams Street and Nobadeer Avenue	*7
At the southern portion of Miacomet Pond	*8
At Hummock Pond	*7
Nantucket Sound:	
Head of the Harbor northern portion	*7
Maps available for inspection at the Nantucket Building Commissioners Office, 37 Washington Street, Nantucket, Massachusetts.	
NEW JERSEY	
Clinton (Town), Hunterdon County (FEMA Docket No. 7172)	
Beaver Brook:	
Approximately 150 feet upstream of Interstate 78	*205
At upstream corporate limits	*207
Maps available for inspection at the Clinton Town Hall, 43 Leigh Street, Clinton, New Jersey.	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW YORK	
Gorham (Town), Ontario County (FEMA Docket No. 7164)	
Canandaigua Lake:	
At shoreline west of Orchard Rest Road	*692
At shoreline west of intersection of East Lake and Townline Road	*692
Maps available for inspection at the Gorham Town Hall, 4736 South Elm Street, Gorham, New York.	
Putnam (Town), Washington County (FEMA Docket No. 7159)	
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Putnam Town Clerk's Office, Route 22, Putnam Station, New York.	
NORTH CAROLINA	
Cary (Town), Pine Lake (FEMA Docket No. 7159)	
Pine Lake:	
Entire shoreline of Pine Lake	*383
Swift Creek Tributary No. 7 (Basin 20, Stream 24) (Currently shown as Pine Lake):	
Approximately 550 feet downstream of Lake Pine Drive	*383
Approximately 1,275 feet downstream of Lake Pine Drive	*383
Maps available for inspection at the Engineering Department, 318 North Academy, Cary, North Carolina.	
PENNSYLVANIA	
Avondale (Borough), Chester County (FEMA Docket No. 7164)	
East Branch White Clay Creek:	
Approximately 750 feet downstream of confluence of Chatham Run	*270
Approximately 550 feet upstream of confluence of Chatham Run	*271
Trout Run:	
At confluence with East Branch White Clay Creek	*270
Approximately 670 feet above confluence with East Branch White Clay Creek	*270
Chatham Run:	
At confluence with East Branch White Clay Creek	*271
Approximately 475 feet upstream of Pomeroy Street	*283
Maps available for inspection at the Avondale Borough Hall, Pomeroy Avenue, Avondale, Pennsylavnia.	
Caln (Township), Chester County (FEMA Docket No. 7138)	
Beaver Creek:	
Approximately 0.6 mile downstream of Lloyd Avenue	*245
Approximately 300 feet downstream of Lloyd Avenue	*250
Copeland Run:	
At CONRAIL	*282
Approximately 100 feet upstream of Donofrio Drive	*282
Maps available for inspection at the Caln Township Engineering and Codes Department Municipal Building, 253 Municipal Drive, Thorndale, Pennsylvania.	
Downingtown (Borough), Chester County (FEMA Docket No. 7138)	
East Branch Brandywine Creek:	
Approximately 650 feet downstream of U.S. Highway 30	*247
Approximately 375 feet upstream of U.S. Highway 30	*250
Maps available for inspection at the Borough Hall, 4 West Lancaster Avenue, Downingtown, Pennsylvania.	
East Brandywine (Township), Chester County (FEMA Docket No. 7138)	
Beaver Creek:	
At its upstream corporate limit	*482
Maps available for inspection at the East Brandywine Township Municipal Office, 1214 Horseshoe Pike, Downingtown, Pennsylvania.	
East Caln (Township), Chester County (FEMA Docket No. 7138)	
East Branch Brandywine Creek:	
Approximately 650 feet downstream of CONRAIL, approximately 600 feet east of the intersection of Brandywine Avenue and Boot Road	*233
Maps available for inspection at the East Caln Township Building, 110 Bell Tavern Road, P.O. Box 232, Downingtown, Pennsylvania.	
East Coventry (Township), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	
At the confluence with Pigeon Creek	*122
At the upstream corporate limits	*135
Pigeon Creek:	
At the confluence with the Schuylkill River	*122
At downstream side of Bethel Church Road	*125
Maps available for inspection at the East Coventry Township Building, 855 Ellis Woods Road, Pottstown, Pennsylvania	
East Fallowfield (Township), Chester County (FEMA Docket No. 7138)	
Doe Run:	
Approximately 1.64 miles downstream of State Route 82	*264
West Branch Brandywine Creek:	
Approximately 700 feet downstream of Strasburg Road	*251
Maps available for inspection at the Township Building, 2264 Strasburg Road, East Fallowfield, Pennsylvania.	
East Pikeland (Township), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	
At the confluence of Stony Run	*107
Approximately 0.8 mile upstream of Conrail	*109
French Creek:	
Downstream of State Routes 724 and 23 (Schuylkill Road)	*118
Maps available for inspection at the East Pikeland Township Building, Rapps Dam Road, Kimberton, Pennsylvania.	
East Vincent (Township), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	
Approximately 1,300 feet upstream of State Route 683	*113
At the upstream corporate limits	*122
Pigeon Creek:.	
At the confluence with Schuylkill River	*122
Approximately 1,550 feet downstream of Bethel Church Road	*124
French Creek:	
Approximately 1,700 feet downstream of Hollow Road	*206

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.4 mile upstream of Bertolet School Road	*249
Maps available for inspection at the East Vincent Township Building, 262 Ridge Road, Spring City, Pennsylvania.	
Franklin (Township), Chester County (FEMA Docket Nos. 7138 and 7164)	
East Branch White Clay Creek:	
Approximately 0.7 mile downstream of Newgarden Station Road	*255
Approximately 0.2 mile downstream of Newgarden Station Road	*259
Middle Branch White Clay Creek:	
Approximately 0.4 mile downstream of Avondale-New London Road	*301
Approximately 1,300 feet downstream of Avondale-New London Road	*306
Maps available for inspection at the Franklin Township Building, Walker Road, Kemblesville, Pennsylvania.	
Highland (Township), Chester County (FEMA Docket No. 7164)	
Buck Run:	
Approximately 2,000 feet downstream of Buck Run Road	*357
Approximately 900 feet upstream of most upstream CONRAIL crossing	*447
Doe Run:	
Approximately 560 feet upstream of abandoned CONRAIL	*339
Approximately 1,400 feet upstream of Creek Road	*413
Maps available for inspection at the Highland Township Building, R.D. 3, Guntree Road, Coatesville, Pennsylvania.	
Kennett Square (Borough), Chester County (FEMA Docket No. 7138)	
Tributary 2 to East Branch Red Road Clay Creek:	
Approximately 750 feet downstream of Walnut	*316
Maps available for inspection at the Kennett Square Borough Hall, 120 North Broad Street, Kennett Square, Pennsylvania.	
New Garden (Township), Chester County (FEMA Docket Nos. 7138 and 7164)	
East Branch White Clay Creek:	
Approximately 0.4 mile upstream of confluence with Egypt Run	*253
Approximately 0.9 mile upstream of confluence with Egypt Run	*255
West Branch Red Clay Creek:	
Approximately 1,050 feet upstream of Cedarcroft Road	*286
At the downstream side of Township Line Road	*294
Maps available for inspection at the New Garden Township Building, 8934 Gap Newport Pike, Avondale, Pennsylvania.	
North Coventry (Township), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	
Approximately 900 feet downstream of U.S. Route 422	*135
At the county boundary	*148
Maps available for inspection at the North Coventry Township Building, 845 South Hanover Street, Pottstown, Pennsylvania.	
Penn (Township), Chester County (FEMA Docket No. 7140)	
Middle Branch White Clay Creek:	
Approximately 100 feet upstream of Tice Road	*422
Approximately 1,200 feet upstream of Tice Road	*428
Maps available for inspection at the Penn Township Building, 150 Sunnyside Road, West Grove, Pennsylvania.	
Phoenixville (Borough), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	
Approximately 0.6 mile downstream of State Route 29 (Church Street)	*98
At confluence of Stony Run	*107
French Creek:	
At confluence with Schuylkill River	*99
Approximately 50 feet downstream of Main Street	*101
Maps available for inspection at the Pheonixville Borough Hall, 140 Church Street, Pheonixville, Pennsylvania.	
Sadsbury (Township), Chester County (FEMA Docket No. 7138)	
Little Buck Run:	
Approximately 0.6 mile downstream of most downstream crossing of U.S. Route 10	*470
Approximately 610 feet upstream of Private Road	*592
Maps available for inspection at the Sadsbury Township Building, Pine Alley, Sadsburyville, Pennsylvania.	
Schuylkill Haven (Borough), Schuylkill County (FEMA Docket No. 7164)	
Schuylkill River:	
Approximately 1.7 mile downstream of confluence of Long Run	*501
Approximately 370 feet upstream of confluence of West Branch Schuylkill River	526
Long Run:	
At confluence with Schuylkill River	*511
Approximately 1,325 feet upstream of Stoyers Dam	*511
Maps available for inspection at the Schuylkill Haven Borough Hall, 12 West Main Street, Schuylkill Haven, Pennsylvania.	
Schuylkill (Township), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	
At confluence of Valley Creek (at the county boundary)	*88
Approximately 0.5 mile upstream of confluence of Pickering Creek	*98
Pickering Creek:	
At confluence with Schuylkill River	*98
At downstream side of State Route 23	*98
French Creek:	
At u pstream side of State Route 23 and 724 (Nutt Road)	*118
At downstream side of Township Line Road	*119
Maps available for inspection at the Schuylkill Township Hall, 801 Valley Park Road, Pheonixville, Pennsylvania	
Spring City (Borough), Chester County (FEMA Docket No. 7138)	
Schuylkill River:	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.2 miles downstream of State Route 683 ...	*109
Approximately 1,300 feet upstream of State Route 683 ...	*113
Maps available for inspection at the Spring City Borough Hall, 6 South Church Street, Spring City, Pennsylvania.	
Thornbury (Township), Chester County (FEMA Docket No. 7138)	
West Fork of East Branch Chester Creek:	
Approximately 950 feet upstream of Farm Lane	287*
Approximately 1,600 feet upstream of Farm Lane	*290
Maps available for inspection at the Thornbury Township Building, Building #3, 754 Cheyney-Thornton Road, Westtown, Pennsylvania.	
Upper Uwchlan (Township), Chester County (FEMA Docket No. 7138)	
East Branch Brandywine Creek:	
Approximately 575 feet downstream of Dolans Mill Road	*283
Approximately 0.7 mile upstream of Lyndell Road at its upstream corporate limit	*343
Maps available for inspection at the Upper Uwchlan Township Building, 140 Pottstown Pike, Chester Springs, Pennsylvania.	
West Bradford (Township), Chester County (FEMA Docket No. 7138)	
East Branch Brandywine Creek:	
Approximately 0.75 mile upstream of Strasburg Road	*206
Approximately 0.3 mile downstream of Downingtown West Chester Road	*209
West Branch Brandywine Creek:	
Approximately 750 feet upstream of its confluence with Tributary 2	*194
At confluence of Broad Run	*198
Approximately 750 feet upstream of Northbrook Road	*203
Maps available for inspection at the West Bradford Township Hall, 1385 Campus Drive, Downingtown, Pennsylvania.	
West Brandywine (Township), Chester County (FEMA Docket No. 7138)	
West Branch Brandywine Creek:	
At State Route 340	*364
Approximately 50 feet upstream of Hibernia Road	*443
Maps available for inspection at the West Brandywine Township Building, 1199 Lafayette Road, Coatesville, Pennsylvania.	
West Chester (Borough), Chester County (FEMA Docket No. 7138)	
Marshall Manor Tributary:	
At the downstream Limit of Study (Goshen Road)	*360
Approximately 195 feet upstream of Hillside Drive South	*419
Maps available for inspection at the Building Inspectors Office, 401 East Gay Street, West Chester, Pennsylvania.	
West Grove (Borough), Chester County (FEMA Docket No. 7138)	
Middle Branch White Clay Creek:	
Approximately 150 feet downstream of Valley Road	*372
Approximately 50 feet upstream of Valley Road	*373
Maps available for inspection at the West Grove Borough Building, 117 Rose Hill Avenue, West Grove, Pennsylvania.	
West Marlborough (Township), Chester County (FEMA Docket Nos. 7138 and 7164)	
Buck Run:	
At upstream side of State Route 82	*326
Approximately 1,700 feet downstream of Buck Run Road	*358
Chatham Run:	
At State Road 926	*504
Approximately 350 feet upstream of Mosquito Road	*509
Maps available for inspection at the Township Building, Doe Run Road, Route 82, Village of Doe Run, Pennsylvania.	
West Sadsbury (Township), Chester County (FEMA Docket No. 7138)	
Pine Creek No. 2:	
At confluence with East Branch Octoraro Creek and Williams Run	*464
Approximately 575 feet upstream of Zion Hill Road	*483
East Branch Octoraro Creek:	
Just downstream of State Route 372	*458
At confluence with Pine Creek and Williams Run	*464
Officers Run:	
Approximately 150 feet upstream of State Route 41	*461
Approximately 350 feet downstream of CONRAIL bridge	*474
Valley Creek No. 3:	
Approximately 175 feet upstream of State Route 41	*461
Maps available for inspection at the West Sadsbury Township Building, Moscow Road, Parkesburg, Pennsylvania.	
Willistown (Township), Chester County (FEMA Docket No. 7138)	
East Branch Ridley Creek:	
Approximately 500 feet upstream of Warrior Road	*437
Approximately 0.2 mile upstream of Warrior Road	*445
Maps available for inspection at the Willistown Township Municipal Building, 688 Sugartown Road, Malvern, Pennsylvania.	
VIRGINIA	
City of Virginia Beach, Independent City (FEMA Docket No. 7155)	
Chesapeake Bay:	
At the intersection of Oceanview and Fentiess Avenues	*9
Approximately 220 feet north of the intersection of Windy Road and Sandy Bay Drive	*12
Approximately 650 feet northwest of the intersection of Shore Drive and Vista Circle	*10
Approximately 310 feet north of the intersection of Ebb Tide Road and Ocean Shore Avenue	*11
Atlantic Ocean:	
Approximately 130 feet east of the intersection of 20th Street and Atlantic Avenue	*11
Approximately 450 feet east of the intersection of 8th Street and Atlantic Avenue	*14
Lake Wishart:	
Entire shoreline	*8
Bradford Lake:	
Entire shoreline	*9
Chubb Lake:	
Entire shoreline	*9
Fox Run Canal:	
At the confluence with Eastern Branch Elizabeth River	*9
Approximately 1,200 feet upstream of Churchill Drive	*13
Left Bank Tributary Thalia Creek:	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,400 feet upstream of the mouth of Thalia Creek	*8
At Windsor Oaks Boulevard	*10
Holland Road Tributary Thalia Creek:	
At the confluence with Left Bank Tributary Thalia Creek	*10
At the downstream side of Holland Road	*10
Unnamed Pond:	
Approximately 100 feet east of the intersection of East Port Road and Gammon Road	*9
Shallow Ponding Area:	
Approximately 400 feet east of Atlantic Avenue on 65th Street	#1
Shallow Ponding Area:	
Located in the vicinity of the intersection of Sandpiper Road and Oyster Lane	#2
Shallow Ponding Area:	
Approximately 500 feet north of the State boundary line	#3
Maps available for inspection at the City of Virginia Beach Municipal Center, Operations Building No. 2, Virginia Beach.	
WISCONSIN	
Kenosha (City), Kenosha County (FEMA Docket No. 7172)	
Pike River:	
At confluence with Lake Michigan	*585
At downstream side of State Route 32	*585
Lake Michigan:	
Entire shoreline within the community	*585
Maps available for inspection at the Kenosha City Hall, 625 52nd Street, Kenosha, Wisconsin.	
Kenosha County (Unincorporated Areas) (FEMA Docket No. 7172)	
Lake Michigan:	
Entire shoreline within community	*585
Camp Lake:	
Entire shoreline within community	*743
Center Lake:	
Entire shoreline within community	*744
Unnamed Tributary:	
At the State boundary	*742
At Camp Lake dam	*743
Unnamed Tributary to Center Lake:	
At Center Lake inlet	*744
Approximately 0.3 mile upstream of County Highway AH (89th Street)	*763
Maps available for inspection at the Kenosha County Administration Building, 1010 56th Street, Kenosha, Wisconsin.	
Pleasant Praire (Village), Kenosha County (FEMA Docket 7172)	
Lake Michigan:	
Entire shoreline within community	*585
Barnes Creek North Outlet:	
At the confluence with Lake Michigan	*585
Approximately 100 feet downstream of First Avenue	*586
Barnes Creek South Outlet:	
At the confluence with Lake Michigan	*585
Approximately 200 feet upstream of Third Avenue	*585
Maps available for inspection at the Pleasant Prairie Village Hall, 9915 39th Avenue, Kenosha, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 10, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–18660 Filed 7–22–96; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 042396B]

RIN 0648–AF81

Scallop Fishery Off Alaska; Management Measures; 1996–97 Harvest Specifications

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

ACTION: Final rule; final 1996–97 harvest specifications; closures.

SUMMARY: NMFS issues a final rule to implement Amendment 1 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP). The management measures established under Amendment 1 and implemented by this final rule include: Gear and efficiency restrictions, scallop registration areas and districts, procedures for specifying total allowable catch (TAC) and crab bycatch limits (CBLs), time and area closures, inseason management authority, fishing seasons, and observer coverage requirements. This action is necessary to further the conservation and management objectives of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATES: The changes to part 679 are effective August 1, 1996. The final 1996–97 harvest specifications and closure are effective August 1, 1996, through June 30, 1997.

ADDRESSES: Copies of Amendment 1 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for Amendment 1 may be obtained from the North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery in the exclusive economic zone (Federal waters) off Alaska is managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Act. Regulations implementing the FMP are set out at 50 CFR part 679. General regulations that also affect fishing in Federal waters are set out at 50 CFR part 600. This action establishes Federal management measures to replace the interim closure of Federal waters off Alaska to fishing for scallops. The history of the scallop fishery off Alaska and the events leading up to the interim closure of Federal waters are described in the FMP and the preambles to the proposed and final rules implementing the FMP (60 FR 24822, May 10, 1995, and 60 FR 42070, August 15, 1995, respectively).

In June 1995, the Council adopted Amendment 1 to the FMP, which authorizes Federal management measures to replace the interim closure of Federal waters to fishing for scallops. The Council's preferred alternative for Amendment 1 was to incorporate certain State of Alaska management measures into the Federal regulations and implement a vessel moratorium based on criteria adopted in April 1994 and reaffirmed in January 1995.

At its January 1993 meeting, the Council determined that unrestricted

access to the scallop fishery may be harmful to the resource and result in a net loss to the Nation. The Council announced a control date of January 20, 1993, to place the industry on notice that a moratorium for this fishery may be implemented and any person or fishing vessel that entered the scallop fisheries in Federal waters off Alaska would not be assured of future access to those fishery resources if a moratorium is implemented. In June 1995, the Council developed final qualifying criteria for the vessel moratorium. Under the Council's qualifying criteria, vessels would qualify for inclusion in the moratorium if they made at least one legal landing of scallops in any year from 1991 through 1993, or during any 4 separate years from 1980 through 1990. This two-tier approach was chosen to emphasize recent participation in the fishery by allowing all vessels with any legal landings in 1991, 1992 or 1993 to qualify. Historic participants would qualify under the more restrictive standard of a legal landing in at least 4 years between 1980 and 1990. The Council's final recommended qualifying criteria, which were published in the Council's newsletter, means that fishermen and/or vessels not participating in the fishery by December 31, 1993, may not be guaranteed future access to the fishery.

The Council subsequently separated the vessel moratorium from Amendment 1 and recommended that the vessel moratorium be implemented as Amendment 2 to the FMP. The Council took this action to prevent moratorium issues from delaying the reopening of the scallop fishery. On May 10, 1996, NMFS published a proposed rule to implement Amendment 1 to the FMP (61 FR 21431). The comment period for the proposed rule ended on June 21, 1996. Six letters of comment were received, which are summarized in the Response to Comments section below.

The regulations implementing Amendment 1 were developed in coordination with the Council and the State and are designed to complement current State management of the scallop fishery. These regulations do not preclude the State from imposing additional regulations on State registered vessels fishing in Federal waters, so long as State regulations are not in conflict with the FMP and its implementing regulations. The preamble to the proposed rule provides a description of and justification for each Federal management measure including: Gear and efficiency restrictions, scallop registration areas and districts, procedures for specifying TACs and CBLs, time and area closures, inseason management authority, fishing seasons, and observer coverage requirements.

Changes From the Proposed Rule

Four changes were made from the proposed rule. First, since publication of the proposed rule, the Federal regulations implementing Alaska FMPs have undergone a comprehensive consolidation. As a consequence, most of the regulations implementing the FMP for the scallop fishery off Alaska (50 CFR part 673) have been recodified at 50 CFR 679 subpart F, except for the purpose and scope, definitions, and prohibitions sections of the scallop regulations, which are now found in 50 CFR 679 subpart A.

Second, in § 679.1(h)(2) the phrase ''consistent with'' was changed to ''in addition to, and not in conflict with'' so that § 679.1(h)(2) reads as follows: ''State of Alaska laws that are in addition to, and not in conflict with, the regulations in this part are not preempted for vessels registered under the laws of the State fishing for scallops in the Federal waters off Alaska.'' This change was made in response to a comment and clarifies that NMFS intends to allow the State to impose additional regulations on State-registered vessels that are fishing for scallops in Federal waters as long as State regulations are not in direct conflict with Federal regulations or the FMP.

Third, the 1996 fishing season in Registration Area D is temporarily extended in response to a comment to allow for the harvest of remaining 1995–96 State TAC amounts that were not harvested in this area during the January 1996 fishery in State waters. In January 1996, the State authorized a fishery in the State waters of Registration Area D for the estimated portion of the TACs that were attributable to beds in State waters (8,000 lb (3,628.7 kg) shucked meat from District 16 and 55,000 lb (24,947.6 kg) from the remaining districts of Registration Area D). Because the entire portion of the 1996 TAC attributable to beds in State waters has been taken, the State has closed State waters in Registration Area D until 1997. Because State waters will remain closed until 1997, the remaining 1996 TAC for this area, which will become available on August 1, 1996, will be available only in Federal waters.

Fourth, § 679.62(a) was changed in response to a comment to require that available TAC be specified by registration area rather than allow a combined TAC for multiple registration areas. This change was made to prevent overharvest from within one area. This change affects Registration Areas M, Q, and R.

1996–97 Total Allowable Catch Specifications

The TACs for Registration Areas A, E, K, and O are unchanged from the proposed specifications published with the proposed rule. TACS for Registration Areas D, H, M, Q, and R have been changed from the proposed specifications for the reasons cited below.

In Registration Area D, the State authorized a January 1996 fishery inside State waters and allowed the harvest of the percentage of the annual TAC that was estimated to be attributable to scallop beds within State waters. Under the new regulations established by this rule, the fishing year for scallops runs from July 1 through June 30 of the following fishing year. Consequently, in Registration Area D, two TACs must be specified to allow for the harvest of the remaining 1995–96 TAC in Registration Area D. The 1995–96 TAC amount that went unharvested during the State's January 1996 fishery is specified for the period August 1, 1996, through December 31, 1996. The TAC for the current 1996–97 fishing year TAC is specified for the period January 1, 1997, through June 30, 1997.

In Registration Areas M, Q, and R, and H (other than Kamishak District), a combined TAC of 875,000 lb (396,893.32 kg) shucked meat was listed in the proposed specifications. This combined TAC was subdivided by area to prevent overharvest of the TAC from within any one area. TACs for each of these registration areas are now specified at the historic high catch, which is equal to the upper end of the OY range. No TAC is specified for districts other than the Kamishak District of Registration Area H. The other districts within Registration Area H lie primarily within State waters and there are no known commercially viable scallop beds in these districts. The State may authorize exploratory scallop fishing in these districts within State waters. Any exploratory fishing in Federal waters within these districts could be authorized by NMFS pursuant to ''exempted fishing'' regulations published at 50 CFR 600.745.

TABLE 1.—SCALLOP TAC AMOUNTS FOR THE PERIOD AUGUST 1, 1996, THROUGH JUNE 30, 1997, IN POUNDS (KILOGRAMS IN PARENTHESES) OF SHUCKED SCALLOP MEAT BY SCALLOP REGISTRATION AREA AND DISTRICT

Scallop registration area	TAC	
	lb	kg
Area A (Southeastern)	zero	
Area D (Yakutat):		
(Applicable August 1, 1996 through December 31, 1996) [1]		
District 16	27,000	12,247
All other districts	195,000	88,451
(Applicable January 1, 1997 through June 30, 1997)		
District 16	35,000	15,880
All other districts	250,000	113,430
Area E (Prince William Sound)	50,000	22,686
Area H (Cook Inlet):		
Kamishak District	20,000	9,074
Area K (Kodiak)	400,000	181,488
Area M (Alaska Peninsula)	200,000	90,718
Area O (Dutch Harbor)	170,000	77,132
Area Q (Bering Sea)	600,000	272,155
Area R (Adak)	75,000	43,019
Total [2]	1,800,000	816,416

[1] Represents unharvested TAC that would have been specified for the period July 1, 1995, through June 30 1996. Because the closure of Federal waters prevented the harvest of this TAC during the January 1996 State-managed opening, NMFS is making this unharvested TAC amount available on August 1, 1996. The Area D TAC that would normally have been specified for the period August 1, 1996, through June 30, 1997 will not become effective until January 1, 1997.

[2] Does not include the August 1, 1996, through December 31, 1996, TAC for Registration Area D because this TAC amount represents unharvested TAC from the previous fishing year.

1996–97 Crab Bycatch Limits

Table 2 shows CBLs for the period August 1, 1996, through June 30, 1997. These numbers are unchanged from the proposed specifications.

TABLE 2.—CRAB BYCATCH LIMITS FOR THE PERIOD AUGUST 1, 1996, THROUGH JUNE 30, 1997, IN NUMBERS OF CRABS BY SCALLOP REGISTRATION AREA AND DISTRICT

Scallop registration area	Red king	C. bairdi	C. opilio
Area A (Southeastern)	.....	.....	.....
Area D (Yakutat)	.....	.....	.....
Area E (Prince William Sound)	.....	630	.....
Area H (Cook Inlet):			
Kamishak District	40	15,900	.....
Outer/Eastern Districts	98	2,170	.....
Area K (Kodiak):			
Shelikof District	22	16,100	.....
Northeast District	66	130,000	.....
Area M (Alaska Peninsula)	435	22,800	.....
Area O (Dutch Harbor)	10	10,700	.....
Area Q (Bering Sea)	500	257,000	275,000
Area R (Adak)	50	10,000	.....

Closure

In Registration Area A, the final scallop TAC amount for the period August 1, 1996, through June 30, 1997, is zero. Therefore, under § 679.62(c), NMFS is prohibiting the catch and retention of scallops in Registration Area A from August 1, 1996, through June 30, 1997.

Response to Comments

Comment 1: The 30-day delay in effectiveness normally incorporated into Federal rulemaking procedures should be waived. This rule will impact the industry in a positive way by allowing fishing to resume after an 18-month hiatus brought about by a lack of Federal regulation. The period normally viewed as an opportunity for industry to adapt to an onerous regulation is not needed and would, in fact, present further hardship to the fishing industry.

Response: NMFS agrees. The 30-day delayed effectiveness period for this rule has been waived (see ''Classification'' section, below).

Comment 2: The proposed rule has an August 15 opening date for Registration Area H (Cook Inlet). A later opening date of August 29 is recommended, because crab tend to move out of this area later in the season. A later opening date would produce less crab bycatch,

which is a prime concern of industry and the Council.

Response: Because a single TAC is specified for both the Federal and State waters of each registration area or district, a simultaneous opening of Federal and State waters is necessary to prevent localized overfishing of scallop stocks and reduce administration and enforcement concerns. For these reasons, opening dates in the Federal waters of each registration area or district were scheduled to match existing State opening dates. If the opening date for the Federal waters of Registration Area H were delayed until August 29, vessel operators might try to harvest the entire TAC from within State waters that would open on August 15. This situation could cause localized overfishing of scallops stocks inside State waters. Moreover, enforcement of closures would be more problematic if adjacent State and Federal waters were open at different times. Therefore, the opening date for Registration Area H is unchanged.

NMFS does not have adequate bycatch data to support or refute the contention that crab bycatch would be appreciably lower if the opening date were delayed until August 29. However, crab bycatch was certainly a consideration of the Board of Fisheries when it established an August 15 opening date for the Cook Inlet Registration Area. In its comments on the proposed rule, ADF&G has indicated that possible changes to scallop opening dates will be examined by the Board of Fisheries at the March 1997 meeting. If bycatch data presented to the Board of Fisheries indicate that a change in opening dates is warranted for the Cook Inlet Registration Area, NMFS, in coordination with the Council and the State could address opening date changes at that time.

Comment 3: While the exemption from observer coverage for vessels less than 80 ft (24.4 m) length overall (LOA) in Cook Inlet is justified, a similar exemption is necessary for small vessels fishing outside Cook Inlet. In the past, State regulations have exempted vessels less than 65 ft (19.8 m) LOA from observer requirements. A number of vessels qualified for this exemption. If small vessels must give up bunk space to carry an observer, they will lose a significant percentage of their workforce while incurring the extra expense of accommodating an observer. Therefore, small vessels will be hit doubly hard by the 100 percent observer coverage requirement. In the groundfish observer program, vessels between 60 and 125 ft (18.3 and 38.1 m) LOA are only required to carry an observer for 30 percent of their fishing days. A small vessel exemption should be reinstated for the scallop fishery, or a percentage-based coverage system similar to that used in the groundfish fishery.

Response: All vessels required to carry an observer under this rule will need to provide accommodations for an observer. The loss of a bunk space is not limited to small vessels. In addition, the restrictions on dredge width and crew size will tend to limit disparities in harvesting capacity between large and small vessels. Therefore, NMFS does not believe that a 100 percent observer coverage requirement will have inordinate impacts on small vessels. Nevertheless, NMFS is sensitive to the impacts that this rule will have on small businesses and has taken numerous steps to reduce burdens on small businesses such as avoiding duplicate State and Federal recordkeeping and recording requirements. In addition, the Council heard testimony on the burden of 100 percent observer requirements from small vessel owners during initial and final consideration of Amendment 1. However, the Council believes, and NMFS concurs, that the need for accurate management data outweighed the economic impacts on small vessels. One hundred percent observer coverage is necessary outside Cook Inlet to accurately monitor crab bycatch, which is a primary management concern because crab populations are severely depleted throughout the area covered by the FMP. Observer data are also required because little information is presently available on the status of scallop stocks in much of the management area. Consequently, no observer coverage exemption was made for small vessels fishing outside of Cook Inlet.

Comment 4: The Alaska Department of Fish and Game (ADF&G) is concerned that the Federal regulatory system will not be flexible enough to reflect season changes made by the Alaska Board of Fisheries, or by ADF&G emergency order. ADF&G believes that a real likelihood exists that the State seasons established for Registration Areas D and E will be changed in 1997. Seasons in State and Federal waters must be identical for conservation, as well as enforcement and fair start reasons.

Response: NMFS may make regulatory changes in fishing seasons at any time for conservation or management reasons in response to recommendations from ADF&G or the Council. Any changes to State fishing seasons made at the March 1997 Board of Fisheries meeting could not become effective before the 1998 fishing season because the 1997 scallop fishery in Registration Areas D and E would have already occurred in January. NMFS would have more than sufficient time to make corresponding changes in Federal fishing seasons through the normal regulatory process. Any conservation emergency that warrants an immediate adjustment of fishing seasons, or any other management measure, could be made through the inseason adjustment authority set out at § 679.63 or through an emergency rule.

Comment 5: The proposed rule establishes the TAC for each registration area as a single number. ADF&G recommends that the TAC be set as a range for each registration area. For example, in the Yakutat Registration Area, TAC should be set at 0 to 250,000 lb (113,430 kg) shucked meat. By stating TAC as a range, conservation adjustments to harvest guidelines, either preseason or inseason, would be frameworked within regulations and would not require additional action by NMFS.

Response: The TACs specified by NMFS simply represent the upper end of the range of acceptable harvests. No requirement exists that the entire TAC be harvested in each registration area. Indeed, NMFS expects that the scallop fishery in some registration areas will close long before the entire TAC is harvested due to attainment of CBLs. No management advantage would be achieved by specifying TACs as a range, because NMFS would still be required to publish an inseason adjustment or closure to affect any change in the fishery. NMFS believes that the inseason adjustment authority established by this regulation is sufficient to implement timely inseason changes to TACs, should they be warranted for conservation or management reasons.

Comment 6: Paragraph 673.1(c) of the proposed rule states ''State of Alaska laws that are consistent with the regulations in this part are not preempted for vessels registered under the laws of the State fishing for scallops in the Federal waters off Alaska.'' Neither the FMP nor the proposed rule adopt all of the areas closed by State to scallop fishing. Thus, one could interpret paragraph 673.1(c) to mean that State closed areas within Federal waters could be preempted for State registered vessels. The areas closed by the State to scallop fishing were adopted by the Board of Fisheries over 20 years ago to protect king and Tanner crab stocks by using the best scientific information available along with public testimony. Crab stocks in these closed areas are very depressed and commercial king crab fisheries have

been closed since 1983. Based on the crab stock status and additional public input, the Board of Fisheries confirmed the closures in 1994.

Response: NMFS did not implement all of the closed areas that are currently established in State regulations, because NMFS did not have sufficient information on crab bycatch and crab habitat immediately available to propose such closures. To compile and analyze crab bycatch statistics for the areas currently closed by the State prior to publication of the proposed rule could have delayed the timely reopening of the scallop fishery in Federal waters. However, NMFS encourages the State to take any additional measures necessary to protect scallop stocks and bycatch species for State-registered vessels fishing in Federal waters. In § 679.1(h)(2), the phrase ''consistent with'' was changed to ''in addition to, and not in conflict with'' to clarify that NMFS intends to allow the State to impose additional regulations on State-registered vessels that are fishing for scallops in Federal waters, as long as State regulations are not in direct conflict with Federal regulations or the FMP.

Comment 7: The proposed rule does not close Federal waters presently closed by the State to scallop fishing. ADF&G is concerned that vessels that are not registered with the State will not comply with State regulations and could legally fish in these closed areas. The State's Fish and Wildlife Protection Division cannot enforce regulations on vessels that are not registered with the State or do not enter State waters. ADF&G believes that NMFS Enforcement could not enforce these closed waters if they are not established in Federal regulations.

Response: The reasons why NMFS did not implement all of the State closures in Federal waters are outlined in the response to comment 6. Because the closed areas in question are not established in Federal regulations, they will not be enforced by NMFS, however, they may be enforced by the State for State-registered vessels. A vessel fishing for scallops that is not registered with the State could indeed fish in areas of Federal waters that the State has closed to State-registered vessels. However, NMFS believes it is extremely unlikely that a vessel operator would chose to fish for scallops without registering with the State. Many scallop beds straddle both State and Federal waters and a vessel not registered with the State would be prevented from fishing in State waters and could also be prevented from entering State waters with unprocessed scallops on board. NMFS believes that the loss of access to State waters would far outweigh any possible advantage a vessel would gain by avoiding State-registration simply to fish in the closed areas in question.

Comment 8: ADF&G believes that separate TACs should be established for Registration Areas M, Q, and R. The combined TAC of 875,000 lb (396,893.3 kg) of shucked meat creates a potential risk of overfishing in any single area. Dependence on CBLs to protect the scallop resource from overfishing in these areas is not appropriate. TACs for each registration area should be established at historic high catch: Registration Area M, 0 to 200,000 lb (90,718 kg) shucked meat; Registration Area Q, 0 to 600,000 lb (272,155 kg) shucked meat; and Registration Area R, 0 to 75,000 lb (43,019 kg) shucked meat.

Response: NMFS agrees. The final specifications of TAC for the period August 1, 1996, through June 30, 1997, have been changed to reflect TACs of 200,000 lb (90,718 kg) shucked meat for Registration Area M, 600,000 lb (272,155 kg) shucked meat for Registration Area Q, and 75,000 lb (43,019 kg) shucked meat for Registration Area R.

Comment 9: The Bristol Bay bottom trawl closures recently adopted by the Council should also be closed to scallop dredging to be consistent with Federal groundfish regulations and to assist in the protection and rebuilding efforts for the Bristol Bay red king crab stocks.

Response: NMFS agrees. All Federal waters that are closed to trawling for groundfish with nonpelagic trawl gear for the purpose of habitat protection, limiting crab bycatch, or protecting walrus rookeries and Steller sea lion areas are also closed to dredging for scallops. If the Bristol Bay bottom trawl closures recently adopted by the Council are approved by NMFS, they will also apply to dredging for scallops.

Classification

The Director, Alaska Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the scallop fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

The Federal waters off Alaska have been closed to scallop fishing under an emergency interim rule and subsequent final rule since February 23, 1995 (60 FR 11054, March 1, 1995 and 60 FR 42070, August 15, 1995, respectively). The management measures established under this final rule relieve this restriction by reopening Federal waters to fishing for scallops. Therefore, as this rule relieves a restriction, delayed effectiveness under 5 U.S.C. 553(d)(1) is not required. Additionally, with respect to the new management measures imposed by this rule, there is good cause to waive the delayed effectiveness period under 5 U.S.C. 553(d)(3) because of the need to coordinate the opening of Federal waters with the August 1, 1996, opening of State waters within each registration area. Furthermore, all vessels expected to fish in Federal waters also fish in State waters where these regulatory requirements have been in effect and are familiar to the fleet.

This rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared a FRFA as part of the RIR, which describes the impacts that this rule is expected to have on small entities. The economic effects of this rule to the regulated community are expected to be significant and positive. Because this rule repeals the total closure of Federal waters to fishing for scallops, significant opportunities for scallop fishing will exist that could otherwise be unavailable under current regulations. The analysis concluded that in 1994, 86 percent of the scallops harvested off Alaska were taken from Federal waters and 11 of the 16 vessels harvesting scallops participated in no other fishery. This rule will restore the opportunity to fish in Federal waters that was available prior to 1995. A copy of this analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: July 17, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.1, paragraph (h) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(h) *Fishery Management Plan for the Scallop Fishery off Alaska.* (1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of

the United States (see subparts A and F of this part).

(2) State of Alaska laws that are in addition to, and not in conflict with, the regulations in this part are not preempted for vessels registered under the laws of the State fishing for scallops in the Federal waters off Alaska.

3. In § 679.2 the definition of ''Authorized fishing gear'' is amended by revising the introductory paragraph, redesignating paragraphs (1) through (9) and (10) as paragraphs (2) through (10) and (12), respectively, and adding new paragraphs (1) and (11). New definitions of ''CBL'' and ''Shucking machine'' are added, in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear means dive, fixed gear, hook-and-line, jig, longline, longline pot, nonpelagic trawl, nontrawl, pelagic trawl, pot-and-line, scallop dredge, and trawl defined as follows:

(1) *Dive* means any scuba or surface supported diving equipment that allows for the underwater harvest of scallops by divers, or the taking of scallops by means of such gear.

* * * * *

(11) *Scallop dredge* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any modification to this design that can be or is used in the harvest of scallops, or the taking of scallops by means of such gear.

* * * * *

CBL means crab bycatch limit.

* * * * *

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from the shell.

* * * * *

4. In § 679.7, paragraph (h) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(h) *Scallop fishery off Alaska.* It is unlawful for any person to violate any provision of subpart F of this part while fishing for scallops in the Federal waters off Alaska.

5. Subpart F is revised to read as follows:

Subpart F—Scallop Fishery Off Alaska

Sec.

679.60 Gear and efficiency limits.
679.61 Registration areas.
679.62 General limitations.
679.63 Inseason adjustments.
679.64 Seasons.
679.65 Observer requirements.

Subpart F—Scallop Fishery Off Alaska

§ 679.60 Gear and efficiency limits.

(a) *General.* Scallops may be taken only with dive gear or scallop dredge gear as defined at § 679.2.

(b) The inside ring diameter on all dredges used or carried by a vessel fishing for weathervane scallops (*Patinopectin caurinus*) must be 4 inches (10.16 cm) or larger.

(c) The inside ring diameter on all dredges used or carried by a vessel fishing for scallops other than weathervane scallops must be 3 inches (7.62 cm) or larger.

(d) No person may use chafing gear or other devices that decrease the legal inside ring diameter of a scallop dredge.

(e) Except as provided in paragraph (f) of this section, no more than two scallop dredges may be operated at one time from a vessel, and the opening of a scallop dredge must be equal to or less than 15 ft (4.57 m) wide.

(f) In the Kamishak, Southern, and Central Districts of Scallop Registration Area H defined under § 679.61, no more than one scallop dredge may be operated at one time from a vessel, and the opening of a dredge may not be more than 6 ft (1.83 m) in width.

(g) Scallops must be shucked by hand only. A shucking machine must not be on board a vessel that is fishing for scallops or that has scallops on board.

(h) No vessel fishing for scallops in Federal waters may have aboard more than 12 persons, exclusive of ADF&G or NMFS observers.

§ 679.61 Registration areas.

For the purpose of managing the scallop fishery, the Federal waters off Alaska and adjacent State waters are divided into nine scallop registration areas. Three scallop registration areas are further subdivided into districts. The scallop registration areas and districts are defined as follows:

(a) *Registration Area A* (Southeastern) has as its southern boundary the international boundary at Dixon Entrance, and as its northern boundary Loran-C line 7960–Y–29590, which intersects the western tip of Cape Fairweather at 58°47′58″ N. lat., 137°56′30″ W. long., except for ADF&G District 16 defined under paragraph (b) of this section.

(b) *Registration Area D* (Yakutat) has as its western boundary the longitude of Cape Suckling (143°53′ W. long.), and as its southern boundary Loran-C line 7960–Y–29590, which intersects the western tip of Cape Fairweather at 58°47′58″ N. lat., 137°56′30″ W. long., and ADF&G District 16 defined as all waters all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(c) *Registration Area E* (Prince William Sound) has as its western boundary the longitude of Cape Fairfield (148°50′ W. long.), and its eastern boundary the longitude of Cape Suckling (143°53′ W. long.).

(d) *Registration Area H* (Cook Inlet) has as its eastern boundary the longitude of Cape Fairfield (148°50′ W. long.) and its southern boundary the latitude of Cape Douglas (58°52′ N. lat.).

(1) *Northern District.* North of a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, then to a point on the west shore at 60°46′23″ N. lat.

(2) *Central District.* All waters between a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, to a point on the west shore at 60°46′23″ N. lat., and the latitude of Anchor Point Light (59°46′12″ N. lat.).

(3) *Southern District.* All waters enclosed by a line from Anchor Point Light west to 59°46′12″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then in a northeasterly direction to the tip of Cape Elizabeth at 59°09′30″ N. lat., 151°53′ W. long., then from the tip of Cape Elizabeth to the tip of Point Adam at 59°15′20″ N. lat., 151°58′30″ W. long.

(4) *Kamishak Bay District.* All waters enclosed by a line from 59°46′12″ N. lat., 153°00′30″ W. long., then east to 59°46′12″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then southwesterly to Cape Douglas (58°52′ N. lat.). The seaward boundary of the Kamishak Bay District is 3 nautical miles seaward from the shoreline between a point on the west shore of Cook Inlet at 59°46′12″ N. lat., 153°00′30″ W. long., and Cape Douglas at 58°52′ N. lat., 153°15′ W. long., including a line three nautical miles seaward from the shorelines of Augustine Island and Shaw Island, and including the line demarking all state waters shown on NOAA chart 16640, 21st Ed., May 5, 1990 (Available from Alaska Region).

(5) *Barren Island District.* All waters enclosed by a line from Cape Douglas (58°52′ N. lat.) to the tip of Cape Elizabeth at 59°09′30″ N. lat., 151°53′ W. long., then south to 58°52′ N. lat., 151°53′ W. long., then west to Cape Douglas.

(6) *Outer District.* All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then east to the longitude of Aligo Point

(149°44′33″ W. long.), then north to the tip of Aligo Point.

(7) *Eastern District.* All waters east of the longitude of Aligo Point (149°44′33″ W. long.), west of the longitude of Cape Fairfield (148°50′ W. long.), and north of 58°52′ N. lat.

(e) *Registration Area K* (Kodiak) has as its northern boundary the latitude of Cape Douglas (58°52′ N lat.), and as its western boundary the longitude of Cape Kumlik (157°27′ W. long.).

(1) *Northeast District.* All waters northeast of a line extending 168° from the easternmost tip of Cape Barnabas, east of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, east of 152°30′ W. long. in Shuyak Strait, and east of the longitude of the northernmost tip of Shuyak Island (152°20′ W. long.).

(2) *Southeast District.* All waters southwest of a line extending 168° from the easternmost tip of Cape Barnabas and east of a line extending 222° from the southernmost tip of Cape Trinity.

(3) *Southwest District.* All waters west of a line extending 222° from the southernmost tip of Cape Trinity, south of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak and east of the longitude of Cape Kilokak (156°19′ W. long.).

(4) *Semidi Island District.* All waters west of the longitude of Cape Kilokak at 156°19′ W. long. and east of the longitude of Cape Kumlik at 157°27′ W. long.

(5) *Shelikof District.* All waters north of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak, west of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, west of 152°30′ W. long., in Shuyak Strait, and west of the longitude of the northernmost tip of Shuyak Island (152°20′ W. long.).

(f) *Registration Area M* (Alaska Peninsula) has as its eastern boundary the longitude of Cape Kumlik (157°27′ W. long.), and its western boundary the longitude of Scotch Cap Light. The registration area also includes all waters of Bechevin Bay and Isanotski Strait south of a line from the easternmost tip of Chunak Point to the westernmost tip of Cape Krenitzen.

(g) *Registration Area O* (Dutch Harbor) has as its northern boundary the latitude of Cape Sarichef (54°36′ N. lat.), as its eastern boundary the longitude of Scotch Cap Light, and as its western boundary 171° W. long., excluding the waters of Statistical Area Q.

(h) *Registration Area Q* (Bering Sea) has as its southern boundary a line from Cape Sarichef (54°36′ N. lat.), to 54°36′ N. lat., 171° W. long., to 55°30′ N. lat., 171° W. long., to 55°30′ N. lat., 173°30′ E. long., as its northern boundary the latitude of Point Hope (68°21′ N. lat.).

(i) *Registration Area R* (Adak) has as its eastern boundary 171° W. long., and as its northern boundary 55°30′ N. lat.

§ 679.62 General limitations.

(a) *Harvest limits*—(1) *General.* NMFS will establish TAC amounts and CBLs for the scallop fishery off Alaska according to the procedures described under this section. The total annual TAC amount for scallops off Alaska will be established within the OY range of 0 to 1.8 million lb (0 to 815.5 mt) of shucked scallop meat.

(2) *TACs.* (i) The annual TACs for scallops in each Registration Area or part thereof will be established as a weight in pounds of shucked scallop meat based on a review of the following:

(A) Assessments of the biological condition of each scallop species. Assessments will include, where practicable, updated estimates of MSY; historical catch trends and current catch statistics, reviews of alternative harvesting strategies; and relevant information relating to changes in scallop markets.

(B) Socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(ii) Annual scallop TACs will be specified for the 12-month time period extending from July 1 through June 30 of the following year. An annual TAC amount is available for harvest only for the registration area or district specified, only during the applicable season set out in § 679.64, and only if no closure or other restriction or limitation is applicable.

(3) *CBLs.* (i) CBLs may be specified for red king crab and Tanner crab species for any registration area or district.

(ii) Except as provided under paragraph (a)(3)(iii) of this section, annual CBLs will be based on the biological condition of each crab species, historical bycatch rates in the scallop fishery, and other socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(iii) Annual CBLs in Registration Area Q will equal the following amounts:

(A) The CBL for red king crab caught while conducting any fishery for scallops will be specified within the range of 500 to 3,000 crab based on the considerations listed in paragraph (a)(3)(ii) of this section.

(B) The CBL for *Chionoecetes opilio* Tanner crab caught while conducting any fishery for scallops is 0.003176 percent of the best available estimate of *C. opilio* abundance in Registration Area Q.

(C) The CBL for *C. bairdi* Tanner crab caught while conducting any fishery for scallops is 0.13542 percent of the best available estimate of *C. bairdi* abundance in Registration Area Q.

(iv) Annual CBLs will be specified for the 12-month time period from July 1 through June 30 of the following year. An annual CBL may be utilized only for the registration area or district specified, only if any applicable TAC amount is available for harvest, only during the applicable season set out in § 679.64, and only if no closure or other limitation or restriction is applicable.

(b) *Specifications.* The following procedure is established for specifying TAC amounts and CBLs:

(1) On an annual basis, prior to the April Council meeting, the Council will distribute a summary of the State's most recent TAC and CBL recommendations and supporting documentation to the public through its mailing list, as well as provide copies of the recommendations, documentation, and the annual SAFE report to the public upon request. The Council will notify the public of its intent to develop final recommendations at the April Council meeting and solicit public comment both before and during the April Council meeting.

(2) Following the April Council meeting, the Council will submit its TAC and CBL recommendations along with rationale and supporting information to NMFS for review and implementation.

(3) As soon as practicable after receiving recommendations from the Council, NMFS will publish in the Federal Register annual specifications of TAC amounts and CBLs for the succeeding 12-month period extending from July 1 through June 30 of the following year.

(c) *Closures.* (1) If the Director, Alaska Region, NMFS, determines that a TAC or CBL specified under paragraphs (a) and (b) of this section has been or will be reached, NMFS will publish notification in the Federal Register prohibiting the taking and retention of scallops in the Federal waters of the registration area or district where the notification is applicable.

(2) It is unlawful for any person to conduct any fishing for scallops contrary to the notification of closure issued pursuant to this paragraph.

(d) *Closed areas.* It is unlawful for any person to dredge for scallops in any Federal waters off Alaska that are closed to fishing with trawl gear or non pelagic trawl gear under § 679.22(a)(1)(i), (a)(2)(i), (a)(4), (a)(6), (a)(7) and (b).

§ 679.63 Inseason adjustments.

(a) Inseason adjustments may be issued by NMFS to implement the closure, extension, opening, or reopening of a season in all or part of a scallop registration area; and the adjustment of TAC amounts or CBLs.

(b) Determinations for any inseason adjustment authorized under paragraph (a) of this section must be consistent with § 679.25(a)(2).

(c) Procedures for making inseason adjustments are specified at § 679.25(c).

(d) It is unlawful for any person to conduct any fishing for scallops contrary to an inseason adjustment issued pursuant to this section.

§ 679.64 Seasons.

(a) Fishing for scallops in the Federal waters off Alaska is authorized from 0001 hours, A.l.t., July 1, through 2400 hours, A.l.t., June 30, subject to the other provisions of this part, except as provided in paragraphs (b) through (e) of this section.

(b) Fishing for scallops in the Federal waters of Scallop Registration Areas K, M, O, Q, and R is authorized from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t., February 15 of the following year, subject to the other provisions of this part.

(c) Fishing for scallops in the Federal waters of the Kamishak District of Scallop Registration Area H is authorized from 1200 hours, A.l.t., August 15 through 1200 hours, A.l.t., October 31, subject to the other provisions of this part.

(d) (Applicable January 1, 1997) Fishing for scallops in the Federal waters of Scallop Registration Areas A, D, and E is authorized from 1200 hours, A.l.t., January 10 through 2400 hours, A.l.t., June 30, subject to the other provisions of this part.

(e) (Applicable through December 31, 1996) Fishing for scallops in the Federal waters of Scallop Registration Area D is authorized from 1200 hours, A.l.t., August 1 through 2400 hours, A.l.t., December 31, subject to the other provisions of this part. Fishing for scallops in the Federal waters of Scallop Registration Areas A and E is not authorized.

§ 679.65 Observer requirements.

(a) Except as provided in paragraph (c) of this section, vessels must carry a NMFS-certified or ADF&G-certified scallop observer at all times while fishing for scallops in Federal waters.

(b) An operator of a vessel required to carry an observer must comply with all safety and conduct requirements set out at § 679.7(g).

(c) Vessels less than 80 ft (24.4 m) LOA are exempt from the requirements of this section while fishing for scallops in the Federal waters of Registration Area H.

[FR Doc. 96–18666 Filed 7–18–96; 4:19 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 61, No. 142
Tuesday, July 23, 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

Office of the Secretary

7 CFR Part 20

Export Sales Reporting for Sunflowerseed and Sunflowerseed Oil

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would add sunflowerseed and sunflowerseed oil to the list of commodities subject to the export sales reporting requirements of 7 CFR Part 20.

DATES: Comments on the proposed rule, as well as on alternatives to this proposal, must be received on or before September 23, 1996 to be assured of consideration.

ADDRESSES: Comments must be sent to: Export Sales Reporting Branch, Trade and Economic Analysis Division, Room 5959—Stop 1025, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250–1025. All written comments received will be available for public inspection at the above address during business hours from 8:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas B. McDonald, Jr., Chief, Export Sales Reporting Branch, Trade and Economic Analysis Division, Foreign Agricultural Service, U. S. Department of Agriculture, (202) 720–3273, FAX (202) 690–3275.

SUPPLEMENTARY INFORMATION: This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not 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;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Administrator, Foreign Agricultural Service, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although many exporters of sunflowerseed and sunflowerseed oil are small business, the time and expense involved in complying with this proposed reporting requirement is negligible. In addition, data reported under this regulation are maintained as a part of the normal course of export contracting business activity.

A copy of this proposed rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

This proposed rule involves the collection of information. FAS uses Forms FAS–97, FAS–98, FAS–99, and FAS–100 for this collection of information. OMB has assigned control number 0551–0007 to these forms. The Department intends to amend the current information collection approved by OMB expiring March 31, 1998.

Estimate of Burden: Public reporting burden for collecting information under this proposed rule is estimated to average 33 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.

Respondents: Business and other for-profit.

Respondents: 30.

Estimated number of annual Responses per Respondent: 51.

Estimated total annual burden on Respondents: 855 hours.

Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Foreign Agricultural Service, Washington, DC 20503.

Executive Order 12372

This proposed rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Background

Section 602 of the Agricultural Trade Act of 1978, as amended, requires the reporting of information pertaining to the export of certain specified agricultural commodities and other agricultural commodities that may be designated by the Secretary of Agriculture. These reporting requirements are implemented by the Foreign Agricultural Service under regulations codified at 7 CFR Part 20. Individual reports collected under the exports sales reporting program are confidential and are only to be released in compilation form each week following the week of reporting. Reporting under 7 CFR Part 20 is mandatory. Any person who knowingly fails to make a report shall be fined not more than $25,000 or imprisoned for not more that 1 year, or both.

Previously, reports relating to sunflowerseed export sales have not been required because of the limited level of exports and the small size of the industry. Recently, interested industry representatives have suggested that sunflowerseed and sunflowerseed oil exports are now of major importance to the U. S. oilseeds and products industry. Between 30 to 35 percent of

the confection seed production and between 60 to 70 percent of the oil production is exported. Sunflowerseed activity was added to the Department's ''World Agricultural Supply and Demand Estimates'' report in April 1994.

U. S. production of sunflowerseed is estimated at 2.19 million metric tons in 1994 and 1.82 million tons in 1995, compared with an average for 1988/89–1992/93 of only 1.09 million tons. U. S. exports of sunflowerseed increased to 183.1 thousand tons valued at $79.4 million during calendar year 1994 and to 296.0 thousand tons valued at $118.3 million in 1995. U. S. exports of sunflowerseed oil rose to 208.6 thousand tons worth $130.5 million in calendar year 1994 and to 471.3 thousand tons valued at $299.5 million in 1995.

The addition of sunflowerseed and sunflowerseed oil under the mandatory reporting program will provide more complete coverage of the oilseed export industry and additional high quality up-to-date information required in making export projections. These projections are used by private industry as well as the government in making economic decisions concerning the orderly flow of U. S. agricultural commodities in the domestic and export markets.

Lists of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting.

Accordingly, it is proposed to amend Part 20 of 7 CFR as follows:

1. The authority citation for Part 20 continues to read as follows:

Authority: 7 U.S.C. 5712.

2. Appendix 1 to 7 CFR Part 20 is amended by adding the following lines after the line for ''linseed oil, including raw, boiled'' under the indicated column headings:

Appendix 1—Commodities Subject to Reporting, Units of Measure to be Used in Reporting, and Beginning and Ending Dates of Marketing Years

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
* * * *	*	*	*
Sunflowerseed	.....do	September 1	August 31.
Sunflowerseed Oil—including: crude (including degummed), once refined, sunflowerseed salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	.....do	October 1	September 30.
* * * *	*	*	*

Signed at Washington, D.C., July 10, 1996.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 96–18468 Filed 7–22–96; 8:45 am]

BILLING CODE 3410–10–P

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 95–069–1]

Papaya, Carambola, and Litchi From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to increase the irradiation treatment dose required for papayas intended for interstate movement from Hawaii and to allow carambolas and litchis to be moved interstate from Hawaii with irradiation treatment. We are also proposing to allow papayas, carambolas, and litchis from Hawaii to undergo irradiation treatment either in Hawaii or in non-fruit fly supporting areas of the mainland United States. We are also proposing to allow litchis to be moved interstate from Hawaii if they are inspected and found free of the litchi fruit moth and undergo hot water treatment for fruit flies. In addition, we are proposing several amendments to the requirements for irradiation procedures and facilities and the handling of treated and untreated fruits and vegetables. Finally, we are proposing to amend the definition for *inspector* to include State plant regulatory officials designated by the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. These proposed actions would facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

DATES: For comments on all portions of this proposed rule except the rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act, consideration will be given only to comments received on or before August 22, 1996. For comments on the Paperwork Reduction Act requirements of this proposed rule, consideration will be given only to comments received on or before September 23, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–069–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–069–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables, including papayas, from Hawaii. Regulation is necessary to prevent the spread of the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*), which occur in Hawaii. These types of fruit flies are collectively referred to in this document as Trifly.

The regulations allow papayas to be moved interstate from Hawaii to any destination in the United States if,

among other things, they have been treated for Trifly. One approved treatment for Trifly in papayas is irradiation. Section 318.13–4f provides for irradiation of papayas at an approved facility in Hawaii at an irradiation dose of 150 Gray (15 krad).

Irradiation Dosage Levels

The Agricultural Research Service (ARS), United States Department of Agriculture, recently reevaluated the irradiation treatment for fruits and vegetables, including papayas, and has formally recommended a change from 150 Gray to 250 Gray for the dose necessary to control Trifly. At the current dosage levels, normal-appearing, sterile adult pests may emerge after treatment. Although these insects cannot reproduce, the emergence of normal-appearing adults presents problems for surveillance programs designed to intercept exotic insects, because there is no practical way to distinguish an irradiated (sterile) insect from an untreated one. ARS has determined that the 250 Gray (25 krad) dosage would prevent adult emergence altogether, including the emergence of normal-appearing, sterile adult insects capable of flight.

The Food and Drug Administration (FDA) regulations permit the use of irradiation at doses not to exceed 1,000 Gray (100 krad) to inhibit the growth and maturation of fresh foods and to disinfest food of arthropod pests. The 250 Gray (25 krad) dosage recommended by ARS is well within FDA limits. We are therefore proposing to amend § 318.13–4f by increasing the irradiation treatment dose required for papayas intended for interstate movement from Hawaii from 150 Gray (15 krad) to 250 Gray (25 krad).

Irradiation Treatment on the Mainland

Hawaii has not been able to ship irradiated fresh papayas to the mainland under the existing regulations due to the lack of an irradiation facility in the State. We believe that routine commercial shipments of papayas can be authorized for treatment in any State of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia. Prior to treatment, movement into and through the United States would be limited to the area authorized under § 318.13–17(e) for fruits and vegetables from Hawaii that transit the United States en route to a foreign destination. It is unlikely that Trifly would be able to establish reproducing populations in the States on the mainland where treatment would be allowed because of either the relatively cool climate or the lack of suitable host material in those areas. Therefore, we are proposing to amend the regulations at § 318.13–3 and 318.13–4f to allow untreated papayas from Hawaii to undergo irradiation treatment in the areas of the mainland United States described above.

We are also proposing to require that untreated papayas moved interstate from Hawaii for treatment at an irradiation facility in an approved area on the mainland United States be accompanied by a limited permit. The purpose of a limited permit is to allow movement, under certain restrictions, of a commodity that may not otherwise be authorized for movement. This document provides a way to track the commodity and ensure that it moves only as authorized.

In addition, we are proposing to prohibit the commingling of untreated papayas shipped from Hawaii to the mainland United States with other fruits and vegetables. This appears necessary to prevent other commodities from becoming infested with Trifly.

Irradiation Procedures and Facilities

We are proposing to amend § 318.13–4f to eliminate the requirement that dose indicators be attached to the cartons or the pallet loads of treated papayas. Instead, we would require that absorbed dose be measured at the treatment facility using a dose indicator that can accurately measure an absorbed dose of 250 Gray (25 krad). We would require that the number and placement of dosimeters used to measure the absorbed dose be in accordance with standards of the American Society for Testing and Materials (ASTM). (See Designation E 1261–94, ''Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,'' American Society for Testing and Materials, Annual Book of ASTM Standards.) We would add that the dosimetry system (the system used for determining absorbed dose, consisting of dosimeters, measurement instruments, reference standards, and procedures) in place at the treatment facility must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded, and we would rely on the treatment facility records to verify the treatment. Under the current regulations, the treatment facility is required to maintain records of treatment for a period of time that exceeds the shelf life of the irradiated product by 1 year. The regulations require the records to include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation. All records must be available for inspection.

In addition, we are proposing to amend § 318.13–4f to require that approved irradiation treatment facilities be certified annually by Plant Protection and Quarantine (PPQ), APHIS, and that they be recertified in the event that an increase or decrease in radioisotope or a major equipment modification affects the delivered dose. This action would ensure that irradiation facilities are capable of properly administering effective treatments.

Packaging Requirements

We are proposing to amend specific provisions regarding packaging and wrapping of papayas under § 318.13–4f to require that all treated papayas be packaged in pest-proof cartons to protect them from re-infestation by Trifly. Then, to ensure that no cartons are added to or removed from a pallet load of cartons, pallet loads would have to be wrapped in one of the following ways, as is currently required under § 318.13–4f(b)(6): With polyethylene sheet wrap, with net wrapping, or with strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap. We further propose to require that pallet loads of treated papayas be marked with treatment lot numbers, packing and treatment facility identification and locations, and dates of packing and treatment. This information would allow an inspector to identify the treatment lots and trace them back to the packing and treatment facilities. This method of labeling would replace the current requirement that individual cartons and pallet-loads of cartons be marked with a ''Treated'' stamp.

We are not proposing similar packaging requirements for untreated papayas moving interstate to the mainland United States. Any Trifly that might be present in the shipment of untreated papayas would most likely be eggs and larvae, and it is unlikely that eggs and larvae could escape. If Trifly eggs and larvae were present in the shipment, and if they reached maturity and escaped, it is unlikely that they could establish a reproducing population in the areas in which movement of untreated papayas would be authorized under this section because of either the relatively cool climate or the lack of suitable host material in those areas. Further, untreated papayas would be treated on

the mainland before being distributed, minimizing the possibility that any eggs and larvae could reach maturity and escape.

Carambolas from Hawaii

Carambola (*Averrhoa carambola*) fruit is a recorded host of Trifly. Based on ARS research and recommendations, [1] we are also proposing to amend § 318.13–4f to allow the interstate movement of carambolas from Hawaii with irradiation treatment. The same provisions proposed for papaya, including irradiation treatment dosage, would apply.

Litchis from Hawaii

Litchi (*Litchi chinensis*) fruit is a recorded host of the Mediterranean fruit fly and Oriental fruit fly, among other pests, but litchi is not a recorded host for melon fly. Based on ARS research and recommendations, we are proposing to further amend § 318.13–4f to allow the interstate movement of litchis from Hawaii with irradiation treatment. The same provisions proposed for papaya, including irradiation treatment dosage, would apply.

We have determined, however, that irradiation treatment may not affect other pests that may be carried by litchi. One pest, the litchi rust mite (*Eriphyes litchi*), would not be easily detected by an inspector. Therefore, the entry of litchi from Hawaii into Florida, where most mainland litchi is grown, would be prohibited as a precaution against the possible introduction of litchi rust mite. Accordingly, the cartons in which the litchi are packed would have to be stamped ''Not for importation into or distribution in FL.''

Other pests that may be carried by the litchi, including the litchi fruit moth (*Cryptophlebia* spp.), could be easily detected by inspection. We propose to require that the litchis be inspected by an inspector and found free of plant pests prior to interstate movement under a limited permit.

Allowing the interstate movement of litchis from Hawaii under the conditions described above would facilitate trade while continuing to provide protection against the spread of plant pests into other parts of the United States.

As an alternative to the irradiation treatment for litchi from Hawaii, we are proposing to allow the interstate movement of litchis from Hawaii if the litchis are inspected and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector and then treated with hot water for the Mediterranean fruit fly and Oriental fruit fly under the supervision of an inspector before the litchis' interstate movement.

However, because the litchi rust mite cannot be effectively detected by inspection and would not be eliminated by hot water treatment, we are proposing that the litchi be prohibited movement into Florida. Accordingly, the cartons in which the litchi are packed would have to be stamped ''Not for importation into or distribution in FL.''

The provisions described above for litchi from Hawaii would be added to the regulations as a new § 318.13–4e.

Research conducted by ARS indicates that the following hot water treatment of litchis would provide probit 9 quarantine security (no more than 3 individuals surviving from an estimated treatment population of 100,000 target) against any potential infestations of Mediterranean fruit fly or Oriental fruit fly:

Water temperature	Time
49 °C (120.2 °F) or above	20 minutes.

Treatment would begin when the water temperature is 49 °C (120.2 °F) or above in all locations throughout the tank; the tank must be designed to allow sufficient water circulation and heating to maintain treatment temperatures during the 20 minute treatment cycle. Hot water treatment tanks with upper temperature limits of 49.5 °C (121.1 °F) would be recommended, because temperatures exceeding 49.5 °C (121.1 °F) could cause phytotoxicity damage due to overheating. Hydrocooling for 20 minutes at temperatures of 24 °C (75.2 °F) # 4 °C (7.2 °F) would also be recommended to prevent injury to the fruit from the hot water treatment. This treatment schedule for litchis from Hawaii would be added to the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated into the regulations by reference at 7 CFR 300.1.

Definition of Inspector

We are proposing to amend the definition of *inspector* in § 318.13–1 to enable a greater number of qualified people to perform inspections on, issue limited permits for, and certify fruits and vegetables moving interstate from Hawaii. We propose that the new definition define an inspector as ''An employee of Plant Protection and Quarantine, or a State plant regulatory official designated by the Administrator to inspect and certify to shippers and other interested parties, as to the condition of the products inspected. To be eligible for designation, a State plant regulatory official must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in State plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying plant pests known to occur within Hawaii. Six years' experience in State plant regulatory activities may be substituted for the degree requirement.'' We believe that this proposed definition, which is based in part on the definition for *inspector* found in 7 CFR 353, ''Phytosanitary Export Certification,'' would allow greater State participation in the inspection process while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Miscellaneous

We are proposing to amend § 318.13–4f so that it permits irradiation treatment for certain fruits or vegetables, not exclusively for papayas. Although papayas, carambolas, and litchis would be the only commodities listed in § 318.13–4f as being approved for this treatment, we expect that additional fruits and vegetables from Hawaii may be approved for irradiation treatment and added to this section through rulemaking in the future.

We are also proposing to amend § 318.13–4f(c) to update the address for requests for approval and inspection of irradiation facilies.

This proposed rule would facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of

[1] Information on this and other ARS research may be obtained by writing to Dr. Ken Vick, USDA, ARS, NPS, BARC-West, Building 005, Beltsville, MD 20705.

small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 7 U.S.C. 162, the Secretary of Agriculture is authorized to promulgate regulations governing the interstate movement of plants and plant products from a State or territory of the United States to prevent the spread of a dangerous plant disease or insect infestation new to or not widely prevalent or distributed within or throughout the United States.

This proposed rule would increase the irradiation treatment dose required for papayas from Hawaii and allow irradiation treatment of carambolas and litchis from Hawaii. The proposed rule would also allow papayas, carambolas, and litchis from Hawaii to undergo irradiation treatment in non-fruit fly supporting areas of the mainland United States. In addition, the proposed rule would allow litchis to be moved interstate from Hawaii if they are inspected and found free of the litchi fruit moth and other plant pests and then undergo hot water treatment for Medfly and Oriental fruit fly. Finally, the proposed rule would amend the requirements for irradiation procedures and facilities and the handling of treated and untreated fruits and vegetables. Economic impacts associated with this rulemaking would largely be the result of untreated papayas, carambolas, or litchis being allowed to move to the mainland United States for irradiation treatment.

Papayas

Papayas are produced commercially on about 340 farms in Hawaii. Nearly 65 percent of those farms are owned by individuals whose major occupation is not farming, while the balance are operated by individuals whose major occupation is farming.

Papaya farms with average annual revenues of less than $500,000 are considered small. All papaya farms in Hawaii are therefore considered small.

In 1994, Hawaii produced 62 million pounds of papaya (valued at $15 million). Fresh papaya comprised 56.2 million pounds of this total. During that year, Hawaii shipped about 37.8 million pounds of papaya. Shipment of fresh papaya to the mainland totaled about 19.4 million pounds, and the remainder was exported to other countries. Of the approximately 19.4 million pounds of fresh papayas shipped from Hawaii to the mainland in 1994, most went to the West Coast. Seventy five percent of them were sold directly to retailers, and the rest were sold to wholesalers.

The United States imported about 41.2 million pounds of fresh papaya (valued at $10.9 million) in 1994. Most of the imported papayas came from Mexico (80 percent), Belize (9.6 percent), Jamaica (6.3 percent), and the Dominican Republic (1.9 percent). The United States exported 18.4 million pounds of fresh papayas (valued at $15.4 million) in 1994. The major importers were Japan (66.8 percent) and Canada (27.1 percent). Almost all United States exports of papayas go out of Hawaii, while all imports come into the mainland United States.

There are five firms currently operating nine papaya treatment facilities in the State of Hawaii. Four firms use the vapor-heat treatment method and one uses the dry heat (or high-temperature forced air) method. The total capacity of these treatment chambers is 85,000 pounds per run.

Both heat treatment methods have the potential to damage the papayas. They require the center of each papaya fruit to reach about 47 °C (about 117 °F), a temperature sufficient to kill fruit fly eggs and larvae. Because of variation in fruit size and ripeness, the papayas may not be uniformly heated. This may result in the fruit becoming lumpy and losing flavor. For both methods, careful control of the uniformity of fruit size and ripeness is necessary for effective treatment. In addition, both methods require between 4 and 6 hours of treatment. Efforts to speed up the process result in fruit which is either scalded externally or hardened on the inside. The cost of treatment for both methods ranges from 9 to 23 cents per pound.

Although the regulations currently allow papayas to be treated by irradiation in Hawaii, there are no irradiation facilities in that State. Allowing irradiation to be performed on the mainland appears to be an attractive option. The subsequent diversion of untreated papayas from Hawaii to the mainland would likely result in loss of business to the existing vapor heat and dry heat facilities. This could result in lay-offs and possibly the shut-down of some of these facilities. However, if papaya producers respond by producing more papayas, continuing traditional treatment for some and shipping others for irradiation, this would not necessarily occur.

Carambolas

The United States produced about 6 million pounds of carambola in 1994, with a total value of approximately $4 million to $4.5 million. In the United States, carambola is grown on about 100 farms. All of these farms have a market value of less than $500,000 and are thus considered to be small businesses according to the Small Business Administration's size standards.

In 1994, Hawaii produced only about 50,700 pounds of carambola, valued at approximately $38,000, on 35 farms. The provisions proposed in this rule concerning irradiation treatment of carambola fruits by the mainland facilities are expected to stimulate growth of the carambola industry in Hawaii and provide greater access to the larger mainland market.

No economic impact on mainland carambola growers is anticipated, since the total Hawaii production of carambola is less than one percent of the mainland production. Therefore, even in the unlikely event that Hawaii could ship 100 percent of its production to the mainland, supply would only increase by less than one percent. However, mainland consumers would likely benefit from increased seasonal and regional availability, as well as from the increased variety of fresh carambola. Additionally, carambola growers in Hawaii would benefit from the opportunity to sell their product in a larger and more diverse market.

This proposed rule would enable carambola from Hawaii to be irradiated at an existing irradiation facility on the mainland and is not expected to impose additional costs on carambola producers in Hawaii. We expect that carambola producers in Hawaii would benefit from the proposed irradiation treatment because this treatment could deliver better product quality, extended shelf life of the fruit, and cost effective treatment of the fruit. However, the overall impact of the carambola provisions of the proposed rule is expected to be insignificant.

Litchis

Litchis are produced commercially on 257 farms in Hawaii. In 1993, the United States produced about 770,000 pounds of litchi. Of that total, approximately 85,000 pounds was produced in Hawaii.

Litchi farms with average annual revenues of less than $500,000 are considered small. All litchi farms in Hawaii are considered small.

The litchi industry in Hawaii has been constrained by the lack of an approved treatment for fruit flies since the cancellation of ethylene dibromide in 1994. Approving irradiation treatment of litchis on the mainland would be expected to stimulate growth of the industry and provide access to the larger mainland market. No information is available on the effect of approving inspection and hot water treatment as an alternative method for moving litchis interstate.

The United States is a net importer of fresh litchi, with a total import of about 165,000 pounds in 1994. In 1994, nearly 70 percent of imported litchi came from Mexico; the remainder came from Israel. The total supply of litchi on the mainland is about 850,000 pounds. Wholesale prices of litchi range between $1.00 per pound and $4.50 per pound.

The economic impact on mainland litchi growers and prices on the mainland will not be significant. Even in the unlikely event that Hawaii shipped 25 percent of its production to the mainland, supply would increase by only about 2.3 percent. However, mainland consumers would benefit from increased seasonal and regional availability, an increased variety of fresh litchi, and stable prices. Additionally, litchi growers in Hawaii would benefit from the increased opportunity to sell their product in a larger and more diverse market.

According to recent research conducted by the ARS, irradiation appears to be an effective treatment option that does not require control of either fruit size or ripeness. Irradiation typically requires only 40 minutes for treatment. The irradiation method may be more cost effective depending on volume treated, because it costs only about 5 to 12 cents per pound.

The proposed rule is expected to benefit producers, since irradiation appears to offer a number of advantages over current treatment options, including greater flexibility of fruit size and ripeness, reduction in treatment time, improved effectiveness against pest infestation, better product quality, extended shelf life, and improved cost effectiveness. Consumers also could benefit from a better quality product. The overall impact upon supply, price, and competitiveness is expected to be insignificant.

This proposed rule contains paperwork requirements. Under this proposed rule, a limited permit would be required for untreated papayas, carambolas, and litchis moved interstate from Hawaii for irradiation.

The alternative to this proposed rule would be to take no action. We do not consider taking no action a reasonable alternative. Papayas, carambolas, and litchis are not currently moved interstate from Hawaii because of a lack of suitable treatment options. This proposed rule would facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–069–1. Please send a copy of your comments to: (1) Docket No. 95–069–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to increase the irradiation treatment dose required for papayas intended for interstate movement from Hawaii and to allow carambolas and litchis to be moved interstate from Hawaii with irradiation treatment. We are also proposing to allow papayas, carambolas, and litchis from Hawaii to undergo irradiation treatment either in Hawaii or in non-fruit fly supporting areas of the mainland United States. We are also proposing to allow litchis to be moved interstate from Hawaii if they are inspected and found free of the litchi fruit moth and undergo hot water treatment for fruit flies. In addition, we are proposing several amendments to the requirements for irradiation procedures and facilities and the handling of treated and untreated fruits and vegetables. These proposals would facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of Trifly from Hawaii to other parts of the United States.

The implementation of these proposed regulatory actions would require us to engage in certain information collection activities that would necessitate the use of several forms, including limited permits and container markings.

We are seeking OMB approval to use the following forms:

PPQ Form 530 (Limited Permit): The proposed rule would require that untreated papayas moved interstate from Hawaii for treatment at an irradiation facility on the United States mainland be accompanied by a limited permit. The permit would be issued by an inspector after the inspector examines the shipment and determines that it has been prepared in compliance with our regulations.

Container Marking and Identity: The proposed rule would require that pallet loads of irradiation-treated papayas be marked (by irradiation facility personnel or by the shipper) with treatment lot numbers, packing and treatment facility identification and locations, and dates of packing and treatment. This information would allow an inspector to identify the treatment lots and trace them back to the packing and treatment facilities.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond, such as 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.

Estimate of burden: Public reporting burden for this collection of information

is estimated to average 15 minutes per response.

Respondents: Importers, exporters, and shippers.

Estimated number of respondents: 352.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 88 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW, Washington, DC 20250.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR parts 300 and 318 would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials Incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted on November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

4. In § 318.13–1, the definition for *Inspector* would be revised to read as follows:

§ 318.13–1 Definitions.

* * * * *

Inspector. An employee of Plant Protection and Quarantine, or a State plant regulatory official designated by the Administrator to inspect and certify to shippers and other interested parties, as to the condition of the products inspected. To be eligible for designation, a State plant regulatory official must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in State plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying plant pests known to occur within Hawaii. Six years' experience in State plant regulatory activities may be substituted for the degree requirement.

* * * * *

5. In § 318.13–3, a new paragraph (b)(3) would be added to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(b) * * *

(3) Untreated fruits and vegetables from Hawaii may be moved interstate for irradiation treatment on the mainland United States if the provisions of § 318.13–4f are met and if the fruits and vegetables are accompanied by a limited permit issued by an inspector in accordance with § 318.13–4(c). The limited permit will be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions of this subpart.

* * * * *

6. A new § 318.13–4e would be added to read as follows:

§ 318.13–4e Administrative instructions governing the movement of litchis from Hawaii to other States.

(a) Litchis may be moved interstate from Hawaii only in accordance with this section or § 318.13–4f and all other applicable provisions of this part.

(b) To be eligible for interstate movement under this section, litchi must be inspected and found free of the litchi fruit moth (*Cryptophlebia spp.*) and other plant pests by an inspector and then treated for fruit flies under the supervision of an inspector with a treatment authorized by the Administrator.

(c) Treatments authorized by the Administrator are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(d) Litchi from Hawaii may not be moved interstate into Florida. All cartons in which litchi from Hawaii are packed must be stamped ''Not for importation into or distribution in FL.''

7. Section 318.13–4f would be amended as follows:

a. By revising the heading to read as set forth below.

b. By revising paragraph (a) to read as set forth below.

c. By revising the heading and the introductory text to paragraph (b) to read as set forth below.

d. By revising paragraph (b)(1) to read as set forth below.

e. In paragraph (b)(2)(i), by removing the words ''15 kilorads (150 Gray) to the papayas'' and adding ''250 Gray (25 krad)'' in its place.

f. In paragraph (b)(2)(ii), by removing the word ''fruit'' each time it appears and adding ''fruits and vegetables'' in its place.

g. In paragraph (b)(2)(ii), at the end of the paragraph, by adding a new sentence to read as set forth below.

h. By adding a new paragraph (b)(2)(iv) to read as set forth below.

i. In paragraph (b)(4), in the first sentence, by removing the words ''Papayas are'' and adding, in their place, the words ''Fruits and vegetables that are treated in Hawaii must be''.

j. By redesignating the introductory text of paragraph (b)(4) as paragraph (b)(4)(i), and by adding new paragraphs (b)(4)(ii), (b)(4)(iii) and (iv) to read as set forth below.

k. By revising paragraphs (b)(5) and (b)(6) to read as set forth below.

l. By removing paragraphs (b)(7), (b)(8), and (b)(9).

m. By adding a new paragraph (b)(7) to read as set forth below.

n. By redesignating paragraph (b)(10) as paragraph (b)(8).

o. In newly designated paragraph (b)(8), the beginning of the second sentence, by removing the words ''A papaya'' and adding the word ''An'' in their place.

p. By revising paragraph (c) to read as set forth below.

q. In paragraph (d)(1), by removing the word ''papaya'' each time it appears.

r. In paragraph (d)(2), by removing the words ''a papaya'' in the first sentence and adding the word ''an'' in its place, and by removing the word ''papaya'' each time it appears.

s. In paragraph (e), by removing the word ''papayas'' and adding ''the fruits and vegetables authorized for treatment under this section'' in its place.

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the

following fruits and vegetables: carambola, litchi, and papaya.

(b) *Conditions of movement.* Fruits and vegetables from Hawaii may be authorized for movement in accordance with this section only if the following conditions are met:

(1) *Location.* The irradiation treatment must be carried out at an approved facility in Hawaii or on the mainland United States. Fruits and vegetables authorized under this section for treatment on the mainland may be treated in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia. Prior to treatment, the fruits and vegetables may not move into or through Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that movement would be allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

* * * * *

(2) * * *

(ii) * * * Untreated fruits and vegetables shipped to the mainland United States from Hawaii in accordance with this section may not be packaged for shipment in a carton with treated fruits and vegetables.

* * * * *

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

* * * * *

(4) * * *

(ii) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(iv) Litchi from Hawaii may not be moved interstate into Florida. All cartons in which litchi from Hawaii are packed must be stamped ''Not for importation into or distribution in FL.''

(5) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 250 Gray (25 krad).[5]

(6) *Dosimetry systems.* (i) Dosimetry must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded.

(ii) Absorbed dose must be measured using a dose indicator that can accurately measure an absorbed dose of 250 Gray (25 krad).

(iii) The number and placement of dosimeters used must be in accordance with American Society for Testing and Materials (ASTM) standards.[6]

(7)(i) *Certification on basis of treatment.* A certificate shall be issued by an inspector for the movement of fruits and vegetables from Hawaii that have been treated and handled in accordance with this section.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated fruits and vegetables from Hawaii for treatment on the mainland United States in accordance with this section.

* * * * *

(c) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (b)(2) of this section.

* * * * *

Done in Washington, DC, this 16th day of July 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–18461 Filed 7–22–96; 8:45 am]

BILLING CODE 3410–34–P

[5] See footnote 2.

[6] Designation E, ''Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,'' American Society for Testing and Materials, Annual Book of ASTM Standards.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 502, 516, 562, 563, 565, 574

[No. 96–69]

RIN 1550–AA99

Regulatory Citations to Uniform Financial Institutions Rating System

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a related document published in the July 18, 1996 issue of the Federal Register, the Federal Financial Institutions Examination Council (FFIEC) requested comment on proposed changes to the Uniform Financial Institutions Rating System (UFIRS). In this document, the OTS is proposing to make conforming changes to its regulations that cross-reference the UFIRS. The effect of these changes will be to confirm that OTS regulations are intended to refer to the UFIRS as revised from time to time.

DATES: Comments must be received on or before September 23, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 96–69. These submissions may also be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days or may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906–5744, Karen Osterloh, Counsel (Banking & Finance), Regulations and Legislation Division, (202) 906–6639 or Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Proposal

The UFIRS is a supervisory rating system used by the OTS and other agencies represented on FFIEC to evaluate the soundness of depository institutions on a uniform basis. The agencies have implemented the UFIRS through CAMEL ratings. Under CAMEL, the agencies have organized the relevant

UFIRS factors into five major areas (*C*apital Adequacy, *A*sset Quality, *M*anagement, *E*arnings, and *L*iquidity). FFIEC has proposed changes to the UFIRS system that: reformat and clarify the rating descriptions; add a sixth rating area addressing sensitivity to market risk; emphasize risk management processes; and make other changes. Currently, market risk is evaluated within other rating areas.

Under current OTS regulations, ratings are used: (1) To define ''troubled savings association'' for purposes of the OTS assessment system, 12 CFR 502.1; (2) to determine if a savings association is eligible for expedited or standard treatment under the application processing guidelines, 12 CFR Part 516; (3) to determine when an independent audit is required for safety and soundness purposes and to determine whether the Director may waive this independent audit requirement, 12 CFR 562.4; (4) to determine when the OTS may require a savings association and its subsidiaries to provide notification before entering into transactions with affiliates, 12 CFR 563.41; (5) to define ''eligible savings association'' for the purposes of exempting loans to small and medium size businesses and farms from recordkeeping requirements, 12 CFR 563.170(c)(10); [1] (6) to define ''adequately capitalized'' and ''undercapitalized'' under the prompt corrective action regulation, 12 CFR Part 565; (7) to determine whether a savings association should be reclassified based on supervisory criteria other than capital for the purposes of the prompt corrective action regulation; and (8) to define a savings association in ''troubled condition'' under rules requiring prior notice of the addition of any individual to the board of directors or the employment of any individual as senior executive officer, 12 CFR 574.9.[2] Most of these regulations currently refer to ''CAMEL'' ratings. Under the proposed changes to UFIRS, the ''CAMEL'' acronym will become obsolete. Accordingly, the OTS is proposing to revise its regulations to refer more generally to the UFIRS as it may exist from time to time or to any comparable rating system that the OTS may adopt in lieu of UFIRS.

Two other minor changes are also being proposed. First, for the sake of consistency and to prevent confusion, each regulation cross referencing UFIRS will indicate that the OTS will use the most recent rating (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified in writing. Currently, some of the cited regulations include this provision, while others do not. Additionally, the OTS proposes to clarify 12 CFR 562.4. Currently, that regulation requires, *inter alia,* all institutions receiving a rating of 3, 4 or 5 to obtain an independent audit. However, the Director of the OTS is authorized to waive the independent audit requirement for these institutions, if the Director ''determines that an audit would not address the safety and soundness issues that caused the [low] examination rating.'' To be more precise, the OTS proposes to state that a waiver may be granted if an audit ''would not provide further information on safety and soundness issues relevant to the examination rating.''

The OTS request comments on all aspects of this aspects of this proposal.

II. Reporting and Recordkeeping Requirements

Reporting and recordkeeping requirements in this proposed rule are currently found in 12 CFR 563.41(e), 563.170(c), and 574.9. These requirements are addressed in the following OMB approved packages: Control Nos. 1550–0011, 1550–0083, and 1550–0032. The reporting burden under these packages remains unchanged under the rule.

III. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

IV. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule incorporates appropriate citations to the revised Uniform Financial Institutions Rating System proposed by the Federal Financial Institutions Examination Council. The revisions will merely reduce confusion by updating the terminology used in the OTS regulations to reflect the current rating system. The OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The OTS does not anticipate that the application of the revised UFIRS rating system will result in a change in composite ratings assigned to depository institutions. Today's proposed rule will merely reduce confusion by updating the terminology used in the OTS regulations to reflect the current rating system.

List of Subjects

12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

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[1] In January 17, 1996, the OTS proposed to substantially revise 12 CFR 563.170(c) in a way that would remove paragraph (c)(10). 61 FR 1162 (Jan. 17, 1996). If that proposed amendment is adopted, it will supersede the amendment proposed here.

[2] The OTS previously proposed a revision to the capital distributions regulation at 12 CFR 563.134 that would define ''troubled condition'' by reference to the examination rating system. 59 FR 62356 (Dec. 5, 1994). When that regulation is finalized, it will also include appropriate references to the revised UFIRS system.

Authority and Issuance

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 502—ASSESSMENTS

1. The authority citation for part 502 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

2. Section 502.1 is amended by revising paragraph (f) to read as follows:

§ 502.1 Asset-based assessments.

* * * * *

(f) *Definition.* For purposes of this section only, a troubled savings association shall be defined as a savings association with a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter. A troubled savings institution also includes a savings association in conservatorship so long as the association requires increased supervision and examination by the Office.

* * * * *

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

3. The authority citation for part 516 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

4. Section 516.3 is amended by revising paragraphs (a)(1)(i), (b)(1)(i), and (c) to read as follows:

§ 516.3 Definitions.

(a) * * *

(1) * * *

(i) The savings association has a composite rating of 1 or 2;

* * * * *

(b) * * *

(1) * * *

(i) The savings association has a composite rating of 3, 4 or 5;

* * * * *

(c) *Composite rating.* Composite rating means the composite numerical rating assigned to the savings association by the OTS under the Uniform Financial Institutions Rating System (For availability, see § 516.1.) or an equivalent rating under a comparable rating system adopted by the OTS, and refers to the most recent rating (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified in writing.

* * * * *

PART 562—REGULATORY REPORTING STANDARDS

5. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

6. Section 562.4 is amended by revising paragraphs (b)(1) and (c)(2) to read as follows:

§ 562.4 Audit of savings associations and savings association holding companies.

* * * * *

(b) * * *

(1) If a savings association has received a composite rating of 3, 4 or 5, as defined at § 516.3(c) of this chapter; or

* * * * *

(c) * * *

(2) The Director may waive the independent audit requirement described in paragraph (b)(1) of this section, if the Director determines that an audit would not provide further information on safety and soundness issues relevant to the examination rating.

* * * * *

PART 563—OPERATIONS

7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

8. Section 563.41 is amended by revising paragraph (e)(2)(ii)(A) to read as follows:

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(A) Has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

* * * * *

9. Section 563.170 is amended by revising paragraph (c)(10)(i)(B) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) * * *

(10) * * *

(i) * * *

(B) *Eligible savings association* means any savings association that is well- or adequately capitalized, as defined in part 565 of this chapter and was either:

(1) Assigned a composite rating of 1 or 2, as defined in § 516.3(c) of this chapter; or

(2) Assigned a composite rating of 3, as defined in § 516.3(c) of this chapter, and has obtained written permission from the Regional Director to employ this exemption.

* * * * *

PART 565—PROMPT CORRECTIVE ACTION

10. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

11. Section 565.4 is amended by revising paragraphs (b)(2)(iii)(B), (b)(3)(iii)(B), and (c)(2) to read as follows:

§ 565.4 Capital measures and capital category definitions.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(B) A leverage ratio of 3.0 percent or greater if the savings association is assigned a composite rating of 1, as defined in § 516.3(c) of this chapter; and

* * * * *

(3) * * *

(iii)(A) * * *

(B) Has a leverage ratio that is less than 3.0 percent if the savings association is assigned a composite rating of 1, as defined in § 516.3(c) of this chapter.

* * * * *

(c) * * *

(2) *Unsafe or unsound practice.* The OTS has determined, after notice and an opportunity for hearing pursuant to § 565.8(a), that the savings association received, and has not corrected, a less-than-satisfactory rating for any rating category (other than in a rating category specifically addressing capital adequacy) under the Uniform Financial Institutions Rating System (For availability, see § 516.1 of this chapter.), or an equivalent rating under a comparable rating system adopted by the OTS. Ratings under this paragraph (c)(2) refer to the most recent ratings (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified in writing.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

12. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

13. Section 574.9 is amended by revising paragraph (a)(5)(i)(A) to read as follows:

§ 574.9 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.

(a) * * *

(5) * * *

(i) * * *

(A) Has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

* * * * *

Dated: July 9, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–18565 Filed 7–22–96; 8:45 am]

BILLING CODE 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA recently issued a proposed rule to revise the regulations governing corporate credit unions. At the time the proposal was released, NCUA indicated that special consideration would have to be provided for wholesale corporate credit unions, due to their unique role in the credit union system. NCUA and the one wholesale corporate credit union that currently exists have worked together to develop this proposal, which provides for such consideration. This proposal would amend the regulations on corporate credit unions by adding a new section, to follow the numbering of the recent proposal, governing wholesale corporate credit unions. Final provisions governing wholesale corporate credit unions, as well as other corporate credit unions, will be adopted after consideration of public comments.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Robert F. Schafer, Acting Director, Office of Corporate Credit Unions, at the above address, telephone: (703) 518–6640, or E-mail: occumail@ncua.gov; or Edward Dupcak, Director, Office of Investment Services, at the above address, telephone: (703) 518–6620, or E-mail: oismail@ncua.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1996, NCUA issued a proposed rule to revise the regulations for corporate credit unions. 61 FR 28085 (June 4, 1996). The comment period expires on September 3, 1996. The proposal sets forth requirements and authorities that would apply to all corporate credit unions, and then provides, through appendices, additional requirements and authorities for those corporate credit unions that have more developed infrastructures and more experienced staffs. Currently, the credit union system supports one ''wholesale'' corporate credit union, which is a corporate credit union that serves corporate credit unions. It was expected that this wholesale corporate credit union would seek to obtain the authorities available under Appendix B of the proposed rule. It was also expected that certain adjustments to the general requirements and the requirements of Appendix B would have to be made to allow the wholesale corporate credit union to fulfill its role as an ultimate liquidity provider to the system.

NCUA and the wholesale corporate credit union have worked closely on these adjustments, pending adoption of final revised rules governing corporate credit unions. For several reasons, NCUA has determined to incorporate these adjustments into the proposed revisions to Part 704. First, the wholesale corporate credit union should have the assurance that, once these adjustments are made final, it will remain entitled to them, unless the regulation is changed. Second, the importance of the wholesale corporate credit union to the entire credit union system warrants public comment on the adjustments. Further, the adjustments should be standardized in the event other corporate credit unions wish to become wholesale corporate credit unions. Accordingly, this proposed rule adds a new Section 704.19 governing wholesale corporate credit unions. Public comment is requested. Final action on this proposal will coincide with final action on the broader proposed Part 704.

Analysis

Proposed Section 704.19(a) provides that wholesale corporate credit unions must comply with Part 704, unless there is a specific provision to the contrary in Section 704.19. Thus, a wholesale corporate credit union that wishes to have access to the broader investment powers of Appendix B of the May proposal must meet the general requirements of that proposal, except as modified by Appendices B and C and proposed Section 704.19. For a wholesale corporate credit union, where Section 704.19 conflicts with Appendices B or C, Section 704.19 prevails.

For example, Section 704.3(b)(1) of the May proposal contains a general requirement that a corporate credit union maintain a capital ratio of 4 percent. To engage in Part II authorities, though, a 6 percent ratio is required. For a wholesale corporate credit union, however, proposed Section 704.19(b)(1) requires only a 5 percent ratio. This is partly justified by proposed Section 704.19(c), which establishes a narrower limit for risk taking than is available to other corporate credit unions with Part II authority. It is also justified because of the membership of a wholesale corporate credit union. Senior managers of corporate credit unions have specialized expertise in the areas of investments and asset and liability management. NCUA believes that corporate credit union managers, as members and board representatives, will analyze and question the balance sheet strength and financial activities of the wholesale corporate credit union, keeping its risk-taking in check. Finally, the lower ratio is justified because a wholesale corporate credit union has a greater capacity to raise paid-in capital from non-credit union sources if the need arises.

Section 704.3(b)(2) of the May proposal provides that a corporate credit union's monthly reserve transfers are based upon the level of its reserve ratio, which is calculated by dividing the institution's moving daily average net assets into the total of its reserves and undivided earnings plus paid-in capital. Where the reserve ratio is greater than or equal to 3 percent but less than 4 percent, the corporate credit union must transfer .10 percent of its moving daily average net assets. Where the reserve ratio is less than 3 percent, the corporate credit union must transfer .15 percent of its moving daily average net assets. The amount to be transferred must be calculated monthly, but the funds may come out of earnings for the quarter. This formula is maintained even for a corporate credit union operating with Part II authorities.

Proposed Section 704.19(b)(2), however, allows a wholesale corporate

credit union to make reserve transfers at the lesser of .10 percent of its moving daily average net assets or the amount, depending on its reserve ratio, that would be required under Section 704.3(c). A lower requirement is appropriate to provide competitive wholesale corporate credit union services. Proposed 704.19(b)(2) also provides that reserve transfers may be made from earnings in either the prior calendar month or prior twelve- month period. It may be necessary for a wholesale corporate credit union to utilize the earnings accumulated over a year, rather than just a quarter, to balance occasional short-term losses with overall long-term gain.

Section 704.8(e)(1) of the May proposal requires a corporate credit union to evaluate the risk in its balance sheet by measuring, at least quarterly, the impact of a 300 basis point interest rate shock. A corporate credit union must structure its balance sheet so that its after-shock MVPE ratio does not fall below 1 percent. If the ratio falls below 2 percent, the corporate credit union must conduct the tests monthly. Section 704.8(e)(2) of the May proposal provides that a corporate credit union must limit its risk exposure to levels that do not result in an after-shock decline in MVPE of more than 18 percent. Pursuant to Appendix B, a corporate credit union with Part II authorities may structure its balance sheet so that its MVPE declines as much as 50 percent after a 300 basis point shock.

Proposed Section 704.19(c) permits a wholesale corporate credit union's after-shock MVPE ratio to go as low as .75 percent and restricts the absolute decline in MVPE to 35 percent. The MVPE floor was lowered in the belief that the 1 percent level could unduly restrict a wholesale corporate credit union and prevent it from providing essential services to members. Since the MVPE floor serves, in part, as a cushion for MVPE modeling errors, lowering the floor requires greater assurance that the modeling system is reliable. Accordingly, proposed Section 704.19(c)(2) requires a wholesale corporate credit union to obtain, at its expense, an annual third-party review of its asset and liability management modeling system.

In light of the forbearance provided in the capital and MVPE requirements, NCUA believes that a wholesale corporate credit union should operate with a lower limit on the permitted decline in MVPE than provided in Appendix B, Part II. The proposed limit is consistent with the level of risk a wholesale corporate credit union should undertake in light of its mission to provide liquidity to the credit union system.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant economic impact on small credit unions (those under $1 million in assets).

Paperwork Reduction Act

The paperwork requirements of this proposed rule are incorporated in the requirements set forth in a proposed rule issued by NCUA on May 22, 1996. 61 FR 28085 (June 4, 1996). NCUA invites comment on: (1) whether the collection of the information is necessary for the proper performance of the functions of NCUA, including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information. Comments on the collection of information should be directed to Ms. Beauchesne, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. (703) 518–6433; E-Mail Address: SUEB@ncua.gov, by September 3, 1996. Comments should also be sent to the OMB Desk Officer at the following address: Mr. Milo Sunderhauf, OMB Reports Management Branch, New Executive Office Building, Rm. 10202, Washington, DC 20530.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: ''Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope.'' The risk of loss to federally insured credit unions and the NCUSIF caused by actions of corporate credit unions are concerns of national scope. The proposed rule would help assure that proper safeguards are in place to ensure the safety and soundness of corporate credit unions.

Proposed Part 704 applies to all corporate credit unions that accept funds from federally insured credit unions. NCUA believes that the protection of such credit unions, and ultimately, the NCUSIF, warrants application of the proposed rule to non federally insured corporate credit unions. NCUA, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect 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 and the states, or on the distribution of power and responsibilities among the various levels of government. However, the potential risk to the NCUSIF without these changes justifies them.

List of Subjects in 12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 16, 1996.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to amend 12 CFR Part 704, as proposed to be revised at 61 FR 28098, June 4, 1996, as follows:

PART 704—CORPORATE CREDIT UNIONS

1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

2. Section 704.19 is added to read as follows:

§ 704.19 Wholesale corporate credit unions.

(a) *General.* Wholesale corporate credit unions are subject to the requirements of this part, except as set forth in this section.

(b) *Capital.* (1) A wholesale corporate credit union will maintain a minimum capital ratio of 5 percent.

(2) A wholesale corporate credit union shall make reserve transfers at the lower of .10 percent of its moving daily average net assets or the amount that would be required under § 704.3(c).

(i) Required transfers are to be made from earnings in either the prior calendar month or prior twelve-month period. Transfers made during the prior twelve-month period must be greater than or equal to the aggregate amount of required reserve transfers for each of the months in that twelve-month period.

(ii) NCUA and, in the case of state-chartered wholesale corporate credit unions, the state supervisory authority, must be notified within 15 business days of the close of any calendar month in which a wholesale corporate credit union's required reserve transfer exceeds earnings for that month. The notice must include the dollar amounts

of the required reserve transfer and earnings for that month and for the prior twelve-month period. The notice must also provide an explanation of why the current month's required reserve transfer exceeded earnings for that month.

(c) *Asset and liability management.* (1) In conducting the interest rate sensitivity analysis set forth in § 704.8(e)(1)(i), a wholesale corporate credit union must limit its risk exposure to levels that do not result, at any time, in an MVPE ratio below .75 percent or a decline in MVPE of more than 35 percent.

(2) A wholesale corporate credit union must obtain, at its expense, an annual third-party review of its asset and liability management modeling system.

[FR Doc. 96–18453 Filed 7–22–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 127, and 135

[Docket No. 28577; Notice No. 96–4]

RIN 2120–AG11

Special Flight Rules in the Vicinity of the Rocky Mountain National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: This document announces an extension of the comment period on a Notice of Proposed Rulemaking (NPRM), which proposes to establish a Special Federal Aviation Regulation to preserve the natural quiet of Rocky Mountain National Park from any potential adverse impact from aircraft-based sightseeing overflights. This action is being taken to rectify the discrepancy of the comment period closing date between the NPRM published in the Federal Register and the closing date of the NPRM located in the FAA Rules Docket.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28577, 800 Independence Avenue SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28577. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Notice No. 96–4 was placed on immediate display at the Federal Register on May 10, 1996, and published on May 15, 1996 (61 FR 24582). This Notice, as published, provided for a 90 day comment period to close on August 13, 1996. The FAA Rules Docket inadvertently stamped the wrong date on the copy of the notice located in the docket room at FAA Headquarters that comments to Notice No. 96–4 must be received on or before August 18, 1996, which falls on a Sunday. To afford all interested persons, especially those who relied on the closing date of the comment period provided for in the FAA Docket, the opportunity to comment on the proposal, the FAA extends the comment period, as published in the Federal Register, to coincide with the closing date of the comment period as provided for in the FAA Docket. Therefore, comments on this Notice should be received on or before August 19, 1996.

Extension of Comment Period

The comment period closing date on Notice No. 96–4, Special Flight Rules in the Vicinity of the Rocky Mountain National Park, is hereby extended to August 19, 1996.

Issued in Washington, DC on July 17, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic, Airspace Management.

[FR Doc. 96–18552 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AB61

Country of Origin Marking Requirements for Frozen Imported Produce

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: In response to comments received concerning an Advance Notice of Proposed Rulemaking published by Customs on February 2, 1995, regarding the need for country of origin marking requirements for frozen imported produce, and in further consideration of Customs duty to prescribe marking rules for imported merchandise when necessary, Customs proposes to amend its regulations to require that the country of origin of imported produce be marked on the front panel of packages of frozen produce in order for the marking to comply with the statutory requirement that it be in a ''conspicuous place''. This amendment is proposed to ensure a uniform standard for the country of origin marking of frozen produce.

DATES: Comments must be received on or before September 23, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Ave., NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 may result in the levy of an additional duty of ten percent *ad valorem*. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. This document concerns the correct country of origin marking for packages of frozen imported produce pursuant to 19 U.S.C. 1304 and 19 CFR part 134.

Customs Ruling and Court Action

On May 9, 1988, Norcal/Crosetti Foods, Incorporated, and other California packers of domestically-grown produce requested a ruling from Customs concerning what constituted a

conspicuous place for country of origin marking on packages of frozen produce, *i.e.*, whether the marking should be located on the front or some other panel of the package and in what type size and style it should appear. The request asked Customs to determine whether packaged frozen imported produce was considered marked in a conspicuous place if the marking did not appear on the front panel of the package in prominent lettering. Sample packages which were not marked on their front panels were submitted with the ruling request. On November 21, 1988, Customs issued Headquarters Ruling Letter (HRL) 731830, and stated that all of the samples that the domestic packers submitted complied with the country of origin marking requirements. Customs found that the country of origin marking on packages of frozen imported produce was not required to appear on the front panel of the package, be in lettering at least as prominent as the product description, and/or appear in a color or typestyle vividly contrasting with the rest of the front panel to be considered conspicuous.

The packers obtained judicial review of the Customs determination in HRL 731830 by the Court of International Trade (CIT). *Norcal/Crosetti Foods, Inc.* v. *U.S. Customs Service,* 15 CIT 60, 758 F.Supp. 729 (CIT 1991) (*Norcal I*). In *Norcal I,* the Court disagreed with the ruling and held that frozen produce is not marked in a conspicuous place unless it is marked on the front panel of the package.

Upon examination of the sample packages supplied to Customs, the Court found that the only consistency in the country of origin marking of frozen imported produce was the inconsistency of where manufacturers chose to place the marking. The Court found that most often the marking was lost among information denoted in various small typefaces which appeared on the back or side panels of the package. The Court stated that producers were reluctant to conspicuously display the source of the food, and that the result of these inconsistencies was that customers could not be assured of easily finding the country of origin marking, even upon reasonable inspection of the package. The Court stated that this was a situation at cross-purposes with Congress' attempt to ensure that consumers know of the country of origin of imported goods before they decide to purchase the particular product.

The court took judicial notice of the common method of displaying the merchandise in shelved freezers or frozen food bins with the front panel in view and the rear panel obscured. The Court found that frozen vegetables were commonly marketed in long, low freezers with open tops, or wall-mounted freezers with glass doors, and that access to frozen produce is limited and sometimes awkward, given that the produce must not defrost. The Court further found that packages are usually displayed so that only the front panel is clearly visible. Further, because the packages are frozen and cold to the touch, and because, at least in upright freezers, the freezer door must be held open, the Court found that customers are unable to scan the labels on frozen produce as easily as those on dry goods or other produce that are not frozen. All of these factors, according to the Court, prevent consumers from having the opportunity to see the country of origin marking that is secluded among the small print on the back of a package.

The Court found the analogy in the ruling to the placement of nutritional information on packages unconvincing, because that information was not required information at that time. In contrast, it found a more persuasive analogy in the Food and Drug Administration (FDA) requirement that packages disclose the weight of their contents on the principal display panel. Such quantity of contents disclosure must be a certain size and located on the front or most prominent panel of the package.

The Court also observed that certain packages of frozen produce listed the name and U.S. address of the manufacturer and failed to indicate the country of origin in close proximity as required under the Customs Regulations. Applying 19 CFR 134.46, the Court held that if the words ''U.S.,'' or ''America,'' or a United States address appeared on those labels, the article would have to be marked to indicate the country of origin in lettering of at least a comparable size.

The Court concluded by finding that, although Customs had routinely interpreted ''conspicuous'' through 19 CFR 134.41(b), Customs failed in its issuance of HRL 731830 to follow the clear meaning of the statute or the regulation. Section 134.41(b) of the Customs Regulations provides, in part, that the country of origin marking should be easily found by the ultimate purchaser and read without strain. For packages of imported frozen produce, the Court found that the country of origin marking requirements were not met by the present practice of indicating the country of origin marking on the back or side panels.

The Court remanded the matter to Customs with directions to issue a new ruling. Pursuant to the court's order in *Norcal I,* Customs issued Treasury Decision (T.D.) 91–48 (56 FR 24115, May 28, 1991), which required the country of origin marking for frozen produce to be placed on the front panel of the package.

The government appealed the CIT's decision to the United States Court of Appeals for the Federal Circuit (CAFC) on the ground that the CIT lacked jurisdiction. *Norcal/Crosetti Foods, Inc.* v. *U.S.*, (Appeal No. 91–1295), 10 Fed.Cir. ____, 963 F.2d 356 (CAFC 1992) (*Norcal II*). In *Norcal II,* the CAFC reversed the judgment of the CIT and remanded the case with instructions to dismiss the complaint for lack of jurisdiction; the Court held that since the packers had not exhausted their administrative remedies, their claims were not properly before the CIT. The CAFC indicated that a proper course would have been for the packers to file a domestic interested party petition with Customs under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516).

The Section 516 Petition and Agency Action (1993)

A Section 516 petition was initiated by letters dated January 13 and January 29, 1993, and filed with Customs pursuant to part 175, Customs Regulations (19 CFR part 175). The petitioners were Norcal/Crosetti Foods, Incorporated and Patterson Frozen Foods, Incorporated, California packers of produce grown domestically. The International Brotherhood of Teamsters, on behalf of its Local 912, also submitted a petition by letter dated February 24, 1993, supporting the Norcal and Patterson petition (hereinafter, the petitions are collectively referred to as the *Norcal* petition). The *Norcal* petition asked Customs to reconsider its position in HRL 731830, and to adopt the findings of the CIT in *Norcal I.*

The petitioners contended that frozen imported produce is not marked in accordance with the requirement of 19 U.S.C. 1304 that the country of origin shall appear in a conspicuous place; under a correct application of 19 U.S.C. 1304, the country of origin must appear on the front panel of a package to be considered as marked in a conspicuous place. These domestic producers argued further that Customs standards for the size and prominence of such markings were not in conformity with 19 U.S.C. 1304. Supporting materials for the petition included samples of frozen produce packages. These samples were alleged to be illustrative of labels that, for various reasons, were not in compliance with the marking rules: *e.g.*,

missing markings, illegible markings, and markings that were not in a ''conspicuous place.'' The allegations closely mirrored the allegations in the complaint [filed] and the CIT's findings in *Norcal I.*

Customs published a notice in the Federal Register on September 9, 1993 (58 FR 47413), advising the public of the petitioners' contentions and soliciting public comments on the issues raised in the petition. Also in this notice, Customs effectively suspended the effective date of T.D. 91–48 by reinstating HRL 731830. Seventy-one comments were submitted in response to the *Norcal* petition.

Approximately half of the public comments expressed support for the *Norcal* petition to require the country of origin marking of frozen imported produce to appear on the front panel of the packaging. These commenters presented data and arguments concerning the nature of frozen produce and the manner of its storage and presentation for sale, contending mainly that the inherent coldness of frozen produce makes the packaging more cumbersome to handle than other food products. These commenters accordingly concluded that the ultimate purchaser is likely to examine the produce in haste, and is not likely to see country of origin marking which appears on the back or side panel of the packaging.

Some respondents also expressed concern that frozen produce packaging tends to accumulate frost while being stored in refrigerators, such that the country of origin marking often becomes obscured in a way that is unique to frozen produce. In view of these factors, it was argued, country of origin marking which does not appear on the front of these frozen produce packages cannot be considered in a conspicuous place, and cannot meet the standard stated at 19 CFR 134.41(b) that marking must be easily found and read without strain.

Commenters opposed to the *Norcal* petition tended to dismiss these contentions as unfounded. These commenters claimed that there was no reason to establish a different marking location for frozen produce packages as opposed to other imported articles. They did not see the temperature of the package as a fundamental obstacle to handling a frozen produce package and turning it over to find country of origin marking. They assert that even the information appearing on the front panel probably cannot be read without picking up the package.

The petitioners, as well as several subsequent commenters, submitted for consideration samples of frozen produce packaging as evidence of common marking practices which were said to be short of the statutory standards for permanence, legibility, and conspicuousness. All the markings shown on the sample packages appear on the back panel. One major category of sample packages consisted of rectangular packages on which all the printed information, except the country of origin marking, is pre-printed. The country of origin instead is evidently stamped after the package is filled with frozen produce. The quality of this marking tends to be poor, and for the most part does not satisfy existing standards for permanence and legibility. The location is quite inconsistent between various packages in the same batch. Sometimes the lettering is stamped over pre-printed information; sometimes it is sideways or crooked; and sometimes it is smudged. These stamped-on markings are insufficient under the current statutory criteria of 19 U.S.C. 1304, particularly as regards legibility, indelibility and permanence.

Commenters opposed to the petition believe that these defects should be remedied by enforcement under the regulations of current standards governing legibility, permanence, indelibility and conspicuous placement, and that there is no compelling evidence that the current regulations are inadequate.

Other sample packages submitted by the petitioners and other commenters, while marked permanently and legibly under current standards (on the back panel), showed geographic markings or names which could create confusion or be misleading as to the country of origin of the frozen produce. Some such names or markings were part of the distributors' trademarks, while others used generic names for vegetable products in potentially confusing ways. The petitioners and other commenters argue that the remedy for these potentially confusing or misleading markings is country of origin marking which appears uniformly on the front panel of the package. They believe the ultimate purchaser is less likely to inspect frozen produce on its back panel to ascertain its country of origin when the front panel of the packaging indicates in print a reference to a locale in a country other than the country of origin.

Commenters opposed to the petition do not believe that ultimate purchasers are deceived by such references. One opponent indicated that while in some cases marking on the front panel of the package may be needed, it is not generally necessary if the current regulations were enforced in all cases. One of the sample packages already has been the subject of corrective action and a ruling by Customs. *See,* HRL 735085 (June 4, 1993) (Mixed frozen vegetables sold as ''American Mixtures'' required to have country of origin marking on front of package to be considered conspicuously marked; Customs indicated at that time, however, that marking on the back could be permissible in the absence of potentially confusing words or marks).

In T.D. 94–5 (58 FR 68743, December 29, 1993), Customs issued a final interpretive ruling based on the comments described above which were received in response to the September 9, 1993, Federal Register notice. T.D. 94–5 stated that back panel marking was insufficient and front panel marking of country of origin was required in a specified type size and style designed to match the net weight or quantity marking of the product under the Food Labeling Regulations (21 CFR 101.105). In T.D. 94–5, Customs modified T.D. 91–48 by requiring that conspicuous marking within the meaning of T.D. 91–48, shall be limited to marking which complies with the additional specifications for type size and style set forth in T.D. 94–5. The effective date initially established for the decision in T.D. 94–5 was May 8, 1994, in order to allow importers time to modify their packaging. On March 29, 1994, however, Customs issued two Federal Register documents: One (59 FR 14458) suspending the compliance date of May 8, 1994, for parties adversely affected by the country of origin marking requirements specified in T.D. 94–5, and the other (59 FR 14579) giving notice of its intention to adopt a new compliance date of January 1, 1995, and soliciting comments on both the proposed compliance date and on the specifications regarding type size and style.

In response to T.D. 94–5, however, an action was filed with the Court of International Trade on behalf of American Frozen Food Institute, Incorporated, and National Food Processors Association, which challenged the Customs decision. In *American Frozen Food Institute, Inc.; et al.* v. *The United States,* (Slip Op. 94–97), 18 CIT _____, 855 F.Supp. 388 (CIT 1994), the CIT ruled that because Customs had chosen to promulgate front panel marking in combination with other requirements needing APA (Administrative Procedure Act, 5 U.S.C. 553) rulemaking procedures, the entirety of T.D. 94–5 could not stand. The Court accepted the government's position that to the extent the front panel marking portion of T.D. 94–5 was

separable from the other portions of the ruling it constituted an interpretive ruling. However, the court found that the type size and style portion of the ruling functioned as a legislative ruling, as Customs had selected a narrow range of sizes and styles from a broad spectrum of type sizes and styles that could be considered conspicuous. Accordingly, the Court found that the selection of type size and style requirements imposed additional requirements which were not promulgated as a regulation in accordance with APA rulemaking procedures.

The court further concluded that because the full rulemaking process had not been followed, it would not rule on whether T.D. 94–5 was acceptable substantively. Since the court declared T.D. 94–5, in its entirety, null and void, there is no decision on the 1993 petitions of the domestic interested parties. On September 8, 1995, Customs received notice from Dean Foods Vegetable Company (Dean Foods) that it had purchased the assets of Norcal/ Crosetti Foods, Incorporated. Dean Foods stated that, as Norcal/ Crosetti's successor in interest, it no longer supported the petition and it withdrew the comments submitted by Norcal/ Crosetti Foods in response to Customs solicitation of comments. However, the petitions of Patterson Frozen Foods, Incorporated, and the International Brotherhood of Teamsters, on behalf of its Local 912, are still pending.

Proposed Rulemaking

In view of the foregoing background, Customs is exercising its authority under 19 U.S.C. 1304(a)(1) to prescribe by regulation reasonable methods of marking and a conspicuous place on the article (or container) where the marking must appear on packages of frozen produce. As the foregoing history of the issue illustrates, the question of marking of frozen imported produce has been embroiled in eight years of procedural disputes and litigation. In an attempt to disentangle the issue from this history, to provide complete regulatory due process, and to facilitate a fresh examination of the substantive issues involved, Customs chose to publish an advance notice of proposed rulemaking (ANPRM). 60 FR 6464 (1995). Customs published the ANPRM on February 2, 1995, and solicited comments with respect to the marking requirements for frozen imported produce. The comments received are summarized below.

In addition, Customs has considered and drawn upon evidence and opinions in the record of this matter, including public comments received since the first ruling request and the various court opinions. These have been considered for whatever persuasive authority they may have regardless of whether they were submitted in response to the ANPRM or, in the case of judicial opinions, are legally binding.

Summary of Comments Received in Response to the ANPRM.

A total of fifty comments were submitted in response to the February 2, 1995, ANPRM. The commenters included a number of trade organizations, companies in the business of manufacturing, processing, and distributing frozen produce, a non-profit organization, the Canadian government, members and officials of the International Brotherhood of Teamsters; the California Department of Justice, and a U.S. manufacturer of semiconductors, personal computers, and communications products. In addition to general comments, Customs invited specific comments regarding several issues, many of which have been incorporated into this document.

In response to the issues that Customs raised in the ANPRM as to whether there are current abuses in the country of origin marking of imported packages of frozen produce, the commenters in favor of front panel marking claim that many importers, processors, and distributors of frozen produce neglect to mark packages of frozen imported produce at all. In support of this position, they submitted several samples of what they believe to be non-complying labels. Some commenters also indicated that the marking was not conspicuous because the marking was in an inconspicuous place, the type size was too small, or the ink was smeared. Commenters opposed to a proposed rulemaking contend that they are unaware of any abuses with respect to the country of origin marking of frozen produce and believe that there is no need to provide specific marking requirements for frozen produce. They stated that any problems with the country of origin marking of frozen produce can be addressed through a case-by-case basis rather than additional rulemaking.

On the other hand, some of the commenters believe that the way frozen produce is displayed in the supermarket is sufficient reason to require special marking rules. The commenters in favor of front panel marking believe that because of the difference between the way canned produce and frozen produce are displayed in the supermarket, canned produce is easier for the consumer to pick up and inspect than frozen produce. Further, they contend that canned produce is displayed on a shelf at room temperature which makes it easy for the consumer to pick up and inspect the can. The cold conditions under which frozen produce must be maintained in the retail store make it less likely that consumers will examine the back or side panels of frozen produce packages prior to purchase. Moreover, these commenters submit that the consumer has a greater motivation to examine the back label of canned vegetables than of frozen produce. They maintain that the majority of frozen vegetables sold at retail are plain, blanched vegetables, without additives of any kind.

These commenters further state that the ingredients of frozen produce are generally named and pictured on the front panel of each package, there is almost never any added salt or sugar, and the consumer typically knows about the high nutritional content of vegetables and their ease of preparation. As a result, these commenters contend that the consumer typically has no particular need to examine the ingredients list, the nutritional content or the cooking instructions as part of the process involved in making a decision of whether or not to purchase the frozen produce item. Canned produce, they say, by contrast with frozen produce, usually contains ingredients beyond the pure agricultural product; therefore, the buyer of canned produce has more incentive to examine the contents, nutritional statement and cooking instructions than the buyer of frozen produce.

Commenters opposed to the requirement for front panel country of origin marking submit that there is no reason for frozen produce to be treated any differently than any other packaged food product. They argue that Customs has never imposed a general requirement that packaged goods bear country of origin marking on any specific panel or in any specific type size or type style. They submit that it would be arbitrary and capricious for Customs to impose on frozen produce a different and more burdensome labeling requirement than that which is applied to all other food products and to all other packaged products that are subject to the marking requirements.

These respondents dismiss the view that packages of frozen produce should be the subject of special regulatory attention because they are displayed in retail freezers and are ''cold to the touch.'' They maintain that there is no evidence to show that a frozen produce package is so cold as to prevent the purchaser from removing it from the

freezer display, examining it, and carrying it to the check-out counter. Moreover, they state that consumers are accustomed to picking up frozen food packages to read the nutritional information contained on the rear and side panel of the product. They point out that in enacting its current regulations, the FDA recognizes that the information panel which can be located on the back or side panel of a package is a conspicuous location for ingredient and nutrition information. Thus, these commenters believe that frozen produce should not be treated any differently for marking purposes than any other packaged food product.

In response to the issue of whether Customs should prescribe, by regulation, certain type size and style specifications for the country of origin marking of frozen produce, commenters who were in favor of this proposed measure believe that the type size and style should vary depending upon the size of the package. One commenter suggested that the marking should be the same size and style as the net weight declaration. Another commenter suggested that Customs follow the specifications set forth in the Federal Food Labeling Regulations (21 CFR 101.1) for information appearing on the principal display panel for the country of origin marking of packages of frozen produce.

The commenters opposed to the imposition of certain type size and style specifications maintained that additional regulations that would increase the prominence of country of origin markings would impose undue burdens on importers and would almost certainly be inconsistent with the government's interest in encouraging the consumption of vegetables and discouraging false health concerns.

Moreover, the commenters opposed to requiring certain type size and style specifications for country of origin marking claim that there is a vast difference in the amount of space that would be occupied on a package, depending upon whether one or ten countries are listed. They state that the question posed as to whether type size should vary with the size of the package emphasizes the impracticality of imposing industry-wide blanket regulations. These commenters believe that determinations of conspicuousness can and should be made on a case-by-case basis.

Customs Analysis of the Regulatory Options

With regard to a basic issue raised in the ANPRM, that is, whether rulemaking is needed, Customs determined that not to proceed with a marking proposal would leave the country of origin marking situation no better than it was prior to *Norcal I.* Manufacturers of frozen produce would still be free to choose marking options that could make it difficult for the average consumer to learn the origin of the produce prior to purchase, contrary to clear Congressional intent in the law. The weight of information and opinion submitted in response to the ANPRM did not furnish any justification for denial of the Section 516 petition and termination of the rulemaking process at this stage.

In developing this proposed regulation, Customs weighed a number of alternatives, one of which, front panel marking, was selected as the most consistent with the statutory requirement for marking frozen produce in a conspicuous place. Customs believes that a front panel requirement would prevent many of the regulatory abuses brought to the attention of Customs and the CIT and illustrated by the label samples submitted to Customs.

Customs has concluded that, while it can continue on a case-by-case basis to correct the types of marking problems identified in the record of this issue, and will do so as necessary, nonetheless a more comprehensive solution is needed to assure proper marking of frozen produce for the reasons discussed below. As a result, Customs is proposing a blanket requirement that country of origin marking appear on the front panel of the package of frozen imported produce. This should afford a definitive solution to a problem which has been demonstrated to be extensive.

Much of the frozen imported produce sold in the United States is packaged after importation. As such, the marking of the retail packages is not subject to physical supervision by Customs, but is performed under importers' certifications for the marking of repacked articles tendered in accordance with 19 CFR 134.25. The administrative burden of enforcing the marking of such repacked articles on a case-by-case basis is an additional reason for establishing uniform specifications for the marking of frozen produce. Such specifications should reduce ambiguity and interpretive questions, thus facilitating broad-based compliance by importers, packagers, and distributors.

Customs has concluded that the nature of frozen produce and its typical retail presentation makes marking on the back or side panel insufficient; that there are numerous examples of insufficient and potentially misleading marking practices based on current marking which is typically on the back panel; that marking appearing on the back panels of frozen produce packages is not easily found and is frequently obscured by competing text or graphics; and that consequently a uniform standard for marking should be prescribed for frozen produce packages in order to assure proper marking under 19 U.S.C. 1304.

In addition, in Customs judgment, a front panel marking requirement actually represents economy in government regulatory activity in contrast to the available alternatives. By its very nature, the front panel is a ''conspicuous place''. Consequently Customs, in the proposed regulation, has been able to minimize government-imposed requirements and leave the details of type size and label graphics to the manufacturer while reserving the right to proscribe abuses. Such regulatory simplicity is possible because there is little incentive or opportunity for the manufacturer to clutter up the front panel in a way that would obscure the marking and, in fact, there is a strong disincentive to do so.

In contrast, by its very nature, the back panel is not a ''conspicuous place''; it affords many opportunities to bury the origin marking in other information or graphic devices. In order to interpret back panel marking as marking in a ''conspicuous place'' within the meaning of the statute, Customs would have an obligation to inject itself into the micromanagement of label graphics in order to circumscribe the current abuses. (NOTE: The ''back panel'' routinely has been referred to in this discussion because it is the location typically chosen by the manufacturer for marking under current practice. While the side panel may contain, in some instances, less competing information and graphics than the back panel, Customs concludes that the side panel is even less likely than the back panel to receive careful scrutiny by the consumer except after purchase when it may be necessary to refer to it to find other information, such as cooking time.)

Regulating country of origin marking on the back, or information, panel thus could involve a fairly detailed set of rules on type sizes and styles, background colors, margins, headers, etc. It could even involve a complex exercise in regulating label graphics comparable to the ''Nutrition Facts'' box prescribed by the Food and Drug Administration. While a number of commenters have objected to front panel marking, we have concluded that this alternative is less burdensome to industry than the Government injecting

itself into the minutiae of label graphics on the back or information panel. Absent such Government controls on marking on the back panel, we believe that the current situation where the marking tends to disappear in other text would not be remedied.

In this regard, Customs did carefully consider whether one or more regulatory options that would regulate marking of country of origin on other than the front panel would constitute compliance with the statute as well as a workable alternative to front panel marking. In an effort to elicit suggestions for such an alternative, the following question was included in the ANPRM:

> (5) Whether a specified location on another panel (e.g. the back panel) where the country of origin marking is demarcated by, for example, a box, a header, bold print, margins, a contrasting background, or other graphic devices, would constitute a ''conspicuous place'' for purposes of the marking statute.

This question was intended in part to explore the potential for a compromise solution that would comply with the statute, correct existing marking problems, and be acceptable to the interested parties. Customs was interested in whether, for example, a ''conspicuous place'' on the back panel could be constructed by regulatory fiat in a manner analogous to the FDA-mandated ''Nutrition Facts'' box. Such a solution might eventuate from government design, industry-government agreement, or negotiated rulemaking in which Customs mediated between and among interested parties. However, no commenter came forward with such a solution. Also, while such an alternative would be a compromise position, it would have the disadvantage of involving Customs in developing a potentially elaborate set of guidelines for back panel marking, suitable for different styles and sizes of produce packages, thus injecting the government more deeply into labeling decisions.

Consideration was also given to providing the manufacturer with a choice: (1) Provide a simple and legible marking on the front panel or (2) submit to a more detailed set of guidelines for marking on the back panel as in the foregoing option. While this option would offer the regulated industry some flexibility, it was rejected in part because of its potential for confusing the ultimate purchaser who would not have a consistent place on the package to look for country of origin marking.

In sum, based on the results of the ANPRM and other information available, Customs concludes that the back panel (as well as the side panel), with its manifold distractions and without qualifications or graphic highlighting, is not a ''conspicuous place''. In contrast, the front panel, with its limited amount of clutter and its ready visibility, does constitute a conspicuous place. The front panel thus meets the statutory test of marking in a conspicuous place without elaborate conditions or regulations specifying, e.g., type size or other details of the marking. Country of origin marking on the front panel is presumptively adequate so long as it is permanent, indelible and legible and the ultimate purchaser can see it without strain.

In the interest of an open rulemaking process, Customs has the following comments on a number of key issues highlighted by commenters opposed to front panel marking:

Importance and Prominence of Origin Marking Relative to the Nutritional Information

Commenters opposed to a front panel marking requirement argued that country of origin information is not as ''important'' as the nutrition and health information. Yet the latter, under current government regulations, may be relegated to the back panel. In the opinion of such commenters, if the back panel is conspicuous enough for the concededly important nutritional information, it ought to be sufficiently conspicuous for the origin marking.

Such a comparison, in Customs' view, contributes little to the analysis of whether front panel marking of produce is necessary to comply with the law and to produce the desired consumer recognition. A number of items on the label, even discretionary information provided by the manufacturer such as preparation instructions and serving suggestions, may be considered ''important''.

However, the rationale behind the different mandatory label elements such as net weight, brand name, product identity, nutrition facts, and country of origin are different. They do not necessarily lend themselves to comparative valuation as to their relative ''importance'' and must be considered on their individual merits. The issue in each case is what placement enables the particular information to be effectively communicated to the consumer in a manner that carries out the intended statutory or regulatory purpose.

1. The ''Nutrition Facts'' Box, Without Regard to Location, Is Intrinsically More Visible Than Current Origin Marking

The ''Nutrition Facts'' box, mandated by the Food and Drug Administration after extensive rulemaking procedures, is now one of the most visible things on any panel of a package of food. Its distinctive graphics, required by regulation, are as instantly recognizable to the American consumer today as major corporate logos and trademarks. It contains its own eye-catching headline ''Nutrition Facts'' and is graphically subdivided by three distinctive bold lines. It must be large enough to accommodate a significant amount of required information. Hence, the high visibility or ''conspicuousness'' of the Nutrition Facts Box derives from its relative size and its unique design characteristics, not from the panel on which it is located. The term ''conspicuous'' in the marking statute, however, refers only to the location of the marking.

In contrast to the nutritional information, under current industry practice, the country of origin marking may consist of one or a few words such as ''Mexico'' or ''Product of Mexico'' placed without any attention-getting graphics in a place on the back panel where it is not particularly likely to be noticed. An example is for the country of origin to follow or to be merged with other geographical information, such as ''PRODUCT FROM THE UNITED STATES AND MEXICO. PACKAGED IN THE UNITED STATES''. Also, in the words of one of the petitioners in the Section 516 proceeding, the origin information is frequently submerged on the back panel in a ''sea of cooking instructions.'' The CIT observed in *Norcal I* that most often the marking is lost among the various small typeface information contained on the back or side panel of the package. In sum, Customs is not persuaded by the comparison of the relatively obscure placements accorded to country of origin marks in current practice to the very prominent government-mandated presentation of the nutritional data.

2. The ''Nutrition Facts'' Box May Not Lead the Consumer's Attention to the Origin Marking

While the availability of nutritional data may provide a consumer with a reason to consult the back or information panel of the package, this may not draw his attention to the origin marking. As indicated above, the ''Nutrition Facts'' box tends to dominate the panel on which it appears and the origin marking does not appear within the box or necessarily even in proximity to it. Furthermore, the origin marking may be relegated by design to an inconspicuous spot on the label.

There also is a fundamental difference between the type of information imparted by the ''Nutrition Facts'' box

and that imparted by the country of origin marking. The former identifies a number of characteristics that the product possesses which, in fact, it may share generically with the same type of product from another manufacturer and/or with a different origin. As one commenter suggested, consumers tend to purchase frozen vegetables as a ''commodity''. For common vegetables, the nutritional value of this commodity is often a known quantity to the experienced, health-conscious consumer. Furthermore, nutritional characteristics of frozen produce will not be likely to vary greatly from purchase to purchase, particularly if the consumer chooses brands consistently. This may diminish the attention paid by the consumer to the nutritional information once he is familiar with the produce and brand.

In this regard, it is believed that consumers reserve their closest scrutiny of the nutritional information for ''suspect foods'', *e.g.*, processed foods, foods known or suspected of containing high levels of fat, sodium, sugar, or additives. In contrast, frozen fruits and vegetables tend to be the ''good guys'' of the supermarket which require little scrutiny. In fact, in response to a petition filed by the American Frozen Food Institute, the Food and Drug Administration recently has published a notice of proposed rulemaking that would permit the use of the term ''healthy'' to describe frozen vegetables based on arguments submitted by the industry that the nutrient profile for frozen vegetables is essentially the same as that for fresh vegetables. 61 FR 534 (February 12, 1996). The foregoing considerations may result in the fine print on the information panel of frozen produce packages, including both nutritional information and origin marking, receiving less attention while the consumer is in the store than in the case of other products, including canned produce.

3. Origin Marking Relates to the Identity of the Product and Is Exclusively ''Point of Sale'' Information

Country of origin marking, in contrast to nutritional information, furnishes information that is specific to the product in the individual package that the consumer is examining. In fact, the origin information can be considered part of the ''identity'' of the product. Other information that describes, defines, or illustrates the identity of the product, such as the brand name or the vignette; the product name, *e.g.*, cauliflower; and the net weight are on the front panel where they can be instantly grasped by the consumer in making a purchasing decision. All of this information is ''point of sale'' information. It has little or no value (except perhaps in promoting brand loyalty) once the consumer leaves the store. In contrast, nutritional information has continuing educational value and may be consulted by the consumer at home, particularly during food preparation (e.g., serving size).

Since country of origin marking is point of sale information, if the consumer does not notice the information until he or she arrives at home, it then is too late to assist in the purchasing decision. The consumer cannot even adjust purchasing intentions based on experience for when he or she returns to the store for the next purchase. By then, the facts of country of origin may have shifted again even if the consumer chooses the same product with the same brand name.

The foregoing factors, in conjunction with the factors cited by the CIT in *Norcal I*, relating to the environment in the frozen food aisle, may cause the country of origin marking of frozen imported produce not to be noticed prior to purchase. This is precisely the type of outcome that the section 1304 requirement that the marking be in a ''conspicuous place'' is designed to prevent.

Health and Safety Implications of Front Panel Marking

A number of the commenters who opposed further rulemaking expressed concerns that requiring more conspicuous labeling of produce would arouse false concerns about health and safety on the part of consumers. In their view, this could lead to decreased purchases and consumption of frozen produce with resulting negative impacts on the U.S. economy and even on the health of consumers.

No information has been submitted to us and none suggests itself to us that would validate this concern. Customs believes that it is unlikely that a consumer will perceive an implied health warning in label information that is in no way identified as a warning. Consumers are presumably familiar with the health warning labels on tobacco products and alcoholic beverages, which are clearly stated as such, as well as poison warnings. Further, it is unlikely that the consumer will conclude that information such as country of origin that does not appear in the ''Nutrition Facts'' box is intended to convey a health and safety advisory. We believe it would take a highly explicit warning to overcome the consumer's belief in the presumptive healthfulness of frozen vegetables and fruits.

Moreover, we believe that the economic motivation that lies behind the marking statute is readily apparent to the informed consumer. Major trade developments and bilateral trade disputes and sanctions have received extensive publicity in the media and in public campaigns by trade associations, labor unions and others urging consumers to ''Buy American''. Thus, we see little likelihood that the consumer will misunderstand the significance of the country of origin marking. While the consumer, once informed of the country of origin, may choose a domestic source product over a foreign source product or vice versa, we do not see evidence that overall consumption of frozen produce is likely to be affected by labeling rules.

Impact of Front Panel Marking on Cost and Price

Finally, a number of commenters argued that more detailed labeling requirements would be costly to the manufacturers and that these costs would be passed on to the consumer. This would particularly be true, they state, if the product were sourced from many countries and if the sources were constantly shifting. Some of these broadly stated arguments seem aimed at the marking requirement itself, a statutory mandate that Customs has no choice but to enforce. Implicit in the marking statute is the effort and expense of adding information to a label that might not otherwise be incurred. There is no exemption in the statute, or in the Customs Regulations, for products sourced in a number of countries.

On the other hand, it may be noted that frozen produce labels already frequently are characterized by colorful, sophisticated, and detailed graphics. These labels may include an array of totally discretionary and promotional information offered by the manufacturer such as recipes and advertisements for other products. Realistically evaluating the proposed rule in this context, we have not received convincing evidence that placing simple country of origin information in a different or additional place on the label, if required after a reasonable period of time for industry to adjust, will adversely impact profit margins, be economically injurious to the consumer, or have an inflationary impact.

Further, as a practical matter, we have not received to date empirical evidence that sourcing from more than two or three countries is widespread as an industry practice. In fact, we are not aware that it is likely that more than a single source is typically involved in the

case of a package containing a single product (e.g., broccoli or cauliflower).

Other Issues

1. Type Size and Style Requirements

T.D. 94–5 contained fairly detailed type size requirements applicable to its front panel marking requirement. Three different type sizes were specified for different size packages of produce. However, this proposed rule does not specify type sizes and styles, background colors or other graphic stipulations applicable to front panel marking. Customs believes that this is consistent with regulatory economy and minimum regulatory burden to the industry. Moreover, Customs has concluded that the front panel marking requirement, subject to the other statutory criteria of legibility, indelibility, and permanence is sufficient to provide an adequate opportunity for the reasonably attentive consumer to notice the country of origin information at point of sale. Customs reserves its right to take enforcement action in the event that label graphics on a package obscure or destroy the requisite legibility of the marking.

2. Overstamped Markings and Other Illegible Markings

The plaintiffs in *Norcal I* and various commenters have alleged that packages of frozen produce contained stamped markings that are smeared or otherwise illegible. In a number of cases, packages are apparently ink stamped with the name of the country of origin after the packages have been filled with product. Frequently the result is a stamp that is smeared or all but wiped off due to condensation on the package. In other cases, the stamping is upside down *vis-a-vis* the print on the panel where the stamp appears, is turned sideways, or is placed over other text or graphics. All of these practices violate statutory standards.

No change in the marking requirements is proposed to address these problems. Customs believes that current regulations and enforcement powers are adequate. The importer is responsible for compliance with the marking statute. If ink markings, stick-on labels and other practices that importers use to avoid the cost or rigidity of preprinted labels do not hold up until the product reaches the ultimate consumer at the point of sale, then Customs reserves the right to take appropriate action, as prescribed by statute and regulations, including detention of the merchandise and imposition of marking duties.

3. Implementation Period

Suggestions received in response to the ANPRM regarding the length of the period from the publication date of a final rule to the required implementation date ranged from 6 to 12 months from commenters favoring tightened marking rules to 17 months or more from commenters opposed to a new rulemaking on marking of country of origin. Common sense as well as evidence in the record of this matter indicates to Customs that the incremental cost of relabeling to comply with new marking rules tends to have dropped dramatically by 18 months after the promulgation of new rules. Thus, Customs is proposing an 18-month implementation period to allow for current stock of labels to be depleted prior to the effective date of any final rule.

4. Consumer Surveys

Information submitted by commenters in response to the question in the ANPRM regarding determination of consumer behavior through surveys was divided and not conclusive. In general, there was opposition, particularly by commenters opposed to rulemaking, to the government conducting surveys at taxpayers' expense. In fact, Customs has conducted no survey and does not contemplate conducting a survey.

Commenters basing opinions on existing surveys reached different conclusions. Those favoring rulemaking argued that consumers were interested in country of origin information and tended to modify their behavior if such information were available. Some of the data relied on by these commenters concerned products other than produce, *e.g.,* apparel. Opponents of rulemaking argued, among other things, that consumers had little interest in country of origin information. While some consumers may value country of origin information as enabling them to act on preferences they may have regarding imported versus domestic-source products, other consumers may be relatively indifferent to the information. In either event, the marking statute is not designed solely for the individual benefit of the consumer, but serves a broader purpose.

Opportunity for Public Comment

As the foregoing illustrates, several issues with respect to the rulemaking procedure to promulgate country of origin marking regulations for frozen imported produce remain and public comments are once again being solicited prior to the issuance of a final rule. Suggestions received in response to the ANPRM on the length of the comment period for an NPRM ranged from 60 days to 120 days. Customs is herein providing its customary 60-day period. Since no commenter requested time in which to conduct a consumer survey, Customs believes the 60-day period is adequate, particularly in view of the extensive opportunity to comment already afforded, and it is not expected that this period will be extended. In addition to comments received on this proposal, all relevant material previously submitted will be taken into account in deciding on a final rule.

Pending a decision on whether a final rule will be promulgated, Customs continues to deliberate on what requirements are proper in the case of multiple source countries and whether Customs should set forth a de minimis level of foreign content that would trigger the country of origin marking requirements. These issues are not within the scope of this proposed rulemaking. Customs will consider the possible need for rulemaking on these issues in the future.

Since this administrative rulemaking process affects the decision to be made on the pending section 516 petition, the Customs Service has decided to delay issuance of a final decision on the section 516 petition until a final determination regarding the proposed regulations concerning the country of origin marking of packages of frozen produce contained in this document is made.

Discussion of Proposed Amendment

Customs proposes to amend part 134 of the Customs Regulations (19 CFR part 134) by adding a new paragraph (f) to § 134.43 to implement the country of origin marking requirements for packages of frozen imported produce. Section 134.43 sets forth the methods of marking for specific articles, such as watches, clocks, timing apparatus, Native-American-style jewelry, and Native American-style arts and crafts. Proposed paragraph (f) will contain two subparagraphs: Paragraph (1) will define frozen produce which is subject to the marking requirement, and paragraph (2) will denote the method of marking that is deemed acceptable.

Proposed Effective Date

Customs recognizes that manufacturers, distributors, and packers of frozen imported produce will need to consider revisions in their current packaging which may be needed to comply with these proposed regulations. Thus, in order to minimize the impact of these new requirements, it is also proposed that the regulations, if

adopted, not be effective until eighteen months from the date of the Federal Register Notice of Final Rulemaking.

Comments

While Customs received a request for a public hearing on the issues involved in this rulemaking from one commenter, the great majority of the commenters did not favor a hearing. Under these circumstances, Customs does not believe that a hearing would significantly enhance the process of public participation in the rulemaking and does not plan to hold a hearing. However, before adopting this proposed regulation as a final rule, consideration will be given to any written comments that are timely submitted in connection with this notice. Comments are requested on both the substance of these proposals and the proposed effective date, if the proposals are adopted. Members of the public submitting comments based on current labeling practices are requested, where possible, to submit sample labels illustrating the alleged practices. The submission of duplicate sets of labels will expedite evaluation of the comments and will be appreciated by the Customs Service.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1099 14th Street, NW., Suite 4000, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this proposed amendment does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers.

Proposed Amendments

It is proposed to amend part 134, Customs Regulations (19 CFR part 134), as set forth below:

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. In § 134.43, it is proposed to add a new paragraph (f) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(f) *Frozen Produce*—(1) *Definition.* Frozen produce means frozen vegetables or mixtures of frozen vegetables provided for in Chapter 7, Harmonized Tariff Schedule of the United States (HTSUS), or frozen fruits or mixtures of frozen fruits provided for in Chapter 8, HTSUS.

(2) *Method of Marking.* (i) Unless otherwise excepted pursuant to 19 U.S.C. 1304(a)(3) and subpart D of this part, frozen produce must be marked with the country of origin of the produce on the front panel of its package for retail sale. The front panel is the part of a package that is most likely to be displayed, presented, shown, or examined by the ultimate purchaser under customary conditions of display for retail sale.

(ii) The country of origin marking on the frozen produce required by paragraph (f)(2)(i) of this section must appear in permanent, indelible and legible print or type so that the consumer can easily read it without strain. Condensed or compressed typefaces or arrangements shall not be used.

Approved: July 9, 1996.

Michael H. Lane,

Acting Commissioner of Customs.

James E. Johnson,

Assistant Secretary of the Treasury (enforcement).

[FR Doc. 96–18544 Filed 7–22–96; 8:45 am]

BILLING CODE 4820–02–P

Office of the Assistant Secretary for Financial Markets

Fiscal Service

31 CFR Part 356

Amendments to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds; Notice of Meeting

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Advance Notice of Proposed Rulemaking; Meeting.

SUMMARY: On May 20, 1996, the Department of the Treasury published an Advance Notice of Proposed Rulemaking soliciting comments on certain aspects of a new inflation-protection security. The Treasury is hosting a symposium to discuss the advantages and disadvantages of certain structures under consideration for the inflation-protection security Treasury intends to issue. The meeting will be open to the public.

DATES: 3:00 p.m., July 24, 1996.

ADDRESSES: Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220; Meeting Room To Be Announced. For security reasons, in order to be admitted to the Treasury Building, you must call the contact person below.

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be addressed to Alison Shelton, Financial Economist, Office of Federal Finance Policy Analysis, Office of the Assistant Secretary for Financial Markets, at 202–622–2680. Persons wishing to attend the meeting are requested to contact Tinese Hamilton at 202–622–2624, prior to 12:00 noon Eastern time on July 24, 1996, to make arrangements for attendance.

SUPPLEMENTARY INFORMATION: On May 16, 1996, the Department of the Treasury (Department or Treasury) announced its intention to issue a new type of marketable book-entry security with a nominal return linked to the inflation rate in prices or wages, as officially published by the United States Government. An Advance Notice of Proposed Rulemaking (ANPR) seeking comments on various structures was published on May 20, 1996 (61 FR 25164) and a series of meetings was subsequently held by the Treasury to obtain public input on the new inflation-protection security.

As a result of the comments received in response to the ANPR and at the public meetings, the Department is

holding a symposium to discuss and obtain comments and information on the comparison between two different structures for an inflation-protection security—a Canadian-style and a current pay structure.

The Treasury has invited certain commenters to take part in the symposium. These participants will comment on certain questions posed by the Treasury and take part in a discussion. Members of the public are invited to observe. Written comments from the public are also welcome (see below). The Treasury intends to seek further comment on the structure for Treasury inflation-protection securities and other issues prior to issuing final rules.

Possible Structures

The Canadian-style structure was described in the ANPR. Briefly, the principal of a Canadian-style inflation-protection security is adjusted for inflation (with a lag) such that its real value remains constant. The semiannual coupon payments are a fixed percentage of the current, inflation-adjusted value of the principal on the interest payment date. At maturity, the inflation-adjusted principal is paid, along with the last interest payment. (Please refer to the ANPR for the formulas for the Canadian-style structure.)

Some commenters have suggested that the Treasury consider an alternative structure that was not described in the ANPR. Under this current pay structure, all the inflation compensation and real interest is paid out semiannually. The formula for the semiannual coupon on the current pay security is the sum of the semiannual coupon and the principal appreciation (depreciation) of the Canadian-style security. Looking at this another way, the current pay semiannual coupon rate is the sum of the real semiannual rate, the six-month percentage change in the price or wage index, and the product of these two rates. The principal of the current pay security would not be indexed. In order to simplify the security, it is assumed here that the rate will not be less than zero. Possible formulas for the current pay structure are provided in the Appendix at the end of this notice.

Questions

The Treasury Department is interested in response to the following questions:

(1) Which structure, Canadian or current pay, is likely to have the largest potential market?

(2) Which investor groups would find investments in the different structures appealing?

(3) How would the yield on the current pay structure compare with the yields on other Treasury securities (bills, notes, or bonds)?

(4) If the current pay structure were strippable, would there be substantial market interest in the stripped components?

(5) Would the preferred maturity sectors for the current pay structure be different from those for the Canadian-style structure?

(6) What would be the best way to auction current pay securities? For example, should the Treasury use a single-price auction and set the coupon rate at the highest accepted yield? Should reopening auctions be based on price rather than yield?

(7) Which structure would provide the Treasury with the largest savings in financing costs?

Written Comments

The Treasury also welcomes written comments on these questions. Written comments should be sent to: The Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street N.W., Room 515, Washington, D.C. 20239. Comments received, together with any written materials presented at the symposium, will be available for public inspection and copying at the Internal Revenue Service, FOIA Reading Room, located at the Internal Revenue Service building at Pennsylvania Avenue and 11th Streets, N.W., Room 1621, until the Treasury Department Library reopens.

Dated: July 18, 1996.

Darcy Bradbury,

Assistant Secretary, Financial Markets.

Appendix—Formulas for Current Pay Structure

I. Reference INUM:

$$\text{Ref INUM}_{\text{Date}} = \text{Ref INUM}_{M} + \frac{t-1}{D}\left[\text{Ref INUM}_{M+1} - \text{Ref INUM}_{M}\right]$$

II. Index Ratio:

$$\text{Index Ratio}_{\text{Date}} = \frac{\text{Ref INUM}_{\text{Date}}}{\text{Ref INUM}_{\text{LastSA}}}$$

III. Semiannual Interest:

A. Coupon = $(I/2) \times \text{Index Ratio}_{\text{Date}} \times P + (\text{Index Ratio}_{\text{Date}} - 1) \times P$

though not less than zero.

B. Coupon Rate = (I/2) + Infl. Rate + ((I/2) × Infl. Rate)

though not less than zero.

Definitions:

Date=valuation date

D=the number of days in the month in which Date falls

t=the calendar day corresponding to Date

INUM=index number

$\text{Ref INUM}_{\text{LastSA}}$=reference INUM for the original issue date or last semiannual interest payment date

Ref INUM_{M}=reference INUM for the first day of the calendar month in which Date falls

Ref INUM_{M+1}=reference INUM for the first day of the calendar month immediately following Date

I=real interest rate (set at initial auction)

P=principal amount

Coupon=semiannual interest payment amount

Coupon Rate=semiannual coupon rate

Infl. Rate=$\text{Index Ratio}_{\text{Date}} - 1$

[FR Doc. 96–18802 Filed 7–19–96; 2:31 pm]

BILLING CODE 4810–39–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA43–7116b; FRL–5514–5]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Programs

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 Washington for the purpose of approving the Inspection and Maintenance (I/M) State Implementation Plan (SIP), for Washington State. On August 21, 1995, Washington submitted SIP revision requests to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended, and Federal I/M rule 40 CFR part 51, subpart S. These SIP revisions will require vehicle owners to comply with the Washington I/M program in the two Washington ozone nonattainment areas classified as ''marginal'' and in the three carbon monoxide nonattainment areas classified as ''moderate''. This revision applies to the Washington counties of Clark, King, Pierce, Snohomish, and Spokane. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for 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 August 22, 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.

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

The Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6917.

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

Dated: May 24, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–18200 Filed 7–22–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7187]

Proposed Flood Elevation Determinations; Illinois et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Acting Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

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

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

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Kankakee County (Unincorporated Areas).	Kankakee River	Approximately 0.5 mile upstream of confluence of Iroquois River.	*613	*608
			Approximately 0.4 mile upstream of confluence with Kankakee River along Spring Creek.	*613	*608
Maps available for inspection at the Kankakee County Administration Building, 189 East Court Street, Kankakee, Illinois.					
Send comments to Mr. Russell Thompson, Chairman of the Kankakee County Board, Kankakee County Administration Building, 189 East Court Street, Kankakee, Illinois 60901.					
Illinois	Sun River Terrace (Village) Kankakee County.	Kankakee River	At downstream corporate limits	*617	*611
			At upstream corporate limits	*617	*611
Maps available for inspection at the Sun River Terrace Village Hall, 7267 East Chicago Street, St. Anne, Illinois.					
Send comments to The Honorable Casey Wade, Jr., Mayor of the Village of Sun River Terrace, 7267 East Chicago Street, St. Anne, Illinois 60964.					
Illinois	Wood Dale (City) DuPage County.	Salt Creek	Just upstream of Thorndale Avenue	None	*281
			Approximately 0.8 mile upstream of Thorndale Avenue.	None	*283
Maps available for inspection at the Building Department, Wood Dale City Hall, 404 North Wood Dale Road, Wood Dale, Illinois.					
Send comments to The Honorable David L. VanGeest, Mayor of the City of Wood Dale, 404 North Wood Dale Road, Wood Dale, Illinois 60191.					
Michigan	Buena Vista (Township) Saginaw County.	Saginaw River Flood Storage Area.	Area east of Interstate 75 and north of East Washington Road.	*586	*587
		Saginaw River	At downstream corporate limits	*588	*589
			Approximately 0.75 mile downstream of upstream corporate limits.	*588	*589
Maps available for inspection at the Township Clerk's Office, 1160 South Outer Drive, Saginaw, Michigan.					
Send comments to Ms. Frances Hayes, Supervisor of the Charter Township of Buena Vista, 1160 South Outer Drive, Saginaw, Michigan 48601.					
Michigan	Carrollton (Township) Saginaw County.	Saginaw River	Immediate area south of Tittabawassee Street and west of Venoy Road.	*587	*589
			Area west of CONRAIL and south of Schust Road.	*588	*589
Maps available for inspection at the Carrollton Township Building, 1645 Mapleridge, Saginaw, Michigan.					
Send comments to Mr. Christopher Picard, Carrollton Township Supervisor, 1645 Mapleridge, Saginaw, Michigan 48604.					
Michigan	Frankenmuth (Township) Saginaw County.	Cass River	Approximately 0.6 mile downstream of South Main Street.	None	*612
			Approximately 0.5 mile downstream of South Main Street.	None	*612
Maps available for inspection at the Frankenmuth Township Building, 218 West Gennessee Street, Frankenmuth, Michigan.					
Send comments to Mr. Martin Warnick, Supervisor of Frankenmuth Township, 218 West Gennessee Street, Frankenmuth, Michigan 48734.					
Michigan	James (Township) Saginaw County.	Tittabawassee River	Area north of CONRAIL and east of Van Wormer Road.	*596	*594

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the James Township Hall, 2590 Sierra Drive, Saginaw, Michigan.					
Send comments to Mr. Gerald M. Wieneke, Supervisor of James Township, 2255 Wiegl Road, Saginaw, Michigan 48603.					
Michigan	Kochville (Township) Saginaw County.	Kochville Drain	Approximately 0.75 mile downstream of CONRAIL.	*585	*586
			Approximately 400 feet upstream of Kochville Road.	*585	*586
		Saginaw River	(Area within the township) west of Venoy Road and north of Tittabawassee Street.	*585	*586
		Saginaw Bay	Saginaw River west of Venoy Road and north of Tittabawassee Street.	*585	*586
Maps available for inspection at the Kochville Township Hall, 5851 Mackinaw Road, Saginaw, Michigan.					
Send comments to Mr. Edward Allington, Kochville Township Supervisor, 5851 Mackinaw Road, Saginaw, Michigan 48604.					
Michigan	Swan Creek (Township) Saginaw County.	Shiawasee Flats	Barer and Benkert Roads intersection	None	*594
Maps available for inspection at the Swan Creek Township Offices, 11415 Lakefield Road, St. Charles, Michigan.					
Send comments to Mr. Don Rappley, Swan Creek Township Supervisor, 11415 Lakefield Road, St. Charles, Michigan 48655.					
Michigan	Thomas (Township) Saginaw County.	Shiawassee Flats (Tittabawassee River).	At Ederer Road and North River Road intersection.	*597	*596
		Swan Creek	At Ederer Road	None	*594
			At Geddes Road	*593	*594
Maps available for inspection at the Thomas Township Offices, 249 North Miller Road, Saginaw, Michigan.					
Send comments to Mr. Morrison Stevens, Thomas Township Supervisor, 249 North Miller Road, Saginaw, Michigan 48609.					
Michigan	Zilwaukee (City) Saginaw County.	Saginaw Bay	Area west of Grand Trunk Western Railroad and north of Tittabawassee Street.	*585	*586
		Saginaw River	Area west of CONRAIL and south of Tittabawassee Street.	*588	*589
			At downstream and upstream sides of Interstate Route 75.	*588	*589
Maps available for inspection at the Zilwaukee City Hall, 319 Tittabawassee Road, Saginaw, Michigan.					
Send comments to The Honorable Richard DeLong, Mayor of the City of Zilwaukee, 319 Tittabawassee Road, Saginaw, Michigan 48604.					
Michigan	Zilwaukee (Township) Saginaw County.	Kochville Drain	Approximately 0.4 mile upstream of Interstate Route 75.	*585	*586
			Approximately 400 feet downstream of Kochville Road.	*585	*586
		Saginaw River Flood Storage Area.	Area east of State Route 13 (Veterans Memorial Parkway).	*586	*587
		Saginaw River	Approximately 3.3 miles downstream of Interstate Route 75.	*586	*587
			Approximately 1,000 feet upstream of Interstate Route 75.	*588	*589
		Saginaw Bay	Areas west of Grand Trunk Western and north of Kochville Road.	*585	*586
Maps available for inspection at the Township Supervisor's Home Office, 7600 Melbourne Road, Saginaw, Michigan.					
Send comments to Mr. David F. Bradt, Zilwaukee Township Supervisor, 7600 Melbourne Road, Saginaw, Michigan 48604.					
Mississippi	Pearl (City) Rankin County.	Conway Slough Tributary 2.	Approximately 0.1 mile upstream of Pearson Road culvert.	None	*271

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximatley 0.1 mile upstream of Lionel Road.	None	*284
		Neely Creek (Left Channel).	Approximately 30 feet downstream of North Biederman Road.	*272	*271
			At downstream side of Old Brandon Road.	*281	*282
		Neely Creek Tributary 2 ...	At downstream side of North Biederman Road.	*272	*271
			Approximately 1.2 miles upstream of Illinois Central Gulf Railroad.	None	*280
		Richland Creek	Approximately 1,050 feet upstream of Old Pearson Road.	*283	*284
			Approximately 1.3 miles upstream of confluence of Richland Creek Tributary 1.	*289	*288
		Richland Creek Tributary 1.	At confluence with Richland Creek	*286	*285
			Approximately 400 feet downstream of Illinois Central Gulf Railroad.	*288	*287

Maps available for inspection at the Pearl City Hall, Department of Community Development, 2420 Old Brandon Road, Pearl, Mississippi.

Send comments to The Honorable Mitch Childre, Mayor of the City of Pearl, P.O. Box 5948, Pearl, Mississippi 39288–5948.

New York	Canandaigua (Town) Ontario County.	Lake Canandaigua	Approximately 200 feet east of intersection of Cribb and West Lake Roads.	*693	*692
			Approximately 1,800 feet east of the intersection of Coy and West Lake Roads.	*695	*692
		Mud Creek	Approximately 2,000 feet downstream of downstream corporate limits.	None	*683
			Approximately 200 feet upstream of upstream corporate limits.	None	*706

Maps available for inspection at the Town of Canandaigua Planning Department, 5440 Route 5 and 20 West, Canandaigua, New York.

Send comments to Mr. Robert F. Simpson, Sr., Supervisor of the Town of Canandaigua, 5440 Route 5 and 20 West, Canandaigua, New York 14424.

New York	Gouverneur (Village) St. Lawrence County.	Oswegatchie River	At corporate limits	None	*395
			Approximately 0.74 mile upstream of State Route 58.	None	*411

Maps available for inspection at the Village Clerk's Office, Gouverneur Municipal Building, 33 Clinton Street, Gouverneur, New York.

Send comments to The Honorable Dierdre Scozzafasa, Mayor of the Village of Gouverneur, 33 Clinton Street, Gouverneur, New York 13642.

New York	Windham (Town) Greene County.	Batavia Kill	At downstream corporate limits	None	*1466
			At confluence of Mitchell Hallow Tributary	None	*1517

Maps available for inspection at the Windham Town Hall, Route 296, Hensonville, New York.

Send comments to Mr. Patrick Meehan, Windham Town Supervisor, P.O. Box 96, Hensonville, New York 12439.

Pennsylvania	London Grove (Township) Chester County.	East Branch White Clay Creek.	Approximately 1,000 feet downstream of Newgarden Station Road.	None	*259
			Approximately 700 feet downstream of confluence of Chatham Run.	None	*270
		Chatham Run	Approximately 350 feet downstream of Pomeroy Street.	None	*283
			At State Road 926	None	*504

Maps available for inspection at the at the London Grove Township Building, 550 East Baltimore Pike, Suite 200, West Grove, Pennsylvania.

Send comments to Mr. Lewis C. Ross, Chairman of the Township of London Grove Board of Supervisors, 550 East Baltimore Pike, Suite 200, West Grove, Pennsylvania 19390.

Pennsylvania	Westtown (Township) Chester County.	West Fork of East Branch Chester Creek.	At upstream side of Street Road	*263	*258

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 150 feet downstream of Westbourne Road.	*263	*262

Maps available for inspection at the Westtown Township Office, 1081 Wilmington Pike, West Chester, Pennsylvania.

Send comments to Mr. Kenton S. Stokes, Chairman of the Westtown Township Board of Supervisors, P.O. Box 79, Westtown, Pennsylvania 19395.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 10, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–18663 Filed 7–22–96; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC–93–23]

RIN 2125–AD20

Commercial Driver Physical Qualifications as Part of the Commercial Driver's License Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of first meeting of negotiated rulemaking advisory committee.

SUMMARY: The FHWA announces the first meeting of an advisory committee (the Committee) established under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to consider the relevant issues and attempt to reach a consensus in developing regulations governing the proposed merger of the State-administered commercial driver's license (CDL) procedures of 49 CFR Part 383 and the driver physical qualifications requirements of 49 CFR Part 391. The Committee is composed of persons who represent the interests that would be substantially affected by the rule.

DATES: The first meeting of the advisory committee will begin at 10:00 a.m. on August 7 and 8, 1996.

ADDRESSES: The first meeting of the advisory committee will be held in the Nassif Building, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. Subsequent meetings will be held at locations to be announced. The Committee will meet in room 4438 on August 7 and rooms 3200–3204 on August 8.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Motor Carrier Research and Standards, (202) 366–4001, or Ms. Grace Reidy, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1996, the FHWA published a notice of intent to establish an advisory committee for regulatory negotiation to develop regulations governing the proposed merger of the State-administered commercial driver's license procedures of 49 CFR Part 383 and the driver physical qualifications requirements of 49 CFR Part 391 (61 FR 18713). The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow. The notice also announced the May 14 public meeting that was sponsored by the agency. This organizational meeting was held in order to help identify and select organizations or interests to be represented on the Committee.

The FHWA received 20 comments on the notice of intent. None of the comments opposed using regulatory negotiation for this rulemaking; most endorsed the process and included requests to serve on the Committee and submitted nominations. Based on the responses to the notice of intent and for the reasons the FHWA stated in that notice, the Department of Transportation has determined that establishing an advisory committee on this subject is necessary and in the public interest. In accordance with section 9(c) of the Federal Advisory Committee Act, the Department of Transportation filed the charter for this Committee on July 12, authorizing the Committee to meet and begin negotiations. The Department has also selected the members of the Committee.

Negotiated Rulemaking Process

Mediator/Facilitator

In the notice of intent, the FHWA stated that it retained the services of a contractor, Mr. Philip J. Harter, to act as a convener and provide advice on the feasibility of using negotiated rulemaking for this rule. The FHWA is pleased to announce that Mr. Harter will be the mediator/facilitator of the Commercial Driver Physical Qualifications Negotiated Rulemaking Advisory Committee.

Membership

In addition to a mediator/facilitator, the Committee will consist of the following members:

Federal Highway Administration
American Association of Motor Vehicle Administrators
New York (State commercial driver licensing agency)
Utah (State commercial driver licensing agency)
Wisconsin (State commercial driver licensing agency)
Montana (State commercial driver licensing agency)
Commercial Vehicle Safety Alliance
International Association of Chiefs of Police
American Trucking Associations
National Private Truck Council
National School Transportation Association
United Motor Coach Association & American Bus Association (sharing one seat on the Committee)
Owner Operator Independent Drivers Association
Independent Truckers and Drivers Association
Teamsters Union
Amalgamated Transit Union
Lancer Insurance
AI Transport
American Insurance Association
National Association of Independent Insurers
Advocates for Highway and Auto Safety
Farmland Industries
American College of Occupational and Environmental Medicine
Association for Advancement of Automotive Medicine

American Academy of Occupational Health Nurses
American Academy of Physicians' Assistants

The FHWA regrets being unable to accommodate all requests for membership on the Committee. The Committee must be kept to a size that permits effective negotiation, but that ensures all interests have a voice in the negotiation and any ultimate recommendations adopted. Although the FHWA would have preferred a smaller committee, the agency erred on the side of inclusion to be certain that all interests affected by the rulemaking are represented in this process.

The Negotiated Rulemaking Act provides that agencies should limit membership on a negotiated rulemaking committee to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. The FHWA recognizes that representation of all significantly affected interests in the negotiation is critical if any rule developed through this process is to achieve widespread support. Therefore, to best serve all who have a significant stake in the outcome of this negotiated rulemaking and to ensure the smooth functioning of the negotiation process, we believe that a 26-member committee is necessary and justified under the statutory standard cited above.

The agency did not grant Committee membership to all applicants. For example, the Georgetown University Law Center—Institute for Public Representation and the National Association of the Deaf requested membership on the Committee but were not included. The FHWA deliberated on these applications and determined that these groups sought inclusion on the Committee primarily because of the mistaken belief that the scope of these negotiations would extend to a discussion of changes to the FHWA's physical qualifications standards. For example, in its comments, the Institute for Public Representation stated, ''We assume from this [the April 29 notice] that the committee will in fact consider the substance of the physical qualification standards.''

However, as noted in the April 29 notice, the current physical qualifications standards will not be a subject for discussion during this negotiated rulemaking process; nor will the FHWA's medical waiver programs be a subject for negotiation in this proceeding. In light of the FHWA's multi-year research plan to systematically review and develop revised medical standards, using medical advisory panels, we find that the use of this negotiated rulemaking forum to consider changing the current medical standards is inappropriate. The Committee will only address whether the physical qualification *guidelines* currently used by the agency to *implement* the current medical standards should be modified. Therefore, we believe that the interests of disabled drivers operating in interstate commerce in accordance with the Federal qualification standards will not be significantly affected by this negotiated rulemaking in a way that is different from the impacts of this action on the total driver population. Accordingly, the interests of these disabled drivers are effectively represented by the several driver organizations included on the Committee.

The FHWA believes that public participation is critical to the success of this proceeding. Participation is not limited to Committee members. Negotiation sessions will be open to the public, so interested parties may observe the negotiations and communicate their views in the appropriate time and manner to Committee members. Also, interested groups or individuals may have the opportunity to participate with working groups of the Committee. The FHWA believes that this form of participation will produce meaningful information and lead to a more effective commercial driver's license/physical qualifications regulation. Of course, the FHWA will invite comment on any proposed rule resulting from the Committee's deliberations.

Major Issues

In the notice of intent, the FHWA tentatively identified potential topics to consider in the negotiation and asked for comment on whether the issues presented were appropriate and if alternate or additional issues should be considered. Most comments were devoted to membership, and no significant modifications to the potential topics included in the April notice were proposed. Therefore, the list of topics is unchanged.

Those topics are:

1. Whether the physical qualifications *guidelines* currently used by the agency should be modified to more effectively implement the current medical standards.

2. The scope of any medical qualifications tracking system which might be used by law enforcement officials, as well as by carriers interested in medical information, that is not currently available.

3. What is the status of the various federally-funded State Prototype Medical Review pilot programs which explored the merger of the medical qualifications and licensing processes, and what useful information can be utilized from these efforts in drafting a rule on merging CDL and physical qualifications requirements?

4. How much control should various parties have over the medical review process and should the current commonly-used procedure, in which a company directs its drivers to physicians it selects, be replaced entirely or could it simply be modified? For example, should the agency require drivers to submit a medical long form to employers and the appropriate State licensing agency instead of replacing the current system?

5. How can the current physical examination requirements used by medical providers be clarified? How can these requirements and guidelines be more effectively communicated to the medical provider community?

6. Is there a way to allow merger of the separate requirements without burdening the small operator who moves to another State? In this case, although the driver's medical certification would still be valid, he or she might still be required to be recertified in the new State, thus potentially requiring a new certificate and a corresponding fee (e.g. medical reciprocity of old certificate to new States).

Once the rulemaking negotiations are underway, Committee members may raise other issues.

Procedure and Schedule

Those who commented on the notice of intent generally did not address Committee procedures. The FHWA anticipates that all of the negotiation sessions will take place in Washington, D.C. at DOT headquarters. Given the FHWA's limited resources, travel outside of Washington, D.C. for the purpose of holding negotiation sessions is unlikely.

Consistent with requirements of the Federal Advisory Committee Act, a clear and comprehensive record of the Committee's deliberations will be kept and circulated to Committee members. The facilitator will provide an assistant to the Committee to complete these and other duties.

The objective of the negotiation, in the FHWA's view, is for the Committee to reach a consensus on how to efficiently and successfully transfer responsibility for medical fitness

determinations to State licensing agencies and produce a draft notice of proposed rulemaking for consideration by the agency.

The negotiation process will proceed according to a schedule of specific dates that the Committee devises at the first meeting. The FHWA will publish notices of future meetings in the Federal Register. The FHWA has provided direct notice of this meeting to all Committee members and urges all members to attend and participate in this first and important meeting.

Authority: 5 U.S.C. §§ 561–570; 5 U.S.C. App. 2 §§ 1–15.

Issued on: July 19, 1996.

Stephen E. Barber,

Acting Associate Administrator for Motor Carriers.

[FR Doc. 96–18767 Filed 7–19–96; 12:10 pm]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies the petition by Mr. John Chevedden for the issuance of a mandatory Federal regulation that would require all new cars, light trucks and sport utility vehicles to be equipped with reflectors or reflective tape on the open driver side door or door jamb. An analysis of the petition revealed no information to support the petitioner's contention that there is a safety problem with the current situation and that his proposed solution will address the problem and improve safety in a cost-effective way.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, D.C. 20590. Mr. Hardie's telephone number is (202) 366–6987.

SUPPLEMENTARY INFORMATION: By letter dated March 29, 1996, Mr. John Chevedden of Redondo Beach, California, petitioned NHTSA to issue a new rule that would mandate the equipping of all new cars, light trucks and sport utility vehicles with reflectors or reflective tape on the open driver side door or door jamb. The petitioner stated that this will avoid collisions with drivers and their car doors as they exit the vehicle at night near traffic because the door will be reflective to oncoming traffic when the driver door is opened.

Analysis of Petition:

To establish a new vehicle safety requirement, the agency must present data or analysis showing that there is a significant safety problem and that the problem would likely be reduced by adopting that requirement. The petitioner did not provide any information showing that a safety problem presently exists. He did not submit any information showing the frequency with which drivers or driver's doors are struck by passing traffic. Further, he did not provide information showing the extent to which such incidents are the result of insufficient conspicuity of the door or the result of the suddenness with which the driver opens his or her door into the path of an oncoming vehicle. Finally, he did not provide any information showing whether the incidents were more likely to involve a solitary parked vehicle or a parked vehicle whose rear end was obscured by another parked vehicle. The agency also lacks any such information.

In the absence of this information, the agency cannot assess whether the problem is of sufficient magnitude to warrant rulemaking. It also can only very roughly assess whether the suggested requirement has the potential for reducing the problem.

NHTSA has already established requirements that make parked vehicles, particularly solitary parked vehicles, more conspicuous to following traffic. FMVSS 108 requires that vehicles be equipped with rear taillamps, stoplamps, high mounted center stoplamps, license plate lamps, and parking lamps. These lamps add to a vehicle's conspicuity when its lights are turned on. The agency recognizes that to the extent that drivers exit from their vehicles at night only after turning off the vehicle lights, these lamps will not be of any assistance in making the stopped vehicle conspicuous.

However, FMVSS 108 also contains a requirement that enhances the conspicuity of vehicles whose lights are turned off. The Standard requires that the rear of all cars, and multipurpose passenger vehicles and trucks less than 80 inches overall width, be equipped with two red reflex reflectors, on each side of the vehicle centerline. These reflectors are required to be as far apart as possible. The intent of requiring these reflectors is to make these vehicles more visible, especially at times of reduced lighting, so that oncoming drivers will ensure that there is sufficient separation to allow them to pass the vehicles safely. Further, although not required by FMVSS 108, vehicles have an interior light that is activated when the door is opened, even if the external vehicle lights are turned off.

While NHTSA is interested in any suggestion that might reduce deaths, injuries or crashes, the agency must ensure that all new requirements are likely to enhance safety, are reasonable, practicable and cost-effective and that the safety problem is significant enough to warrant Federal intervention. Since there is no information available to assess either the alleged safety problem or the potential of the suggested requirement for solving the problem, NHTSA must decide if it should spend limited agency resources to perform the research and conduct the studies necessary to assess these matters. There could by many other measures whose contribution to the safety of motor vehicles could be more easily and certainly established.

In accordance with 49 CFR Part 552, this completes the agency's technical review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. After considering all relevant factors, including the need to allocate and prioritize limited agency resources to best accomplish the agency's safety mission, the agency has decided to deny the petition.

Authority: 49 U.S.C. 30103, 30111, 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 1996.

Barry Felrice.

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–18697 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Mr. John Chevedden's petition for rulemaking to require that all manual transmission cars, trucks, and sport utility vehicles be manufactured with the ''Hill-Holder'' innovation which is found as standard equipment on the Subaru Legacy. Mr. Chevedden claims

that this action will enhance safety by preventing backward travel collisions on hills during start-up from a stop sign or signal. Mr. Chevedden contends that the ''Hill-Holder'' prevents cars from slipping backwards on hills during clutch release and accelerator application. He believes this will reduce collisions with vehicles waiting behind. NHTSA's analysis of the petition concludes that there is no evidence of a significant safety problem that would warrant federal intervention and such a mandate.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366–5276. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By letter dated February 6, 1996, Mr. John Chevedden of Redondo Beach, California, petitioned the agency to issue a rule that would require equipping all manual transmission cars, trucks, and sport utility vehicles with a ''Hill-Holder'' device (currently found on the Subaru Legacy) to enhance safety by preventing backward travel collisions on hills during start-up from a stop sign or signal.

Mr. Chevedden did not provide any support for his suggestion that the Hill-Holder will enhance safety. He provided no information suggesting that the Hill-Holder would prevent any collisions or that the type of collision in question causes any injuries or even causes any damage that might lead to injury-causing collisions at a later time. The collisions, if any, directly prevented by the Hill-Holder are very low speed collisions, too low to have any injury potential. Further, they are unlikely to cause any damage of safety significance. They are particularly unlikely to cause damage to passenger cars because of the protective capability required of passenger car bumpers by 49 CFR Part 580. Part 580 requires that passenger car bumpers provide protection against property damage in impacts up to 2.5 miles per hour. Most cars have bumpers that far exceed the standard.

The agency notes further that any motorist uncomfortable with operating a manual transmission vehicle on hills has ample opportunity to buy an automatic transmission vehicle. Over 80 percent of light vehicles (i.e., those under 8,500 pounds gross vehicle weight rating) have automatic transmissions. According to 1995 vehicle production data submitted to the agency under the Corporate Average Fuel Economy Program, only 16.7 percent of passenger cars and 21.2 percent of light trucks were equipped with manual transmissions.

The agency has just issued a comprehensive Crash Avoidance Implementation Plan listing the agency's priorities for improving the pre-crash safety of new vehicles and vehicles-in-use, and the interactions of drivers with their vehicles. The agency's limited resources for addressing pre-crash safety will be devoted to implementing these measures based on their potential contribution to safety. Even with additional resources, it would not be possible or appropriate for the agency to address every measure believed by a petitioner to have a possible connection with pre-crash safety. Given that the agency does not believe that the suggested action would enhance safety, NHTSA cannot devote its resources to pursuing it.

In accordance with 49 CFR part 552, this completes the agency's technical review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. After considering all relevant factors, including the need to allocate and prioritize limited agency resources to best accomplish the agency's safety mission, the agency has decided to deny the petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–18692 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 142
Tuesday, July 23, 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

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, August 15, 1996. The meeting will be held in Conference Room ''A/B'' of the US Forest Service; Mt. Hood National Forest; 2955 NW Division Street; Gresham, Oregon 97030; phone (503) 666–0700. The meeting is scheduled to begin at 9:00 a.m. and conclude at approximately 3:00 p.m. Topics tentatively scheduled on the agenda include: (1) Report from PAC Subcommittee on flood assessment, (2) Discussion of priorities for flood restoration projects and funding, (3) Review of Province monitoring results, (4) Update on current events and issues by agency managers, (5) Public forum.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during the public forum. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: July 17, 1996.

Maurica Owen,

Supervisory Contract Specialist.

[FR Doc. 96–18589 Filed 7–22–96; 8:45 am]

BILLING CODE 3412–11–M

Natural Resources Conservation Service

Notice of Extension of Deadline for Nominations for Board of Trustees

SUMMARY: The Secretary of Agriculture is extending the period for nominations for persons to serve as members of the National Natural Resources Conservation Foundation Board of Trustees. The original notice dated June 14, 1996 had set the deadline at July 15, 1996.

DATES: Written nominations will be received before September 1, 1996.

ADDRESSES: Send written nominations to Chief, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Doug McKalip, Legislative Affairs Division, Natural Resources Conservation Service; (202) 720–2771.

SUPPLEMENTARY INFORMATION: Applicants should reference Federal Register Vol. 61, No. 116, page 30215 (Friday June 14, 1996) for instructions.

Paul W. Johnson,

Chief.

[FR Doc. 96–18557 Filed 7–22–96; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 57–96]

Foreign-Trade Zone 189—Muskegon, Michigan; Application for Subzone Status ESCO Company Limited Partnership (Colorformer/Pigment/Dye Chemicals) Muskegon, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the KOM Foreign Trade Zone Authority, grantee of FTZ 189, requesting special-purpose subzone status for the colorformer chemicals manufacturing facility of ESCO Company Limited Partnership (ESCO) (jointly owned by Mitsui Toatsu Chemicals and Yamamoto Chemicals (Japan)), in Muskegon, Michigan. 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 July 8, 1996.

The ESCO plant (70,000 sq.ft./25 acres) is located at 2340 Roberts Street, Muskegon (Muskegon County), Michigan. The facility produces pigment/dye-type chemicals known as ''colorformers'', which are used in the manufacture of pressure and heat-sensitive paper such as that used for thermal fax machines. The main products currently manufactured at the plant are: Black XV, N–102 and YK–2 (HTS 3204.12.5000—17.3%) and ODB–2 (HTS 3204.19.4000—13.3%). Some 20 percent of production will be exported.

Zone procedures would exempt ESCO from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer duty on foreign-sourced inputs until formal Customs entry is made. Foreign-sourced inputs include aniline derivative (HTS 2921.49.1000—5.8%), diphenylamine (HTS 2921.44.2000—12.1%), m-aminophenol (HTS 2922.29.1000—5.8%) and diethyl-m-aminophenol (HTS 2922.29.1500—6.7%).

The application indicates that the savings from zone procedures will help improve the international competitiveness of the ESCO plant and will help increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 23, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 7, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 301 W. Fulton St., Suite 718, Grand Rapids, Michigan 49503–6495

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 16, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–18674 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Determination not to Revoke Antidumping Duty Orders and Findings nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to Revoke Antidumping Duty Orders and Findings nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on June 7, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–423–077

Belgium
Sugar
Objection Date: June 27, 1996–June 28, 1996
Objector: Florida Sugar Marketing and Terminal Association, Inc., U.S. Beet Sugar Association, U.S. Cane Sugar Refiners' Association
Contact: Lyn Johnson at (202) 482–5287.

A–427–078

France
Sugar
Objection Date: June 27, 1996–June 28, 1996
Objector: Florida Sugar Marketing and Terminal Association, Inc., U.S. Beet Sugar Association, U.S. Cane Sugar Refiners' Association
Contact: Lyn Johnson at (202) 482–5287.

A–428–802

Germany
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, Except Synchronous & V belts
Objection Date: June 25, 1996
Objector: Gates Rubber Company
Contact: Ron Trentham at (202) 482–4793.

A–428–061

Germany
Precipitated Barium Carbonate
Objection Date: June 18, 1996
Objector: Chemical Products Corporation
Contact: Tom Futtner at (202) 482–3814.

A–428–082

Germany
Sugar
Objection Date: June 27, 1996–June 28, 1996
Objector: Florida Sugar Marketing and Terminal Association, Inc., U.S. Beet Sugar Association, U.S. Cane Sugar Refiners' Association
Contact: Mark Ross at (202) 482–4852.

A–475–802

Italy
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured
Objection Date: June 25, 1996–June 28, 1996
Objector: Gates Rubber Company, Mectrol Corporation
Contact: Ron Trentham at (202) 482–4793.

A–588–706

Japan
Nitrile Rubber
Objection Date: June 19, 1996
Objector: Zeon Chemicals Inc.
Contact: Sheila Forbes at (202) 482–5253.

A–401–040

Sweden
Stainless Steel Plate
Objection Date: June 12, 1996
Objector: Allegheny Ludlum Steel Corporation, Armco Inc., G.O. Carlson, Inc., Lukens-Washington Operations
Contact: Michael Heaney at (202) 482–4475.

A–583–080

Taiwan
Carbon Steel Plate
Objection Date: June 28, 1996
Objector: Bethlehem Steel Corporation, U.S. Steel Group
Contact: Michael Heaney at (202) 482–4475.

A–583–505

Taiwan
Oil Country Tubular Goods
Objection Date: June 24, 1996
Objector: North Star Steel Company
Contact: Michael Heaney at (202) 482–4475

Dated: July 11, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–18673 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–820]

Ferrosilicon From Brazil; Affirmation of the Results of Redetermination Pursuant to Court Remand

SUMMARY: On May 21, 1996, the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) redetermination on remand of the *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil* (59 FR 732, January 6, 1994) and the *Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil* (59 FR 8598, February 23, 1994). *See Aimcor et al.* v. *United States et al.*, Slip Op. 96–79 (CIT May 21, 1996).

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or James Terpstra at (202) 482–4929 or (202) 482–3965, respectively, Investigations Office, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1995, the Court issued an order remanding to the Department the final determination and amended final determination on ferrosilicon from Brazil. See *Aimcor et al.* v. *United States et al.*, Slip Op. 95–130 (CIT July 20, 1995) (*AIMCOR I*).

In its decision in *Timken Co.*, v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision.

In AIMCOR I, the Court ordered the Department to do the following: (1) Determine if the amount of the ''spread'' (the difference between the interest rate and the inflation rate) is sufficiently quantified and, if so, account for this amount in the home market price, or, if not, grant Companhia Ferroligas Minas Gerais (Minasligas) an opportunity to provide such data; (2) reconsider the profit calculation in constructed value and explain the rationale for whatever methodology the Department chooses to apply; (3) apply a U.S. dollar-denominated interest rate in calculating Minasligas' imputed U.S. credit expenses; (4) request from Minasligas data on the appropriate monetary correction for loans, and if that data is inadequate or not provided, to reconsider our selection of best information available, and also to reconsider whether the Department's interest expense adjustment and the selection, if any, of an adjustment for monetary correction for loans understate Minasligas' interest expenses included in cost of production and constructed value; and (5) determine whether Minasligas' value-added taxes on the inputs at issue were fully recovered prior to exportation of the subject merchandise.

These remand instructions constitute a decision not in harmony with the Department's final determination and amended final determination. This notice fulfills the publication requirements of *Timken*.

Absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the Court's opinion, the Department will amend the amended final determination of the investigation on ferrosilicon from Brazil to reflect as follows the amended margins in the Department's redetermination on remand: Minasligas 19.73 percent; Companhia Brasileira Carbureto de Calcio 17.93 percent; and All Others 42.17 percent. Liquidation of such entries is suspended pending final and conclusive affirmance of these remand results.

Dated: July 10, 1996.

Jeffrey P. Bialos,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–18672 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–837]

Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Dennis McClure, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone: (202) 482–0116 or (202) 482–3530, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (''URAA'').

Final Determination

We determine that large newspaper printing presses and components thereof (''LNPPs'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act.

Case History

Since the preliminary determination on February 23, 1996 (60 FR 8029, March 1, 1995), the following events have occurred:

On February 26 and 27, 1996, the respondents, Mitsubishi Heavy Industries Ltd. (''MHI'') and its U.S. affiliate Mitsubishi Lithographic Printing (''MLP''); Tokyo Kikai Seisakusho Ltd. (''TKS'') and its U.S. affiliate TKS USA; and the petitioner, Rockwell Graphics Systems Inc. and its parent company, Rockwell International Corporation, requested disclosure of the Department's calculation methodologies used in the preliminary determination. On March 4, 1996, the petitioner alleged that the Department made two ministerial errors in its calculation with respect to constructed value (''CV'') and further manufacturing costs. The Department determined that neither of the allegations constituted ministerial errors. (See Memorandum from the Team to Richard W. Moreland, March 11, 1996.)

On February 27, 1996, the Department issued supplemental sales questionnaire to MHI and TKS. On March 7, 1996, the respondents submitted their responses to the supplemental sales questionnaire. On March 5, 1996, the Department issued a supplemental cost questionnaire to TKS and on March 8, 1996, TKS submitted its response.

In March and April 1996, we conducted verification of the sales and cost questionnaire responses of the respondents in Japan and the United States.

On May 8, 1996, the Department received comments it solicited from interested parties in its preliminary determination regarding scope issues. On May 31, 1996, respondents submitted new sales and cost databases which incorporated factual corrections noted during verification.

The respondents and the petitioner submitted case briefs on June 3, 1996 and rebuttal briefs on June 10, 1996. The Department held a public hearing for this investigation on June 17, 1996. On June 19, 1996, MHI protested that certain elements of the petitioner's rebuttal brief contained new factual information. On June 20, 1996, the petitioner objected to MHI's complaint. On June 26, 1996, the Department returned the rebuttal brief to the petitioner, and notified the petitioner that the new material to which MHI had objected should be removed from the record of the investigation. The petitioner submitted a revised rebuttal brief on June 27, 1996.

Scope of Investigation

Note: The following scope language reflects certain modifications from the notice of the preliminary determination. As specified below, we have clarified the scope to include incomplete LNPP systems, additions and components. We have also clarified the scope to include ''elements'' (otherwise referred to as ''parts'' or ''subcomponents'') of a LNPP system, addition or component, which taken altogether constitute at least 50 percent of the cost of manufacture of the LNPP component of which they are a part. We have also

excluded from the definition of the five subject LNPP components any reference to specific subcomponents (i.e., the reference to a printing-unit cylinder in the definition of a LNPP printing unit). In addition, we have excluded the following Harmonized Tariff System of the United States (''HTSUS'') subheadings from the scope: 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, and 8524.99.00. See ''Scope Comments'' section of this notice and the July 15, 1996 Decision Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

Scope: The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) A reel tension paster (''RTP''), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

We have included scope issues for this investigation and the concurrent investigation of LNPP from Germany in the *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany* (*''LNPP from Germany''*). The issues are voluminous and the resolution of these issues affects both investigations equally, as reflected in the universal comment period in the public hearing on LNPP scope. We have therefore utilized the German FR Notice as the vehicle to publish the scope comments from all interested parties in both investigations.

Period of Investigation

The POI for MHI is July 1, 1991 through June 30, 1995, and July 1, 1992 through June 30, 1995 for TKS. See: *Preliminary Determination of Sales at LTFV: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 60 FR 8029 (March 1, 1995) (*''LNPPs from Japan Preliminary Determination''*).

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based normal value (''NV'') on constructed value (''CV'') because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. See: *Preliminary Determination: LNPPs from Japan.*

Fair Value Comparisons

To determine whether MHI's and TKS's sales of LNPPs to the United States were made at less than fair value, we compared Constructed Export Price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs.

Constructed Export Price (''CEP'') and Further Manufacturing (''FM'')

TKS

TKS reported its sales as CEP and CEP/FM sales. Because we have

classified installation expenses as further manufacturing, we have treated all TKS sales as CEP/FM sales. We calculated CEP, in accordance with subsections 772(b) and (d) of the Act, for (1) Those sales to the first unaffiliated purchaser that took place after importation by a seller affiliated with the producer/exporter, and (2) those sales involving further manufacturing in the United States.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

(1) We deducted those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Japan, and irrespective of where recorded. We revised the reported indirect selling expense ratio to include all Japanese indirect selling expenses in the numerator and allocated this amount over the total value of TKS sales to be applied to U.S. sales value, not transfer prices; TKS had previously excluded branch sales office expenses from the numerator and included some transfer prices in the denominator. We also calculated these indirect selling expenses in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the ''Common Issues'' subsection of the ''Interested Party Comments'' section of the final notice of the companion investigation of LNPP from Germany.

(2) We recalculated TKS's reported indirect selling expenses incurred in the United States using the total expenses and total revenue for TKS USA during the fiscal years 1991 through 1995, in order to remove distortions in TKS USA's financial statements caused by auditors' modifications to revenue recognized during the POI. Our revision included additional selling expenses and excluded common G&A, as detailed in our July 15, 1996, calculation memorandum.

(3) We recalculated the U.S. insurance premiums expenses for both marine insurance and for U.S. inland insurance, increasing the amounts reported to match the acceptable loss/premium ratio established by Yasuda Fire and Marine Insurance in its official correspondence.

MHI

Although MHI reported its sales as EP sales, we reclassified all MHI sales as CEP/FM sales because MHI's affiliated U.S. sales agent acted as more than a processor of sales-related documentation and a communication link with the unaffiliated U.S. customers. The U.S. affiliate engaged in a broad range of activities including purchasing parts, warranty, technical services, and the coordination of installation, which we have classified as further manufacturing. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for these sales because they involved further manufacturing in the United States.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

(1) We treated post-sale warehousing in Japan as a movement charge and not as a direct selling expense;

(2) We deducted the unpaid portion of the total contract price from the gross price of the Guard sale as a discount. The proprietary details of this adjustment do not allow further elaboration; the July 15, 1996, MHI calculation memo records the methodology.

(3) We deducted those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Japan, and irrespective of where recorded. We also calculated these indirect selling expenses in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the ''Common Issues'' subsection of the ''Interested Party Comments'' section of the final notice of the companion investigation of LNPP from Germany.

(4) We modified the calculation of MLP's reported indirect selling expenses to no longer include an allocation of common G&A expenses, since total G&A applicable to LNPP is accounted for in the calculation of further manufacturing costs.

(5) We have modified the calculation of MHI's indirect selling expenses incurred in the United States but recorded in Japan to remove the salary expenses for an MLP employee where those expenses were already accounted for in the calculation of the MLP indirect selling expenses.

(6) We excluded from the calculation of the Guard commission those additional revenues remitted to MLP by Sumitomo Corporation (''SC'') from the total interest income earned while SC collected and held payment from Guard.

(7) We increased the amount of the spare parts adjustment to the Piedmont gross price in order to account for the value of materials supplied by MHI for the Piedmont sale in excess of the contracted value of spare parts.

Normal Value/Constructed Value

For the reasons outlined in the ''Product Comparisons'' section of this notice, we based NV on CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's materials and fabrication costs plus amounts for selling, general and administrative (''SG&A'') expenses, U.S. packing costs. We based CV on the same methodology used in the preliminary determination, with the following exceptions:

TKS

(1) We adjusted TKS USA's SG&A and indirect overhead costs in accordance with the submitted reclassification of rent, workmen's compensation and employee insurance.

(2) We recalculated CEP profit to include packing, transportation and installation costs.

(3) We modified our calculation of TKS USA's further manufacturing G&A rate by excluding the inputs acquired from TKS.

MHI

(1) We recalculated MLP's G&A rate using the cost of goods sold (''CGS'') incurred in the United States and applied that rate to further manufacturing costs for each U.S. sale.

(2) We recalculated home market profit to reflect the deduction of freight costs.

(3) We recalculated CEP profit to reflect the deduction of home market packing costs.

(4) We reallocated MHI's R&D costs to all LNPP contracts based on the relative manufacturing costs incurred for each contract.

(5) We adjusted NV to include the loss on sale of obsolete LNPP inventory.

Price to CV Comparisons

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses, pursuant to section 773(a)(8) of the Act.

Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by the respondent. We used standard verification procedures, including examination of relevant accounting and sales records and original source documents provided by the respondent.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward

markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MHI reported that forward currency exchange contracts applied to certain U.S. sales, we verified that these contracts were linked to certain payments, not to the particular dates of sale of the contracts (and thereby to calculation exchange rates) in question. See May 14, 1996, MHI Verification Report at 9. Therefore, for the purpose of the final determination, we made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' For this final determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined that a fluctuation existed, we substituted the benchmark for the daily rate. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the yen did not undergo a sustained movement of appreciation against the U.S. dollar affecting any date of sale during the POI.

Interested Party Comments

Common Issues in the German and Japanese LNPP Investigations

We have included all issues which are common to both this investigation and the concurrent investigation of *LNPP from Germany*, and which were commented on by parties in both proceedings, in the *Final Determination of Sales at LTFV: LNPP from Germany*, which is being published concurrently with this notice.

Common Issues for LNPP From Japan

Sales Issue

Comment 1 CEP Offset: As noted in the *Common Issues* section of the German notice, MHI argues that its sales should be treated as EP sales and not as CEP sales. Further, MHI argues that if a CEP analysis is applied, then the Department must consider a CEP offset to MHI's NV. MHI claims that the Department will not look to the initial sales price for CEP sales, but will instead look to the price as calculated after CEP adjustments are made to make level-of-trade (''LOT'') comparisons. MHI explains the statute recognizes that, in certain cases, while sales may have been made at different levels of trade, the data may not exist to make an LOT adjustment. According to MHI, comparing CEP to an unadjusted NV would not result in the ''fair comparison'' mandated by the statute. Thus, MHI states that in order to make a fair comparison, the statute allows for a deduction of indirect selling expenses from the NV by an amount not more than the amount of U.S. indirect selling expenses.

MHI states that, if the Department continues to use CEP analysis for purposes of the final determination, an LOT adjustment would be warranted because of the activities that would be removed from the CEP. According to MHI's interpretations, because a CEP analysis implies that MLP's economic activities are significant, removing the expenses incurred for such activities would likely change the level of trade at which CEP is calculated. Furthermore, MHI maintains that a CEP analysis would remove from U.S. price all of MHI's U.S. economic activity as well, further necessitating an LOT adjustment, since the starting price for MHI's U.S. sales and home market sales is at the same level of trade, *i.e.*, direct to the end-user. MHI maintains that since there is no data on the record to make an actual LOT adjustment, the Department should make a CEP offset adjustment to NV instead.

TKS maintains that the Department should grant to it a CEP offset pursuant to section 773(a)(7)(B) of the Act because: (1) TKS's home market sales are all at a single level of trade which is identical to that of TKS's unadjusted CEP sales; (2) the adjustments made to CEP place it at a different level of trade than its home market sales; and (3) no level of trade adjustment can be quantified. TKS claims that section 773(a)(7)(B) of the Act, which authorizes application of the CEP offset, applies to all of TKS's CV-to-CEP sales comparisons used in this investigation. TKS maintains that TKS's home market LNPP sales involve only one type of customer—newspaper publishing companies, and only one channel of distribution—direct sales to those publishing companies. According to TKS, the sales and distribution process for all these sales is straightforward, as TKS's own specialized sales force initiates and maintains customer relations.

According to TKS, all of its U.S. sales involve a single type of customer—newspaper publishers, and a single channel of distribution—customer-direct sales. TKS states that it is undisputed that TKS's U.S. sales are CEP sales due to the numerous critical activities performed by its subsidiary, TKS USA. According to TKS, it is the CEP adjusted for the various expenses related to such activities which determines the level of trade of a CEP sale.

TKS states that after the adjustments mandated by section 772(d) are completed, the level of trade of its CEP sales is nearer to the factory gate than the level of TKS's customer-direct home market sales, because the Act requires the deduction of all the direct and indirect selling expenses included in the CEP sale. Maintaining that the level of trade for the NV calculation is a CV that includes both direct and indirect selling expenses, TKS contends that its home market sales, in comparison with adjusted CEP sales, are at a more remote stage of distribution. Thus, TKS argues, it is entitled to a CEP offset.

In complete disagreement with the respondents, the petitioner maintains that no CEP offset is warranted in this investigation. It argues that MHI and TKS have failed to establish that NV and CEP were at different levels of trade. The petitioner points out that MHI had maintained up until verification that no LOT adjustment was required, and that TKS had only asserted in a footnote to one of its responses that it was entitled to a CEP offset. Given that neither respondent substantiated the necessity for an LOT adjustment which underpins a CEP offset, the petitioner maintains that no CEP offset is warranted. The petitioner's primary objection to MHI's contention that it is entitled to a CEP offset simply because the Department made CEP adjustments as required by the statute, rests on the observation that the Department appears to have flatly rejected such a position in its proposed antidumping regulations:

> It would not be appropriate to assume that the CEP is at a different level of trade than the prices used as the basis of normal value or that any such differences in the level of trade affect price comparability.

See Antidumping Duties; Countervailing Duties (Notice of Proposed Rulemaking and Request for Public Comments), 61 FR 7308, 7348 (February 27, 1996). Although MHI has three different channels of distribution in the home market, the Department cannot ascertain which selling functions are performed by MHI and which are provided by trading companies or other entities for each type of home market sale. The petitioner argues that the lack of a factual foundation for evaluating levels of trade means that a LOT adjustment under section 773(a)(7)(A) cannot be made and, further, that a CEP offset under section 773(a)(7)(B) is not authorized.

The petitioner also takes issues with the respondents' argument that an LOT adjustment is warranted because of the activities that would be removed from the CEP starting price. The petitioner's interpretation is that such a position runs counter to the preamble to the CEP provision in the proposed regulations. The petitioner further argues that, should the Department follow the methodology of the *Preliminary Results of Administrative Review: Armid Fiber from the Netherlands*, 61 FR 15766, 15768 (April 9, 1996) (''*Armid Fiber*''), then it would still contest the notion that for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. According to the petitioner, stripping away the actual selling functions reflected in the CEP price before comparison for level of trade purposes amounts to an artificial reconfiguration of the CEP level of trade. The petitioner argues that this has the effect of creating the appearance of different levels of trade when in the commercial market the levels are the same. Thus, the argument is set forth that if the Department adjusts the CEP for U.S. selling expenses and artificially views the CEP sale as not including the selling functions represented by those expenses, then it will be positing a difference in level of trade that does not exist. According to the petitioner, if the Department were to allow a CEP offset, then the Department must deduct all of the indirect selling expenses from the U.S. price.

DOC Position: We disagree with the respondents. In this instant investigation, the respondents failed to provide the Department with the necessary data for the Department to consider an LOT adjustment. Without such data, a LOT adjustment under section 773(a)(7)(A) cannot be made and, further, that a CEP offset under section 773(a)(7)(B) is not authorized. Absent this information, the Department cannot determine whether an LOT adjustment is warranted, nor whether the level of trade in the home market is in fact further removed than the level of trade in the United States. We agree with the petitioner that a respondent is required to affirmatively demonstrate all the requirements which would entitle it to a CEP offset as a surrogate for an LOT adjustment. The petitioner correctly noted that the Department's questionnaire requested from respondents all the relevant information required for an LOT analysis and for the documentation and explanation of any claim for an LOT adjustment. We agree with the petitioner that this information was not provided. We note MHI's claim in its section A response that a ''level of trade adjustment is unnecessary,'' though at the time of the submission, MHI did not know that the Department's analysis would classify its U.S. sales as CEP transactions. Without the possibility of making a proper level of trade analysis, the Department cannot and should not grant a deduction from NV for home market indirect selling expenses.

Further, we disagree with the respondents' most basic representation of their home market sales. Respondents now contend that there is one home market level of trade to which CEP is being compared, but this claim is not well substantiated. The information we have on the record for sales in the home market does not support this conclusion. For TKS, sales were not made only to end-users, *i.e.*, newspaper publishers, but, as discovered during verification, were sometimes made to middle-men, such as leasing companies, in the home market. For MHI, we knew in general that the company made some sales involving trading companies based on one paragraph of explanation in MHI's section D response. We were informed during the ''sales and distribution'' portion of the verification that MHI had three distinct channels of distribution in the home market: (1) direct sales to end-users; (2) sales through trading companies and (3) sales to trading companies. See May 14, 1996, verification report at pp. 4–5. For neither TKS nor MHI can we ascertain which selling functions are performed by them and which are provided by leasing companies, trading companies or other entities for each type of home market sale. Thus, the minimal amount of information provided does not support the conclusions reached by respondents.

We note, however, that we also disagree, in part, with the petitioner. In those cases where an LOT comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. As stated in *Armid Fiber* ''the level of trade of the U.S. sales is determined by the adjusted CEP rather than the starting price.''

Cost Issue

Comment 2 Collection of Cost Data in Absence of the Initiation of a Cost Investigation: MHI argues that the Department's collection of cost data on all home market sales in the absence of the initiation of a cost investigation not only violates the 1994 GATT Antidumping Agreement (''the Agreement''), but is inconsistent with U.S. law and administrative practice. MHI cites Article 2.2.2 of the Agreement and section 773(e)(2)(A) of the Act to support its contention that the Department should not have solicited contract price and cost data in order to compute SG&A expenses and profit. MHI contends that there is no provision in either the Agreement or U.S. law which provides that a foreign producer automatically shall be subject to a sales-below-cost investigation after CV is determined to be the appropriate basis for NV. Instead, MHI contends that both the Agreement and U.S. law instruct the Department to conduct cost calculations on the basis of records kept by the respondent, provided that such records are in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country and reasonably reflect the costs of production and sale of the product. MHI cites the *Final Results of Administrative Review: Large Power Transformers from Italy*, 52 FR 46,806 (1987) (''*LPTs from Italy*''), *Preliminary Results of Administrative Review: Large Power Transformers from France*, 61 FR 15461, 15462 (April 8, 1996) (''*LPTs from France*''), and *Preliminary Results of Administrative Review and Partial Termination in Part: Mechanical Transfer Presses from Japan*, 61 FR 15034, 15035 (April 4, 1996) (''*MTPs Preliminary Results (1996)*''), in contending that the Department has resorted to CV as the basis for NV for reasons similar to those enunciated in the preliminary determination of this investigation, without automatically subjecting respondents to cost investigations. In those investigations, MHI maintains, the Department was correct to request product-line profit and loss information for its calculations of SG&A expense and profit. MHI states that it complied fully by submitting its internal profit and loss statements for LNPPs. Accordingly, MHI argues that SG&A and profit should be calculated

from MHI's internal profit and loss statements in the Department's final calculations.

The petitioner maintains that the Department's request for home market contract price and cost data ''in order to compute SG&A and profit'' for its CV calculations in accordance with section 773(e)(2)(A) of the Act was a reasonable action within its discretion in light of the requirements of the 1994 WTO Antidumping Agreement (''the Agreement'') and U.S. law.

According to the petitioner, the Agreement and the Act which implements the Agreement require the Department to exclude below-cost sales from the calculation of SG&A and profit. The petitioner contests MHI's statement that section 773(f)(1) of the Act forbids the Department to examine transaction-specific data for profit and SG&A because it had a product-line financial statement. According to the petitioner, this position is without merit because nothing in the cited statutory provision in the URAA restricts the Department from requesting transaction-specific data. Petitioner also notes that MHI was capable of providing the information in a timely manner.

The petitioner also objects to MHI's characterization of the collection of transaction-specific information on SG&A and profit as an ''aberrational'' practice. According to the petitioner, at this early stage of implementation of the URAA, any such characterization is not credible, as the Department is entitled to evolve its practice under the new statute. Petitioner also points out that MHI failed to mention that in *LPTs from France,* the preliminary notice makes clear that substantial questions arose regarding profit and SG&A on the eve of the preliminary determination, and that, although the Department calculated profit based upon the LPT respondent's parent company's financial statements, the Department noted for the final determination that it would consider calculating the respondent's profit based only on above-cost data if it had cost data for home market sales.

Based on the record of this investigation, the petitioner maintains that it was clear from the response to section A that companies could report transaction-specific data, and that evidence pointed to below-cost sales. According to the petitioner, given the recent changes in the law and congressional intent to exclude below-cost sales from CV profit in most cases, it was reasonable for the Department to seek transaction-specific data in this investigation in order to analyze whether below-cost sales should be excluded from CV profit, either on a mandatory or discretionary basis.

DOC Position: We disagree with MHI that the Department violated the Agreement and U.S. law in soliciting and collecting cost and sales data for each home market sale. There is nothing in the Agreement or the statute which precludes the Department from requesting sales-specific cost and sales data for home market sales, regardless of whether a sales-below-cost investigation had been initiated. In addition, we disagree with MHI that the collection of project-specific home market sales and cost data was an aberration from the Department's normal practice. In this case, the petitioner provided a timely allegation of sales below cost and our review of the respondents' section A questionnaire responses revealed that transaction-specific cost information was readily available and could be provided by the respondents. This being one of the first cases under the new law, we are still developing our practice for computing profit and SG&A in accordance with the new law.

Comment 3 If the Department Must Formally Initiate a Cost Investigation in Order to Disregard Below-Cost Sales: MHI argues that the Department did not act in accordance with the law when it excluded sales below cost as being outside the ordinary course of trade under sections 771(15) and 773(b)(1) of the Act. MHI contends that sales made below cost can be disregarded but that, as a prerequisite, the Department must have reasonable grounds to believe or suspect that below-cost sales have been made. Thus, the Department must formally initiate a cost investigation in order to disregard the below-cost sales, which it did not do in this instant investigation. MHI states that it would be consistent with the SAA and the proposed regulations to include below-cost sales in the calculation of SG&A and profit. MHI maintains that the facts in this investigation are consistent with the recognition by the SAA of those situations where unprofitable sales will be included in the calculation of the antidumping duty margin because, in this investigation, the Department determined that it was unnecessary to initiate and conduct a sales-below-cost inquiry. Also, MHI cites *Federal-Mogul Corporation* v. *United States*, 20 CIT ____, Slip.Op. 96–37 (February 13, 1996)(*''Federal Mogul''*), to support its claim that no home market sales should be excluded, because the burden of presenting evidence of below-cost sales rests on the petitioner, who failed to do so in this case. Absent a formal investigation of sales-below-cost, MHI argues, there is no showing that MHI's home market sales are not in the ordinary course of trade.

The petitioner asserts that MHI has misread *Federal Mogul* in its arguments. First, the petitioner maintains that *Federal Mogul* is of little relevance since it was decided under the former statute and Congress has effectively revised this area of agency practice. The petitioner states that the SAA clearly provides that, in most investigations, profit will be calculated using only above-cost sales. Second, the petitioner maintains that even under the old law, *Federal Mogul* does not support MHI's proposition that the petitioner bears the burden of presenting evidence that below-cost sales are outside of the ordinary course of trade. According to the petitioner, the court's ruling actually said that the reviewing court owed substantial deference to the agency and that, on appeal, the petitioner bore the burden of showing that the agency abused its administrative discretion. The petitioner states that the proposition that the Department unlawfully excluded below-cost home market sales is untenable, because no requirement for a formal initiation of a below-cost sale investigation is found in the new statute. Rather, the petitioner contends, the statute at section 773(b)(1) of the Act provides that the Department need only have ''reasonable grounds to believe or suspect'' that the home market sales of the respondent have been made at prices below the cost of production.

DOC Position: We disagree with MHI. While the Department will typically initiate a sales-below-cost investigation before excluding home market sales as being outside the ordinary course of trade for purposes of calculating profit and SG&A for CV, the unique circumstances in this case required that we perform a below-cost analysis even though the Department elected not to formally initiate a sales-below-cost investigation.

Early on in this investigation it was argued by all parties that we should base NV on CV due to the unique and customized nature of LNPPs. The Department determined that the particular market situation of these highly customized and unique products did not permit proper price-to-price comparisons and, accordingly, we based NV on CV. The petitioner subsequently filed a timely and proper cost allegation which alleged that ''Japanese producers have sold the foreign like product at less than the cost of production in the home market.'' We elected not to formally address petitioner's below-cost allegation because we knew that we were going to base NV on CV for all

respondents, and the respondents'' questionnaire responses confirmed that transaction-specific cost data was readily available. Moreover, we did not want to burden respondents with having to respond to the very detailed section D questionnaire for home market sales that a formal below-cost investigation would require. Although, arguably, we should have formally addressed the sales-below-cost allegation, at the time of its filing, we did not foresee the implications a formal initiation of a sales-below-cost investigation would have on the CV profit and SG&A calculations.

In past cases, under the old law, with similar types of products (i.e., large customized products that are manufactured over an extended period of time) in which we automatically based foreign market value (now NV) on CV, the Department relied on the statutory minimum of eight percent for profit. See, *e.g., Preliminary Results of Administrative Review: LPTs from Japan,* 57 FR 23,204 (June 2, 1992); and *Final Determination of Sales at LTFV: MTPs from Japan,* 55 FR 335 (January 4, 1990) (''*MTPs Final Determination (1990)*''). We realized early in this case that in accordance with the new law, we would have to compute actual profit and SG&A as opposed to simply relying on the statutory minimum of eight percent. Accordingly, we requested sales and cost data for each sale in the home market which fell within the purview of this investigation.

Section 773(e)(2)(A) of the Act specifies that SG&A and profit for CV be computed using only those sales of the foreign like product that were made in the ordinary course of trade. We analyzed the contract-specific price and cost information we received from respondents. This information indicated that there were below-cost sales made in the home market, in substantial quantities, and over an extended period of time. Although we did not *formally* initiate a cost investigation under section 773(b) of the Act (despite the fact that a timely allegation had been made by the petitioner based on the respondent's data), the unique cost reporting aspects of this case were such that, in effect, the Department conducted a cost investigation and our analysis revealed evidence that there were home market sales of merchandise within the purview of this investigation which were below cost. Section 771(15) provides that sales and transactions considered outside of the ordinary course of trade include ''among others'' below-cost sales disregarded under section 773(b)(1). The Department interprets this provision to apply to the exclusion of below-cost sales, even if such sales were not formally disregarded pursuant to section 773(b)(1) of the Act.

Comment 4 Each Home Market Sale of a LNPP, Addition, or Component Constitutes a Distinct Model for Purposes of Performing the Cost Test: MHI argues that even if the Department's exclusion of home market sales below cost from its SG&A and profit calculations was permissible, it should not treat the home market sales as distinct models for purposes of performing the cost test. Respondent refers to section 773(b)(1) of the Act that says the Department is required to exclude home market sales below cost if (1) they are made in substantial quantities, (2) over an extended period of time, and (3) at prices which do not permit recovery of costs in a reasonable period of time. MHI also cites section 773(b)(2)(C) of the Act, which states that substantial quantities must represent 20 percent or more of the volume of sales. In undertaking its preliminary analysis, MHI claims that the Department ignored this statutory definition of substantial quantities and automatically applied its model-specific cost test. Moreover, according to MHI, the Department's normal model-specific cost test loses relevancy when NV is based on CV. MHI refers to Policy Bulletin, No. 94.3, ''Disregarding Sales Below Cost-Extended Period of Time'' (March 25, 1994) to explain that the rationale for this test is to ensure that NV is not calculated for a particular pricing comparison by reference to sales made exclusively below cost.

According to TKS, the Department's model-specific COP analysis and its consequential exclusion of below-cost sales from normal value calculations are not in accordance with subsection 773(b), the SAA, and the Department's own interpretation of the statute. TKS argues that the methodology employed by the Department ''practically read the ''substantial quantities'' and cost recovery requirements out of the law.'' Yet TKS also concedes that the inherent physical diversity among LNPPs is such that ''it would be equally improper'' if the Department were to change the definition of model to encompass all home market sales during the POI. TKS maintains that, with a class of products consisting of highly-valued, uniquely customized machines, model-specific analysis is not possible. TKS argues that disregarding sales made at below-cost prices is discretionary because the wording in section 773(b)(1) is that the Department ''may'' disregard sales. TKS concludes that because, in its view, the COP test cannot be conducted on a model-specific basis in this case, the Department should exercise its discretion and not disregard home market sales for normal value.

The petitioner maintains that even if the Department decides that the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. Assuming *arguendo* that the Department did not investigate below cost sales pursuant to section 773(b)(1) of the Act, the petitioner maintains that it could nonetheless properly exercise its discretion to exclude such sales from its profit calculations under section 771(15).

Concerning the proper definition of a ''model'' in this investigation, the petitioner agrees with the Department's finding that ''each home market sale of an LNPP, addition, or component, constitutes a distinct model for purposes of performing the cost test'' because of the unique nature of the product under investigation. Accordingly, the petitioner supports the use of individual models to determine which home market sales should be excluded from profit and SG&A calculations because they were sold at less than the cost of production. The petitioner maintains that since the Department's model-specific test was not altered when the statute was amended, the Department properly applied its model-specific test in the preliminary determination. The petitioner disagrees with the respondents'' contention that full cost recovery on each sale is unreasonable in a large capital goods industry. The petitioner asserts that, in setting prices, LNPP producers typically perform cost estimates based on the full cost of production with an allowance for profit so as to cover their production costs on every sale. Thus, the petitioner maintains, a model-specific analysis is appropriate.

DOC Position: We disagree with the respondent that the substantial quantities test must be performed on a basis other than a model-specific basis. In past cases, the Department has routinely performed the cost test on a model-specific basis. See, *e.g., Certain Cut-to-Length Carbon Plate from Sweden,* 61 FR 15,772, 15,775 (April 9, 1996) (Comment 5); *Stainless Steel Angle from Japan,* 60 FR 16,608, 16,616 (1995) (Comment 12). As indicated in the SAA, at page 832, the Department will continue to perform the cost test on no wider than a model-specific basis. In this case, each LNPP sale clearly represents its own unique, customized, model of merchandise.

Comment 5 The Department Should Calculate Profit on the Foreign Like

Product: MHI argues that the Department's preliminary analysis calculated SG&A and profit on both LNPP additions and systems in contravention of section 773(e)(2)(A). MHI notes that additions and systems are not equal in commercial value. Thus, MHI argues that if the Department continues its present methodology then it should only calculate SG&A and profit using home market sales of systems which are MHI's foreign like product.

The petitioner objects to MHI's hypothesis that LNPP systems are a separate like product from LNPP additions. According to the petitioner, the Department has determined that a single like product exists which consists of all LNPP systems, press additions, and press components, regardless of state of completion. The petitioner argues that the Department made home market viability and other determinations required by the statute based on this definition, and that changing the like product definition without cause at this late stage of an investigation would involve reassessment of numerous issues which form the foundation of the Department's proceeding. Thus, the petitioner maintains, MHI's suggestion must fail as an argument unsupported by either the record or administrative precedent.

DOC Position: We disagree with MHI that computing a single profit for both additions and systems is in contravention of section 773(e)(2)(A) of the statute, which merely states that CV shall include, *inter alia,* ''actual amounts'' for profits ''in connection with the production and sale of a foreign like product. * * *'' The SAA makes no mention that the profit calculation should consist of different rates for different pools of products within the foreign like product. From early in the investigation we have determined that a single like product exists, and accordingly have computed profit based on all sales of the foreign like product occurring in the ordinary course of trade.

Comment 6 Home Market LNPP Sales Do Not Constitute a Foreign Like Product: TKS maintains that the Department should base its CV profit calculation on either TKS's average LNPP profit or on the company's financial statement. TKS first argues that section 773(e)(2)(A) of the Act is not applicable to the CV profit calculation because the Department determined that TKS's home market LNPPs do not constitute a foreign like product. According to TKS, because the Department determined that TKS's Japanese sales of LNPP systems, additions and components could not be used as the basis for NV due to the particular market situation, the underlying analysis for that determination compels a conclusion that home market LNPPs are not a foreign like product within the meaning of section 771(16) of the Act (19 U.S.C. section 1677(16)). Accordingly, TKS maintains that section 773(e)(2)A) is not the applicable rule for CV profit calculation. TKS cites the Department's November 9, 1995, CV decision memorandum to support its contention that the Department determined that each LNPP sold by TKS in the United States and in Japan is unique and that the models sold in the two markets are not approximately equal in commercial value. Finally, TKS holds that the Department determined that the LNPPs sold in the United States and in Japan are not ''reasonably comparable'' to each other.

TKS also argues that the correct rule for CV profit calculation in this case is found in section 773(e)(2)(B) of the statute, because the Department found that the particular market situation precluded price-to-price comparisons. According to TKS, the SAA requires that the Department utilize section 773(e)(2)(B) in those instances where the method described in section 773(e)(2)(A) cannot be used, either because there are no home market sale of the foreign like product or because all such sales are at below-cost prices.

TKS also argues that if, assuming *arguendo,* TKS's home market LNPP sales constitute a foreign like product, section 773(e)(2)(B) is still the applicable rule for CV profit calculation in this case because TKS's LNPPs are not sold in the ordinary course of trade. According to TKS, the fact that technical specifications are vastly different within the respective groups of components, additions and systems, LNPPs are, *prima facie,* merchandise produced according to unusual product specifications, which should be excluded from analysis according to section 771(15) of the Act.

TKS offers a second subsidiary argument, that if, further assuming *arguendo,* its home market LNPP sales both constitute a foreign like product and are sold in the ordinary course of trade, section 773(e)(2)(B) still controls CV profit calculations where, as here, the Department has determined that the ''particular market situation'' affecting home market sales does not render price-to-price comparisons feasible. TKS maintains that the SAA language does not limit the applicability of section 773(e)(2)(B) to situations where there are no home market sales of the foreign like product or situations where all sales are found to be made at below-cost prices. TKS argues that the applicability is, generally, for all situations where the NVs resulting from the application of section 773(e)(2)(A) would be ''irrational'' and ''unrepresentative.'' TKS argues that because profits are a significant element of price, it would be illogical for the Department to utilize, for CV purposes, the profits of those sales which it rejected for price comparison purposes.

The petitioner believes that TKS's position is wrong because the Department has clearly defined the foreign like product to be LNPP systems, additions and components. The petitioner states that the fact that price-to-price comparisons could not be made does not mean that home market sales are outside the ordinary course of trade. The petitioner supports the Department's analysis that matching sales would require cost adjustments tantamount to computing a CV for each sale. The petitioner maintains that TKS's arguments are inconsistent with the precedents in *MTPs Preliminary Results (1996)* and *LPTs from France* (60 FR 62808, December 7, 1995), wherein the Department rejected price-to-price comparisons and instead used CV. According to the petitioner, in those cases the Department continued to use the home market profit data even though it could not perform price-to-price assessments, thereby negating the idea that the lack of price-to-price comparisons indicate that domestic sales are outside of the ordinary course of trade.

DOC Position: We disagree with TKS that there were no sales of the foreign like product in the home market during the POI. TKS is incorrect to suppose that because we did not find home market sales which provided practicable price-to-price matches, no foreign like product existed. The foreign like product as defined by section 771(16) of the Act, (*i.e.*, sales of LNPP in Japan) did exist, as revealed by our examination of LNPP equipment sold in the home market for purposes of the Department's home market viability test (pursuant to section 773(a)(1)(C) of the Act) as stated in our November 9, 1995, decision memorandum regarding the determination of the appropriate basis for NV. However, the degree of unique customization for customers made the difference-in-merchandise adjustment for product price matching potentially so complex that the use of CV provided a more reliable and administrable methodology for establishing NV. As stated in our November 9, 1995, decision memorandum, the Department

declined comparison of products within the same class of products which have such prominent physical dissimilarities as to make comparisons and calculations of adjustments for such physical differences impracticable, pursuant to the ''particular market situation'' provision, section 773(a)(1)(C)(iii) of the Act.

Because we have not determined the absence of the foreign like product in Japan, we disagree with TKS's suggestion that section 773(e)(2)(B) should apply in determining CV profit. The correct statutory provision for CV profit calculations in this instance is section 773(e)(2)(A) and, accordingly, the Department's final margin calculations were formulated under its guidelinesse.

Comment 7 The Department Has Discretion Not to Disregard Below-Cost Sales: TKS maintains that the legislative history of the 1974 Trade Act, as reemphasized in the URAA with respect to section 773(b), shows the Congressional intent that certain types of below-cost sales should not be disregarded for foreign market value (now NV) determinations. According to TKS, this legislative history reveals the intent of Congress that the Department exercise discretion under section 773(b) based upon the ''rationality of exporters pricing practices.'' TKS lists three reasons why the Department should consider the characteristics of the LNPP market and the rationality of the pricing practices of market participants such that it should exercise its discretion not to disregard sales made below cost. First, TKS claims that below-cost sales of LNPPs are not systematic, since they are infrequent transactions for unique, customized products. Second, TKS claims that below-cost sales of LNPPs occur for reasons beyond the producer's control. Third, TKS maintains that even though the producer may sustain losses in isolated sales, the producer usually recovers the losses over a period of three to four years. TKS claims that this is an appropriate case for the Department to exercise its discretion by not disregarding below-cost sales, as this instant case is the first antidumping investigation in which the Department considers the application of section 773(e)(2)(A) in the context of job-order cost accounting.

With respect to the enforcement of the statute, the petitioner's approach is diametrically opposed to that of TKS. The petitioner maintains that, even if the Department decides that the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. The petitioner therefore urges the Department to use that discretion for the express exclusion of those home market sales below the cost of production.

DOC Position: We disagree with TKS. The circumstances in the instant investigation do not call for the Department to exercise its discretionary authority to include sales made below cost, which were determined to be in substantial quantities, over an extended period of time, and prices which do not permit recovery of costs in a reasonable period of time. We agree with the petitioner's earlier comment that, that even if the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. If a company's market strategy results in below-cost sales of LNPPs, then a willingness to sell below cost is not negated by the relative infrequency of transactions for unique, customized products. First, the Department does not analyze the intent, *per se,* of the respondent in dumping its products, whether above, at or below cost. Second, even if intent were a factor, we believe TKS's arguments regarding job-order costing are incorrect. The procedure of developing each project during the sales negotiating and pricing process gives LNPP manufacturers every opportunity to recognize that they are concluding transactions that will be below the cost of production. Also, TKS's claim that it recovers its losses from a particular sale over time shows that it is necessary to analyze each sale as its own model. If costs cannot be recovered for each sale, which takes several years to conclude in delivery and installation, then that sale should be excluded. If TKS is willing to sell below cost for a particular sale, hoping to recover costs through other projects, whether subsequent sales of press additions and/or through servicing contracts, then it has, in effect, purposely used a transaction as a loss-leader, to the point of selling below cost.

If we examine past circumstances where the Department has exercised its discretionary powers, and investigated the issue, not in terms of intent, but in terms of unique market conditions for particular products, we must still conclude that TKS has no basis to claim that below-cost sales of LNPPs occur for reasons beyond the producer's control. An example of sales where the Department has historically exercised its discretion not to exclude certain sales below cost occurs in the case of perishable agricultural products. *See, e.g., Final Results of Administrative Review: Certain Fresh-Cut Flowers from Mexico,* 56 FR 1794 (January 17, 1991). Flowers, fruits and vegetables are raised and sold en-masse, are subject to various conditions of weather, have a short shelf-life, and are often sold on a consignment basis. Thus, the Department has considered such products subject to forces beyond the producer's control which may cause occasional sales below cost. By comparison, LNPPs are precisely the appropriate case for the Department to exercise its discretion to disregard the below-cost sales in the context of job-order cost accounting, for in the context of this industry, the foreign like product is as removed as possible from the forces affecting perishable products.

Comment 8 Circumstance of Sale adjustment for Credit Expenses: The petitioner argues that the Department should not have deducted credit expenses from MHI's and TKS's CV because CV did not include credit expenses in its original composition. According to its analysis of the preliminary determination calculations, the Department inappropriately failed to include home market credit expenses when calculating CV. Citing *Final Determination of Sales at LTFV: Certain Granite Products from Italy,* 53 FR 27187, 27191 (July 19, 1988), *Final Determination of Sales at LTFV: PET Film, Sheet and Strip from the Republic of Korea,* 56 FR 16305, 16307 (April 22, 1991); *Final Results of Administrative Review: Roller Chain, Other than Bicycle, from Japan,* 55 FR 42602, 42606 (October 22, 1990); and *Preliminary Results of Administrative Review: Certain Fresh Cut Flowers from Colombia,* 60 FR 30270, 30274 (June 8, 1995), the petitioner argues the Department's standard practice requires the addition of imputed credit to CV. The petitioner maintains that in the instant investigation, when the Department made a circumstance of sale adjustment by subtracting home market credit expenses from CV, it removed an expense from a price that did not include that expense in the first place.

MHI argues that the Department properly excluded home market credit expenses in its CV calculations. MHI further argues that the Department has recently changed its practice as found in *Final Determination of Sales at LTFV: Certain Pasta from Italy,* 61FR 30326, at Comment 14 (June 14, 1996) (''*Pasta*''). MHI explains that the Department justified its change in practice by citing sections 773(b)(3)(B) and 773(e)(2)(A) of the Act, which direct the Department to calculate SG&A, including interest expense, based upon actual experience of the company. MHI contends that because the Act defines the calculation of general expenses for COP and CV in the same way, the Department stated that it would be inappropriate to

calculate interest expense differently for COP and CV. Furthermore, MHI contends that because the Department computes profit as the ratio of profit earned on home market sales to the cost of production, applying the ratio to a COP inclusive of imputed credit would be mathematically incorrect.

TKS maintains that the petitioner's arguments are moot because they rely solely on the Department's practice prior to the 1994 amendments to the Act. TKS argues that the petitioner's position would only have validity if applied to cases investigated under the old law. According to TKS, the Department'' treatment of imputed credit is correctly based on the current section 773(e) of the Act, which requires that the ''actual general expenses'' be added to CV. Since the current Act now provides that general expenses added to CV be limited to actual expenses, TKS maintains that imputed credit cannot be utilized, as it is not an actual expense, but a measure of opportunity cost. TKS cites to the basic rationale for the calculation of CV outlined in *Pasta,* to support its contention that only actual expenses will be applied to CV.

DOC Position: We agree with respondents. Section 773(e)(2)(A) of the Act requires that the Department include in CV the actual amount of SG&A expenses (including net interest expense) incurred by the exporter or producer. Imputed credit is, by its nature, not an actual expense. Therefore, we did not include imputed credit in the CV calculation for the final determination.

Comment 9: Headcount Methodology vs. CGS Methodology: TKS and MHI offer similar arguments concerning the proper methodology for allocation of general and administrative expenses. Below, Part A summarizes the arguments concerning TKS USA's operations and Part B the arguments concerning MLP's operations.

A. Allocation of TKS USA's Office Administration Expenses

TKS objects to the allocation of TKS USA's office administration expenses on the basis of total CGS. TKS states that these expenses should be allocated on the basis of headcount, which impacts the calculation of both further manufacturing costs and reported selling expenses. TKS maintains that this is required because TKS USA's commercial activities include merchandise other than LNPP, namely (1) Sale of spare parts; (2) the conduct of press audits; (3) the sale and production of control systems; (4) the sale and production of digital ink pumps; and (5) independent maintenance/technical work, which are each conducted by a separate division with specific personnel assigned to each division.

TKS maintains that the Department's allocation of SG&A expenses ignores the diversity of activities at TKS USA and assigns an inordinate share of the expenses to press sales. Although TKS admits that a CGS-based allocation is common Department practice, it claims that such practice is not mandated by either the Act or the Department's regulations. TKS maintains that for the final determination, the Department should exercise its discretion and utilize TKS's proposed headcount methodology to allocate administrative expenses.

TKS maintains that the Department should give consideration to the fact that the headcount methodology is utilized internally by TKS USA in the normal course of business. Thus, TKS argues, to the extent that TKS USA has any historical practice employed previous to the investigation, it involves the headcount methodology.

Finally, TKS cites to the Department's *Final Results of Antidumping Duty Administrative Review: DRAMS of One Megabit or Above from the Republic of Korea* (61 FR 20216, 20217, May 6, 1996), to support its contention that, just as the Department affirms that indirect selling expense allocations are not inflexibly limited to a value-based methodology, the Department should also recognize that G&A expenses should not be limited to a value-based approach.

The petitioner argues that TKS's claim that it allocates G&A expenses based on headcount in the ordinary course of business to each of its separate divisions appears to contradict its submissions. The petitioner cites to TKS's section A response, where it stated that TKS USA ''does not maintain any internal financial statements of profit and loss statements for specific product lines, or specific internal business units.'' The petitioner also notes that TKS seems inconsistent in concluding that allocating TKS USA's G&A costs based on CGS is distortive in light of its position in favor of a value-based allocation of product-specific factory overhead and engineering costs. Finally, the petitioner juxtaposes TKS's reasoning with that of MRD, a respondent in the companion German LNPP investigation, who re-allocated G&A expenses on a value basis while citing to the Department's *Final Determination: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) (''*Carbon and Alloy Steel Wire Rod*)'', MRD recognized the ''subjective allocations'' which management often makes in allocating G&A using bases other than CGS.

B. MHI's Indirect Selling and G&A Expense Allocation

MHI argues that the common G&A portion of MLP's indirect selling expenses should be allocated to LNPPs based on the number of employees involved in LNPP operations. MHI states that allocating common G&A by LNPP sales value does not accurately reflect the common G&A expenses incurred for LNPP sales activity. According to MHI, a headcount methodology of allocation reflects the greater importance and number of resources required to support its commercial press sales at MLP. MHI explains that MLP's staff must spend more time attending to issues related to commercial press sales activities than a sales-based allocation would reflect (*e.g.*, personnel in MLP's accounting and purchasing sections spend significantly more time issuing invoices, monitoring sales accounts receivable, purchasing parts, and recording expenses related to commercial press operations than they do to LNPP operations). MLP explains that it provides financing services solely for commercial press sales. MHI claims that while a headcount methodology would still allocate too much common expense to LNPPs, such an allocation would nonetheless be more accurate than allocation by sales value. MHI states that its existing base of commercial press customers is vastly larger than the LNPP base and that the Department's methodology fails to capture the inherent slant of general expenses toward the servicing and maintenance of MLP's existing commercial press sales. MHI states that a sales-based allocation is a reasonable measure of cost when the only activity is selling. MHI also argues that the Department should consider that headcount methods are employed by MHI in the normal course of business, as would be expected, since sales-based allocations of indirect expenses are uncommon in normal commercial systems.

The petitioner argues that the Department's long-standing policy is to allocate U.S. indirect selling expenses on the basis of sales value, citing *Final Determination of Sales at LTFV: Certain Internal-Combustion, Industrial Forklift Trucks From Japan,* 53 FR 12552, 12577 (April 15, 1988) and the Department's questionnaire. The petitioner notes that the Department rejected the headcount allocation method at the preliminary determination and applied the standard allocation methodology. The petitioner

argues that MHI's use of headcount to allocate these expenses was created for purposes of this investigation and asserts that the Department has rejected such subjective management allocations of U.S. affiliate G&A expenses in prior cases, even where such methods were used in the normal course of business (citing the German companion case to this investigation). The petitioner takes issue with MHI's suggestion that indirect selling expenses are incurred only as a function of the number of employees directly involved in sales and servicing and states that this assertion ignores the fact that companies expend more common effort (*e.g.*, senior management time, travel expenses, and entertainment) to win large-value sales.

DOC Position: The Department disagrees with TKS's contention that TKS USA's office administration expenses should be allocated to its LNPP operations based on relative headcounts.

Similarly, the Department disagrees with MHI's contention that MLP's common G&A expenses should be allocated to its LNPP and commercial press operations based on relative headcount.

As set forth in *Carbon and Alloy Steel Wire Rod*, our normal methodology for allocating G&A expenses to different operations is based on CGS. Our methodology recognizes the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, headcount) is purely speculative. The Department's normal method for allocating G&A costs based on CGS takes into account all production factors (*i.e.*, materials, labor, and overhead) rather than a single arbitrarily chosen factor. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we continued to allocate such costs for the final determination based on CGS.

Further, because we have treated the common G&A expenses in question as part of total G&A rather than as part of our calculation of total indirect selling expenses, the allocation methodology issue for the common G&A expenses impacts the calculation of the G&A rate and has no effect on the indirect selling expense calculations.

TKS-Specific Comments

Sales Issues

Comment 1 Deduction of U.S. Indirect Selling Expenses from CEP: As noted in detail in the *Common Issues* section in the companion German notice, the petitioner maintains that the Department failed to deduct many of TKS's U.S. indirect selling expenses because they were recorded in the accounts of the foreign LNPP manufacturer. According to the petitioner, the Department should deduct all indirect selling expenses incurred on behalf of U.S. sales, irrespective of the location at which the expenses are actually incurred or the location of the company in whose books the expenses are recorded.

As noted in the *General Comments* Section, above, TKS maintains that the Department has adopted a new methodology for calculating indirect selling expenses pursuant to the enactment of the URAA which make petitioner's arguments moot. TKS also makes the following arguments specific to its questionnaire response.

TKS disagrees with the assertion that it was unwilling to accurately segregate expenses related to Japanese versus U.S. economic activity. TKS maintains that the record of the investigation demonstrates that it properly reported expenses and that there is no indication of unwillingness to comply with Department instruction to separately report expenses; TKS cites to the verification report to bolster its conclusion that the reported indirect expenses incurred in Japan on behalf of sales, including exports, do not contain U.S. economic activity.

Lastly, TKS argues that if the Department does deduct from CEP indirect selling expenses incurred in Japan on behalf of U.S. sales, then the amount reported by TKS is the correct amount. TKS argues that its methodology, whereby it divided total indirect selling expenses incurred in Japan by the company headquarters, exclusive of branch office expenses, by the total transfer price value of all sales, is methodologically sound. It maintains that the expenses reported are in support of TKS USA and related to intra-company communications. Furthermore, TKS argues that since it is the sales price between TKS Ltd. and TKS USA which is reported in the company's financial statements, TKS should allocate total selling expenses incurred by the Tokyo office over the total sales as shown in the financial statements. TKS maintains that if the DOC does deduct indirect selling expenses associated with U.S. sales but incurred in Japan, then it should apply this ratio to the transfer price of each U.S. sale. TKS maintains that deriving a factor based on total sales revenue and then applying that ratio to each transaction's gross sales value would distort the results for two reasons: (1) The U.S. subsidiary is involved in further manufacturing for some sales, so that there can be a significant difference between transfer price and sales price; and (2) theoretically, the Department's proposed calculation method should not result in significant differences in the final calculated per-unit amount of U.S. selling expenses.

DOC Position: We disagree with respondent's arguments. Since TKS calculated a universal indirect selling expense factor, including therein all expenses incurred in Japan associated with U.S. sales (and even included trade show expenses which were physically incurred in the U.S.), such expenses should be deducted from CEP, in keeping with the Department's definition of U.S. indirect selling expenses in *Final Determination of Sales at LTFV: Certain Pasta from Italy*, 61 FR 303256 (June 14, 1996).

With respect to the numerator of TKS's reported indirect selling expense factor, TKS must report all home market expenses since it is including all home market sales in its denominator. TKS's argument in its submissions that the branch offices have nothing to do with export sales is besides the point—the sales revenues included in the denominator have nothing to do with export sales either. The fact is that TKS has calculated a universal indirect selling expense factor for all sales in all markets, not a factor pertaining exclusively to TKS USA sales, not even exclusively to export sales.

With respect to the denominator, TKS is mixing apples and oranges in its calculations. The portion of its denominator for home market and third-country revenue represents gross sales values; it is only the U.S. sales value which represents TKS Ltd.'s sales to a subsidiary. As TKS reported, and the Department verified, TKS Ltd. sold direct to end-users and, on occasion, direct to unaffiliated middlemen such as leasing companies in the home market. In fact, it is this absence of a Japanese sales subsidiary which is part of TKS's arguments for a CEP offset based on a claimed single level of trade in Japan different from that in the United States. The indirect selling expenses which are incurred for all sales should be allocated over the sales value of all sales, not over a mix of domestic sales value, third-country sales value and U.S. transfer prices.

It is because TKS's original calculations are such a hybrid that the correction to total revenue in the denominator slightly decreases the indirect selling expense ratio, whereas the proper application to gross sales

value increase what TKS called the ''per-unit'' amount. TKS, arithmetically speaking, was slightly overstating the size of the expense factor, but in applying that factor to non-arm's-length transfer prices, was significantly understating the per-press sales expenses. Even if all of the denominator were comprised of transfer price values, it would not necessarily be allowable as an allocation basis. TKS points out that the transfer-prices and sales prices differ greatly, which only underscores why the Department is reluctant to utilize in margin calculations prices that, by definition, were not set at arm's length. There may be specific, compelling circumstances whereby the Department exercises its discretion to rely on transfer prices to a limited degree. For example, for MAN Roland Druckmaschinen AG, a respondent in the companion investigation of LNPPs from Germany, the Department applied the indirect selling expense factor to the transfer price for certain sales which consisted only of parts and subcomponents which had no separate contract value. See *Comment 1* of the ''Common Issues'' section of the Federal Register notice for LNPPs from Germany.

We have recalculated the universal indirect selling expense accordingly and applied it to the gross sales value of U.S. sales.

Comment 2 Reporting of All Selling Expenses Related to U.S. Economic Activity: Petitioner maintains that the Department discovered during its Japan verification that TKS incurred selling expenses related to U.S. economic activity, but failed to include the expenses in its reported U.S. indirect selling expenses. The petitioner points to the verification report stating that TKS splits the annual U.S. trade show expenses between TKS USA and TKS Ltd. Japan. Because the trade show is economic activity occurring in the United States, the petitioners argue that TKS should have reported the entire trade show expense as a U.S. selling expense rather than including a substantial portion of the expenses as part of general indirect selling expenses incurred in Japan. Further, the petitioner states that the practice of charging back expenses for U.S. economic activity occurred for numerous other expenses, including testing and training costs. The petitioner points out that since the indirect selling expenses of TKS Ltd. Japan were not subtracted from the U.S. price in the preliminary determination, TKS's charge-back procedures had the effect of overstating the U.S. price in the margin calculations. The petitioner argues that, even if the Department rejects the general argument that all indirect selling expenses supporting U.S. sales, including those incurred as well as recorded in Japan, be deducted from CEP, the Department should at a minimum deduct the Japan indirect selling expenses reported by TKS because of the inclusion of definite elements of U.S. economic activity.

DOC Position: We agree in general with petitioner's argument. We have revised our general treatment of indirect selling expenses incurred on behalf of U.S. sales and recorded by the parent company in this final determination. As detailed in Common Issues comment 1, the Department is deducting from CEP indirect selling expenses associated with U.S. economic activity. We thus capture the expenses which pertain to economic activity in the United States which had not been deducted from CEP in the preliminary determination.

Comment 3 Purchase of Insurance from an Affiliate: Petitioner posits that the information collected at verification supports its conclusion that the insurance relationship between TKS and Yasuda Fire and Marine Insurance Ltd. (''Yasuda)'', is not at arm's length. Petitioner points to the fact that the loss/premium ratio for covering TKS Ltd., even before the Spokane Spokesman Review accidents, had been significantly higher than the ratio which Yasuda normally establishes in creating a policy. These accidents, petitioner states, increased the loss premium ratio even more. Accordingly, the petitioner advocates that the Department increase TKS's reported insurance costs by the factor resulting from the division of the actual loss/premium ratio by the expected loss/premium ratio. The petitioner also asks the Department to re-examine whether any costs related to trucking accidents in the U.S. not covered by insurance should be considered as part of the constructed value of the Spokane Spokesman Review sale.

TKS rejects the petitioner's argument that the Yasuda premiums are not at arm's length and offers the following in support of its position. According to TKS, it requested Yasuda to provide documentation with which the Department could compare TKS premiums to those paid by unaffiliated insurance customers but that Yasuda refused. Since the interest ownership is by Yasuda in TKS, and not vice versa, TKS explains that it had no means of compelling Yasuda to provide the information. TKS cites Article 16 of the Japanese law concerning the Regulation of Insurance offerings which ''* * * generally prohibits extension of preferential treatment for specific clients,'' to support the contention that, legally, Yasuda must set premiums at arm's-length levels.

With respect to the petitioner's request that the Department increase reported insurance costs based on a comparison of Yasuda's preferred premium/loss ratio to that arising out of its actual experience with TKS, the respondent offers several challenges. First, TKS maintains that Yasuda has only identified a ''preferred'' ratio for return on its business efforts, and that there is no evidence on the record that the ratio is anything other than that. According to TKS, absent any information showing how often this ratio is actually achieved in actual business practice, the petitioner cannot draw conclusions about what occurs among unaffiliated customers of Yasuda. Second, TKS argues that the ratio is only a snapshot in time, immediately after a major loss and before the next premium renewal period. Third, TKS argues that petitioner's allegation that the loss premium ratio excludes the Spokane Spokesman Review loss is not supported by evidence, as Yasuda's letter clearly states that the reported loss/premium ratio covers TKS's exported cargos for the period from April 1990 through January 1996. TKS states that petitioner has not provided evidence that the loss amounts factored in the loss/premium ratio are based on claims rather than on insurance-adjuster estimated loss amounts.

Lastly, TKS maintains that, although it believes that the issue of the extent to which TKS's insurance actually covered the costs resulting from transit accidents is moot by virtue of the extraordinary nature of the costs, it must point out that petitioner is factually incorrect in arguing that the actual insurance settlement received in March 1996 did not fully cover the costs incurred in producing and transporting the replacement equipment.

DOC Position: We agree with the petitioner, in part. We agree that TKS was unable to provide sufficient evidence that the Yasuda insurance expenses reported were at arm's length. We disagree with petitioner regarding the relationship between insurance coverage and the treatment of any extraordinary expenses incurred due to in-transit accidents for the Spokane Spokesman Review sale; whether or not such expenses were covered by Yasuda is not germane.

We disagree with TKS's contention that the existence of article 16 of Japanese law automatically means that Yasuda has complied with it. The only

benchmark which TKS and Yasuda provided was Yasuda's statement of its expected loss/premium ratio, which was significantly less than that which Yasuda experienced with TKS. This benchmark shows that the historical experience of Yasuda with TKS in terms of the relationship between the losses claimed by, and premiums paid by, TKS, has been significantly different from the loss/premium guidelines Yasuda claims to adhere to in its normal business practices. We also disagree with TKS that the policy ratio in Yasuda's letter reflects the claims paid on the Spokane accidents; our examination of the values involved show this to be arithmetically unsupportable, as detailed in the TKS July 15, 1996, calculation memorandum. Nevertheless, we have not increased that ratio to include the petitioner's adjustment which imputes an additional claim amount for the Spokane accidents, as the potential effect of those accidents may (and to the degree there is any even partial objective nature to the Yasuda-TKS relationship *should*) increase future premiums. Since the expenses we are using in our calculations are those for the historical premiums paid during the POI, the ratio we used is based on loss/premium ratio for the period covering TKS sales as noted in the documentation reviewed at verification. We have therefore increased TKS's reported insurance costs by the factor resulting from the division of the actual loss/premium ratio by the expected loss/premium ratio as shown in the Yasuda documentation. With respect to question of how the insurance coverage of expenses incurred due to accidents which befell the trucking of LNPP components for the Spokane Spokesman Review sale should or should not affect the final production expenses, see TKS Comment 8.

Comment 4 TKS's Request for Exclusion of a Dallas Morning News Sale: TKS argues that the Department should exclude one of the sales made to the Dallas Morning News (''DMN)'' from its margin calculations. TKS argues that, while the Department is correct to state that the statutory reference to the exclusions of sales outside the ordinary course of trade from the dumping margin calculation does not, *per se,* pertain to U.S. sales, the Department may exercise its discretion to do so if the exclusion of a particular U.S. sale would prevent ''unfair results.'' TKS then reviews the history of the manufacturing of the sale in question, which was comprised of parts sourced from model LNPP units exhibited in 1989, 1990, 1991 and 1993. TKS maintains that it offered a greatly reduced price for this unit due to its belief that the machine had significantly lost its value from the repeated cannibalization of parts and frequent trade show presentations.

TKS argues that the Department should exercise its discretion to exclude sales from the dumping analysis if the sales are not representative of the foreign producer's selling practices in the U.S. market. TKS cites the *Final Results of Administrative Review: Fresh Cut Roses from Columbia,* (60 FR 6980, 7004, February 6, 1995) (''*Roses from Colombia*'') to support its contention that the Department can and has excluded U.S. sales when they ''are clearly atypical and not part of the respondent's ordinary business practices, *e.g.*, sample sales.'' TKS then cites to *IPSCO, Inc. et al.* v. *United States,* 687 F. Supp. 633,642 (CIT 1988) where the court asked the Department to clarify the circumstances under which it would consider exclusion of U.S. sales. According to TKS, on remand, the Department stated that it could exclude certain U.S. sales from the margin analysis where such sales (1) are not representative of the seller's behavior, and (2) are so small that they would have an insignificant effect on the margin. TKS maintains the DMN sale in question is unlike any of the other sales reported, as no other product was produced from trade show models over an eight-year period of intermittent production processes and multiple episodes of intercontinental transportation. TKS buttresses its argument based on the percentage, by value, of total U.S. sales which this particular DMN sale represents (which number is proprietary). TKS states that this value is so small that exclusion of the sale from the dumping margin analysis would not impede the Department's calculations. TKS cites to *American Permac, Inc.* v. *United States,* 783 F. Supp. 1421 1424 (1992) wherein the CIT stated that ''whether sales are in or out of the ordinary course of trade is not the determinative factor on the U.S. sales side of the equation. Fairness, distortion, representativeness are the issues to be examined.'' Finally, TKS disagrees with the Department's preliminary conclusion that the pricing of this DMN sale represented a concessionary price set as an inducement for other sales to the same customer, since TKS had one sale to the DMN prior to the transaction in question.

The petitioner maintains that the Department fully reviewed this issue at the preliminary determination and that TKS has presented no new factual information or argument since the preliminary determination which would change the Department's conclusion. The petitioner maintains that TKS is incorrect in characterizing the DMN sale in question as being the only sale involving a press which was displayed at a trade show, as a later DMN sale also involved a press shown at such an event. The petitioner also maintains that TKS routinely uses parts from inventory in the construction of presses, so that the fact that TKS used inventoried parts for this sale is not indicative of its alleged ''special'' nature. The petitioner characterizes this sale as a loss leader sale, stating that this DMN sale ''was at a very low price because TKS knew that the DMN would soon be in the market for more press additions.''

DOC Position: We disagree with TKS. While the Department has the discretion to exclude some types of U.S. sales when made in insignificant quantities, we do not believe that it would be appropriate to exclude this particular sale. In cases such as *Roses from Colombia* we excluded sample sales and in the *Final Determination of Sales at LTFV: Coated Groundwood Paper from Finland,* 56 FR 56363 (November 4, 1991), (''*Groundwood Paper*'') we excluded U.S. trial sales and sales of damaged merchandise, where such sales were made in small quantities. In those cases, the transactions involved stood by themselves; that is, they were of commodity products which were not directly related to other sales. For example, in the case of *Groundwood Paper,* a printer would never be bound to a paper supplier just because it tried a free roll of normal quality paper, nor would a producer gain any leverage because it found a buyer with a unique application for damaged rolls of paper. Sales of LNPP, however, are of expensive, customized capital equipment which actually change the nature of the printer's operations. In this specific case, in light of the duration of relations between TKS and the DMN, one can reasonably interpret this sale as part of an over-arching marketing strategy vis-a-vis a long-term business relationship with the DMN, i.e., as a loss leader sale.

In this investigation we are reviewing a very small number of large-value contracts whose fulfilment as transactions spans several years. The Department's discretion to exclude sales must take into account the fact that there is such a small pool of sales which are available for analysis. Because the Department is not convinced that the DMN sale in question was so unusual that it should be disregarded, we are including this sale in our final analysis,

and are using the actual costs which were reported in the CV exhibits of TKS's January 18, 1996, supplemental submission, inclusive of any modifications arising from verification. The parts which were sourced from units existing in TKS's inventory were not used parts and should be included in those actual costs.

Comment 5 U.S. Direct Expenses for the Dow Jones Sale: TKS maintains that the terms of sale for the Dow Jones sale were such that the customer, and not TKS, was responsible for transporting the merchandise from the U.S. port to the customer sites, and that the customer independently arranged for the installation of the press additions. TKS objects to the Department's preliminary determination that the number of hours spent on testing and training by TKS personnel warranted the classification of these expenses as further manufacturing costs. TKS maintains that the quantity of time spent on testing and training is not the proper measure to determine such a classification, and instead proposes that the terms of sale and nature of the work performed by TKS should govern. TKS states that at the initial stages of the investigation, both the petitioner and the Department appeared to consider installation and testing and training as selling or movement expenses. TKS states that it ''does not necessarily agree'' with the Department's preliminary analysis that the size of the machinery and complexity of the work compel a classification of installation as further manufacturing. Nevertheless, even assuming that this conclusion was valid, TKS argues that the Department's reasoning does not apply to the specific services performed by TKS for the Dow Jones sale because all manufacturing covered under the contract was completed prior to the importation of the merchandise. Accordingly, TKS describes the services as being the type of work which fits the definition of post-production technical services expenses. TKS points to its accounting records, whose nomenclature assigns the title ''warranty jobs'' in order to support its contention that any technical modifications required during installation do not represent further manufacturing and assembly. While TKS does not deny that the testing operations were complicated since LNPP equipment is itself complex, it does not believe this is sufficient grounds for characterizing the testing and training expenses reported as further-manufacturing costs. TKS states that such activity clearly did not involve an extension of factory work, but only the routine post-delivery technical service required by high-priced, highly-engineered machinery.

The petitioner maintains that TKS's argument is incorrect because the issue of when title transfers is not relevant to the expense classification issue. According to the petitioner, all those expenses which are correctly treated as further manufacturing—installation supervision as well as testing and training, occur after title is transferred. The petitioner also maintains that since TKS classified the Dow Jones sale as a further-manufactured transaction, all of the expenses, (including testing and training if treated as direct selling expenses), and the associated CEP profit would be deducted from the U.S. price.

DOC Position: We disagree with TKS. TKS's argument is incorrect because the issue of when title transfers is not relevant to the expense classification issue. The Department must examine whether or not a party incurs costs and the nature of those costs. Whether a manufacturer delivers goods CIF duty paid U.S. port, delivered, FOB factory gate, or any other delivery designation only designates which movement charges the manufacturer is responsible for. As noted in the Department's general comment section, LNPP installation is not being treated as a movement expense. All those expenses incurred by TKS which we have treated as further manufacturing, *i.e.*, installation supervision as well as the combined testing and training expenses, occur after title transferred. The Department does not have, as TKS implies, a policy whereby direct selling expenses are defined as being incurred after title passes. For example in *Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 60 FR 22045 (May 4, 1995), we treated pre-sale warehousing expenses as direct selling expenses because the producer had a general agreement with its U.S. customer to store subject merchandise; in that case we treated the warehousing as a direct selling expense even though the expenses was incurred before title passed to the customer. .We note here that we would not have treated training as part of total installation activities, but since TKS could not report testing separately from training expenses, we treated the combined value of the two as part of total further-manufacturing.

Comment 6 Exchange Rate for the Spokesman Review Sale: TKS maintains that the Department incorrectly utilized the daily rate as published by the Federal Reserve Board in converting values from yen to dollar amounts for the Spokesman Review sale. According to TKS, the daily rate fluctuated from the benchmark rate by more than 2.25 percent, so that, in accordance with section 773A(a) of the Act, the benchmark rate should be used for this transaction.

DOC Position: We agree with TKS. At the preliminary determination, the Department inadvertently utilized the daily exchange rate for the Spokesman Review sale, whereas, due to the degree of fluctuation experienced on that day, the benchmark rate is the correct exchange rate. We have utilized the benchmark rate for purposes of the final determination.

Comment 7 TKS's May 31, 1996, Submission of Corrected Sales, CV and FM data: The petitioner maintains that there are a series of corrections which TKS failed to include in its May 31, 1996, submission of revised sales, CV, and FM databases. According to the petitioner, TKS failed to make numerous corrections based on the Department's preliminary determination. Further, petitioner disagrees with the argument filed by TKS on May 31, 1996, that if the Department uses a five-year average TKS USA indirect selling expenses ratio, then the Department cannot allocate G&A expenses based on the cost of sales without overstating indirect selling expenses.

TKS contends that its May 31, 1996, submission was filed in direct response to the Department's May 22, 1996, letter instructing it to ''incorporate all corrections of factual information which result from the verification procedure, both those which TKS identified prior to the commencement of verification and those noted during verification.'' TKS maintains that it was not instructed to make the changes which the Department made at the preliminary determination, as these involve methodological issues which TKS has not conceded for purposes of the final determination. As to the calculation of TKS USA indirect selling expenses, TKS argues that its submission was timely and that the arguments rested on data provided in verification exhibit 27 to the U.S. sales verification report.

DOC Position: We agree with petitioner that not all methodological corrections necessary for the final margin calculation are reflected in the data submitted on May 31, 1996, by TKS. We have made, therefore, all necessary corrections and methodological adjustments to the data reported on May 31, 1996, to reflect the policies set forth in this final determination of sales at less than fair value. With respect to the issue

concerning TKS USA indirect selling expenses and G&A allocation, we have modified the calculation of the G&A allocation to further manufacturing thereby eliminating any possible double-counting with respect to the calculation of TKS USA indirect selling expenses. Accordingly, we are applying the corrected ratio established in the TKS USA verification report.

Cost Issues

Comment 8 Treatment of Costs Due to Delivery Accidents: The petitioner maintains that the Department was incorrect in not including in the CV of the Spokane Spokesman Review sale the additional incidental expenses which were incurred because of accidents damaging portions of LNPP towers en route to the customer site, if those costs were not covered by insurance. The petitioner does not agree with the Department's application of the provision of the SAA which supports the exclusion of costs incurred due to unforeseen events. In its preliminary determination, the Department concluded that TKS had general knowledge of the possibility of accidents, but that any specific accident was an unforeseen event. The petitioner argues that a respondent, in its decisions on how to pack and ship LNPPs, its selection of vendors, routes, timetables and insurers, knowingly increases or decreases risks for the particular transactions affected. According to petitioner's reasoning, if certain costs are incurred which are not covered by insurance, this situation arises from multiple factors which resulted from the respondent's business practices. Thus, petitioner argues, the resulting costs are not truly ''unforseen'' and should be included in CV. Petitioner presents several hypothetical situations in which costs increase due to events for which a producer cannot have perfect foreknowledge, but which traditionally have been included as CV.

TKS maintains that petitioner is wrong to claim that specific accidents, one of which resulted in a truck driver's death, were foreseeable and ordinary in nature. According to TKS, the Department's preliminary determination was correct in that it followed a two-part test for determining if costs are sufficiently extraordinary to merit exclusion from the margin calculations. TKS states that under the test used in the remand following the CIT's decision in *Floral Trade Council of Davis California* v. *U.S.,* Slip Op. 92–213, 16 C.I.T. 1014 (December 1, 1992), an extraordinary expense must be: (1) Infrequent in occurrence and (2) unusual in nature. According to TKS, the Department applied this test in the *Final Determination of Sales at LTFV: Fresh Cut Roses from Ecuador,* 60 FR 7019, (February 6, 1995), where the Department rejected a petitioner's arguments that certain losses due to windstorms were foreseeable. After reviewing all incidents of accidents in TKS's history of trucking presses, wherein less than one in three hundred U.S. shipments involved an accident, TKS maintains that the accidents which befell delivery of the Spokane Spokesman Review press additions were similar to phenomena like windstorms, and other events which the Department has previously classified as unforeseeable, infrequent, and hence extraordinary events.

DOC Position: As in the preliminary determination, the Department maintains that the additional expenses stemming from the accidents constitute, in the words of the SAA at page 162 ''an unforeseen disruption in production that occurs which is beyond the management's control.'' See Memorandum from the Team regarding Exclusion of Two Sales, February 23, 1996. As such, when an unforeseen disruption in production occurs which is beyond the management's control, the Department will continue its current practice of using the original costs incurred for production prior to the unforeseen event. Therefore, for purposes of the final determination, we did not include any of the additional expenses incurred as a result of the accidents, irrespective of insurance coverage, in the CV for this sale.

Comment 9 COMAR/Front Page Installation's Reported Costs: The petitioner alleges that TKS understated the costs incurred by its affiliate COMAR/Front Page Installations (''COMAR)''. The petitioner maintains that TKS reported costs for the installation of one of the DMN sales using an indirect overhead rate, inclusive of G&A, which was significantly lower than that contained in COMAR's financial statements. The petitioner objects to TKS's failure to reconcile the reported indirect overhead expenses with those recorded in COMAR's financial statements, despite instructions from the Department to do so. Furthermore, the petitioner questions COMAR's offset to actual production costs for interest revenue, which the petitioner claims is contrary to the Department's long-standing practice. For purposes of the final determination, the petitioner maintains that the Department should revise COMAR's submitted indirect overhead costs based on the rate reflected in its financial statements, and that the Department should disregard COMAR's negative interest expenses.

TKS argues that the reported indirect overhead costs are based on the overhead expenses incurred in the months in which production took place and that documentation reviewed at verification both supports TKS's allocation methodology and reconciles to the company's financial statements. TKS concludes that petitioner's argument is without basis, and that it is unnecessary and unwarranted to adjust the reported costs, particularly given the relative insignificance of the costs to the total price.

TKS also rejects the petitioner's argument to exclude the reported adjustment for interest income from the reported COMAR costs. TKS maintains that the petitioner not only failed to cite any basis for its position, but also ignored the facts in this case warranting the adjustment. TKS argues that while it is true that COMAR does not incur any interest expense, it is not true that there are no interest expenses added to the further-manufacturing costs. According to TKS, the reported further manufacturing costs include interest expense computed as the sum of the TKS consolidated interest rate factor and the total further manufacturing costs, which include those incurred by COMAR.

DOC Position: We agree with TKS in part. Contrary to petitioner's assertions, the Department was able to verify that TKS's submitted indirect overhead costs reconcile to those reported in COMAR's financial statements. COMAR does not ordinarily assign indirect overhead costs to each of its jobs. In order to submit a fully absorbed cost of production to the Department, TKS developed what it characterized as an indirect overhead allocation rate. TKS allocated indirect overhead costs to each job on the basis of the ratio of indirect costs to direct costs during those months production occurred. The Department considers TKS's method of allocating indirect costs as a percentage of direct cost reasonable. Accordingly, no adjustment is deemed necessary.

We disagree, however, that COMAR should be allowed to reduce production costs by the excess of interest income over interest expense. The Department allows interest expense to be offset by short term interest income, but only to the extent the company has interest expense. Not tying interest income in this manner would allow companies to arbitrarily subsidize a product by realizing financial activities not necessarily related to the production of the merchandise in question. Accordingly, we disallowed COMAR's

reported reduction in production costs for the excess of short-term interest income over interest expense.

Comment 10 TKS Indirect Overhead Cost Allocations: The petitioner argues that the Department should reject TKS's indirect overhead cost allocations. According to the petitioner, TKS employed an allocation methodology which was far more general than either the other Japanese respondent or the respondent in the companion investigation of LNPPs from Germany. These other respondents generally calculated separate overhead rates for each major manufacturing process and applied the rates only to those products which undergo the specific processing. According to the petitioner, TKS failed to provide any source documents, or additional detail, for its overhead allocation methodology, or to otherwise support the factory overhead amounts provided in its responses. The petitioner objects to TKS's pooling of LNPP R&D expenses into company-wide overhead costs which were then allocated over total production, thus understating costs. The petitioner objects that TKS's cost system charges much more engineering cost to overhead accounts, as opposed to specific orders. Thus, petitioner reasons, TKS's treatment of a large portion of engineering costs as a part of common overhead results in a shifting of costs from engineering-intensive press additions to press systems, and thus from U.S. market sales to home market sales. Finally, the petitioner maintains that the fact that TKS's normal cost accounting system goes no further to accurately assign costs to particular sales does not absolve TKS from reporting reliable, actual costs to produce the subject merchandise. Petitioner cites precedents where the Department required respondents to report data in a more specific format than that created in the normal course of business. The petitioner thus requests that the Department utilize Rockwell's information as facts available for the final determination.

TKS maintains that its indirect overhead allocation methodology is used in the normal course of business, is in accordance with Japanese GAAP and was thoroughly verified by the Department. Respondent notes that it complied fully with all requests for information made by the Department. TKS argues that a comparison of its allocation method to other companies is not the measure applied by the Department in determining the acceptability of an individual respondent's allocation methodology. Therefore, TKS maintains that the Department should accept its methodology as submitted and ignore petitioner's request to apply as facts available petitioner's own unverified overhead rates.

TKS argues that the information provided to the Department during verification indicates that its allocation method is not distortive. TKS notes that during verification it demonstrated to the Department that both subject and non-subject products are treated identically within its system. Additionally, TKS notes that there is no indication in the verification report that the Department believes the methodology distorts costs.

TKS disagrees with petitioner's contention that its allocation method fails to identify R&D costs incurred to specific LNPP projects. TKS maintains that it is unnecessary for the company to keep product-specific R&D data and gives several reasons why LNPP's are charged with the correct proportion of R&D expenses.

DOC Position: We believe that, in the instant proceeding, TKS's method of allocating indirect overhead costs is reasonable and have relied on it for the final determination. The legislative history of section 773(b) of the Act states that ''in determining whether merchandise has been sold at less than cost [the Department] will employ accounting principles generally accepted in the home market of the country of exportation if [the Department] is satisfied that such principles *reasonably reflect* the variable and fixed costs of producing the merchandise.'' H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973) (emphasis added). The CIT has upheld the Department's use of expenses recorded in a company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See, *e.g.*, Laclede Steel Co. v. *United States*, Slip Op. 94–160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise, and are in accordance with the GAAP of its home country. See, *e.g.*, *Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value (''Canned Pineapple from Thailand)*, 60 FR 29553, 29559 (June 5, 1995); *Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value*, 57 FR 53693, 53705 (November 12, 1992). See also *Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value*, 60 FR 22550, 22556 (May 8, 1995) (''The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise''). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. See, *e.g.*, *New Minivans from Japan; Final Determination of Sales at Less Than Fair Value*, 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether the respondent's indirect overhead allocation methodology results in costs of producing the *subject merchandise* that reasonably reflect its cost of production. At verification, the Department requested and analyzed in detail source documents related to the allocation of the three indirect cost items making up a significant portion of the total indirect overhead costs. *See* TKS verification exhibits 26, 27 and 28. On a sample basis, we analyzed the significance of LNPP-specific indirect overhead costs versus non-LNPP specific indirect overhead costs. *See* TKS verification exhibit 31. We noted that the respective product line-specific amounts were comparable, supporting the conclusion that TKS's method for allocating indirect overhead costs was reasonable. As a result, we have determined that TKS's method of accounting for indirect overhead is used in the normal course of business, in accordance with Japanese GAAP and reasonably reflects the cost of producing LNPPs.

We also disagree with petitioner that by pooling R&D expenses into company-wide overhead costs, TKS shifted costs away from U.S. press sales to home market sales. Petitioner's assumption that TKS incurs higher R&D costs on press additions compared to that of systems is purely speculative. It should also be clarified that the R&D costs pooled and allocated by TKS in its ordinary course of business do not include engineering costs which relate to specific projects as petitioner implies. These engineering costs are assigned to the projects to which they relate.

Lastly, we agree with petitioner that the Department has in past cases

required respondents to report cost data in a more specific format than that created in the normal course of business. We disagree, however, that in this particular instance TKS needed to allocate its indirect overhead cost data in a more specific manner. TKS's primary business activity is the production and sale of LNPPs. Additionally, TKS's non-LNPP production activities utilize production shops and sections that are also used by its LNPP operations. Since production of non-subject merchandise is relatively insignificant and the results of our testing at verification revealed that costs are reasonably allocated, a more detailed cost allocation method is not deemed necessary.

Comment 11 The Reclassification of TKS USA's Rent, Employee Insurance, and Workman's Compensation Expenses: TKS objects to the Department's preliminary determination to disregard TKS USA's reclassification of rent, employee insurance, and workman's compensation expenses from SG&A to indirect overhead. TKS maintains that its total SG&A expenses, as reported on its audited financial statements, encompass three categories: (1) Indirect overhead expenses associated with the different divisions of the company; (2) selling expenses which are incurred in the selling of presses; and (3) office administration expenses which benefit the entire company. TKS explains that in order to be consistent with its current accounting treatment, it reclassified rent, employment insurance, and workman's compensation from office administration to indirect overhead for two fiscal years of the POI.

The petitioner objects to TKS's request and states that the Department appropriately based its preliminary calculations on the expenses as reported in TKS's financial statements. The petitioner states that TKS has not submitted overwhelming evidence which petitioner believes necessary to change classifications of items in audited financial statements. The petitioner disagrees with TKS's contention that the 1995 classification of such expenses requires a change to the prior years' classifications of expenses. The petitioner states that, regardless of whether or not the prior years' results were reclassified, the expenses in question may appropriately be classified differently depending upon the year incurred. According to the petitioner, internal re-organizations to accommodate an expanding product line may change the nature of some expense from being reasonably applicable to the entire company to being more product-line specific.

DOC Position: We agree with TKS that its classification of these costs as indirect overhead is reasonable. We verified that the method TKS used to allocate the prior year workman's compensation, employee insurance and rent costs is in accordance with its current accounting treatment of these costs and we consider it reasonable for these costs to relate to manufacturing operations. Additionally, we noted that each overhead cost item is allocated based on the factor that drives the cost (*e.g.,* square footage for rent). We therefore relied on TKS's submitted reclassification of these indirect overhead costs for the final determination.

Comment 12 Inclusion of General and Administrative Expenses in Imputed Credit: TKS maintains that the Department's preliminary inclusion of general expenses in the imputed credit calculation is contrary to the accounting principle governing the capitalization of interest, is inconsistent with the Department's past practice, and at a minimum results in a double-counting of the expense items that were included in the general expense factor.

TKS cites Financial Accounting Standards Board (''FASB)'' rule 34 as the accounting principle which the Department has relied upon in past cases as the rationale for capitalizing interest in cases involving merchandise with extended production periods. TKS interprets this principle as applying only to interest expenses, not to movement, selling or general expenses, because general expenses are period costs which are not part of the capital expenditures involved in the calculation of the capitalized interest. TKS concludes that by including general expenses in the calculation of imputed credit, and by calculating the net credit expense as the difference between the sum of production costs plus general expenses and various progress payments, the Department contradicts FASB 34, which explicitly provides that the capitalized interest shall be determined as the net of the actual costs and the actual progress payments.

At a minimum, TKS contends that the Department must adjust its calculation methodology to avoid the double-counting of the expenses that are included in the general expense ratio. Specifically, TKS claims that the allocation of movement expenses and direct and indirect selling expenses to U.S. credit without a proportionate reduction of adjustments to CEP made for the same expenses under section 772 of the Act results in a double-counting of the expenses. TKS cites *MTPs Final Determination (1990)* where capitalized interest was categorized as a manufacturing cost instead of a credit expense, and where the Department explicitly allowed the offset of capitalized interest expense against the company's overall interest expense in the calculations. TKS maintains that likewise, the allocated movement, selling, and general expenses included in the credit calculation should be used to offset the amounts reported as a price adjustment or as a general expense for CV purposes.

The petitioner contends that the Department correctly calculated imputed credit expenses using the net balance of costs incurred and progress payments made during the construction period. The petitioner alleges that TKS's characterization of the Department's calculation of imputed credit as a ''capitalized interest'' methodology is incorrect, and that TKS's references to FASB 34 are not relevant. The petitioner maintains that credit expenses are calculated using the sales price of the merchandise sold, which includes not only the manufacturing costs, but also amounts to cover general expenses. Accordingly, petitioner supports the Department's inclusion of general expenses in the costs incurred, stating that this methodology was necessary to keep the calculations internally consistent, (*i.e.,* so that the credit income and offsetting expense would be calculated on a reasonably consistent basis). The petitioner claims that G&A expenses have always been factored into the Department's normal credit expense calculation.

DOC Position: We agree with petitioner that SG&A expenses should be charged with imputed credit costs. As petitioner noted, it is the full cost of production rather than manufacturing costs that should be assessed with imputed credit. Because SG&A, by definition, are included in COP, and because the purpose of the imputed credit adjustment is to reflect the interest cost associated with the production costs incurred and the progress payments received during the production phase of the LNPP, it is appropriate to include SG&A expenses in the imputed credit calculations. Further, as also stated by petitioner, because the revenue side of our calculation captures the entire LNPP price, the cost side of the calculation should capture all production costs.

We disagree with TKS that the Department double counted general expenses through its application of the imputed credit adjustment. We increased the base to which imputed

credit expense was computed in order to include all general expenses related to each press sale. We did not, as TKS contends, increase the imputed credit expense by the actual general expense amounts incurred.

Comment 13 Transportation and Installation Charges and the Calculation of CEP Profit: TKS maintains that the home market cost of production used in the preliminary determination did not include the reported transportation and installation costs (''PTI)'', thereby understating the total costs and overstating the CEP profit ratio. TKS requests that the Department adjust its calculations to properly account for all costs associated with home market sales by summing the manufacturing costs and the transportation and installation expenses.

DOC Position: We agree with respondent that the Department mistakenly excluded PTI costs in computing CEP profit for the preliminary determination. For the final determination, we recalculated CEP profit to include the PTI costs.

Comment 14 Direct Selling Expenses and COM for U.S. Sales: According to TKS, if the Department continues to allocate the general expenses of TKS USA based on COM inclusive of inputs acquired from TKS in Japan, then it should exclude home market direct selling expenses from COM. Following TKS's logic, the inclusion of the home market direct selling expenses overstates the cost of producing the merchandise sold to the U.S., and therefore overstates the amount of the allocated general expenses associated with each U.S. sale. According to TKS, home market direct selling expenses have no relevance to sales of U.S. merchandise, and, since all direct selling expenses incurred on U.S. sales have already been assigned a proportionate share of the TKS USA general expenses, it is thus unnecessary and improper to include any home market direct selling expenses when allocating TKS USA general expenses to further manufacturing operations.

The petitioner maintains that TKS's argument that home market direct selling expenses should not be included in the COP is based on a presumption that the Department intended to allocate the expenses to the cost of presses as imported (rather than the COP of the press sold in the home market). Assuming *arguendo* that TKS is correct, it agrees that the direct selling expenses should not be included in the calculation of the cost of the press as imported. However, the petitioner states that TKS neglected to mention that the Department would have to replace the direct selling expenses with the movement cost incurred to ship the presses from Japan to the U.S. port. Thus, if the Department decides to apply the U.S. G&A expense to the cost of presses as imported, the Department should deduct direct selling expenses from the COP of the Japanese press, replace the home market indirect selling expenses with the export indirect selling expenses and add movement costs from Japan to the U.S. port.

DOC Position: Since we recalculated TKS USA's further manufacturing G&A expense rate exclusive of the inputs acquired from TKS, this point is moot.

MHI-Specific Comments

Sales Issues

Comment 1 Removing Certain Sales from the Denominator of MLP's Indirect Selling Expense Calculation: The petitioner argues that the U.S. indirect selling expense factor calculated for MLP is incorrect because of the inclusion in its denominator of certain sales which were negotiated and concluded prior to MLP's existence. Thus, it concludes, MLP could not have incurred indirect selling expenses associated with such sales, and they should be removed from the denominator of the calculation. The parallel is drawn with MHI's treatment of the Guard sale in its calculation of MLP's indirect selling expense ratio.

MHI argues that MLP properly included all LNPP sales recognized during the POI in the denominator of its indirect selling expense calculation, because of the activities required beyond the direct expenses incurred for installation and warranty work. Furthermore, MHI argues that for large, custom-built products, such as LNPPs, the end of the negotiation process does not signal the end of the sales process. Therefore, MHI explains that MLP performed sales-related activities during the POI. Moreover, if only sales negotiated during the POI are included, then the amount involved in the Washington Post contract should be included in the denominator for indirect selling expenses. MHI explains that if the petitioner's logic is followed, then the MLP indirect selling expense factor would actually decrease. According to MHI, indirect selling expenses for the Guard were not included in the MLP indirect selling expense allocation because MLP did not recognize the revenue; MLP did recognize the revenue associated with the sales it did make that were negotiated outside of the POI.

DOC Position: We disagree with the petitioner. It is proper to include all sales recognized during the POI in the denominator whether the sale was made before or after the start of the POI since the expenses in the numerator apply to pre-POI sales as well. Even though the pre-POI sales were negotiated and concluded before MLP was founded, the Department calculates indirect selling expenses based on expenses and revenue recorded during the POI. Thus the numerator of the factor calculated utilizes the expenses recognized by MLP in the normal course of business for the period in question and the denominator of that factor utilizes the sales recognized by MLP in the normal course of business for the same period. The Department uncovered no manipulation or distortion which would cause us to reject MLP's normal recording of revenue based on sales recognition. At the preliminary determination the Department made an adjustment to the numerator of the indirect selling expense calculation, basing the allocation of general sales office expenses on sales revenue instead of the head-count methodology submitted by MHI. We have therefore employed an MLP indirect selling expense factor for purposes of this final determination which is exclusive of common G&A expenses. *See* also Japan ''Common Issues'' Comment 9.

Comment 2 Commission Paid to a Possibly Affiliated Trading Company for the Piedmont *Sale:* The petitioner maintains that, in the preliminary determination, the Department incorrectly treated the trading company involved in the sale to the Piedmont Publishing Company as an unaffiliated entity. The petitioner cites many joint ventures by MHI and this trading company as evidence that these are affiliated entities. The petitioner further maintains that the relationships inherent in the membership of MHI and the trading company in the Mitsubishi company group (''Keiretsu)'', including the use of a common corporate name and logo, a tradition of company cooperation, cross-ownership of stock, cross-lending and cross-borrowing, are indicators of affiliation.

According to the petitioner, the affiliation status of the trading company raises a critical issue regarding the commission it received from MHI in connection with the Piedmont sale—namely whether that transaction was at arm's length. The transaction is characterized as not at arm's length by the petitioner, based on the relative size of the commission earned on the Piedmont sale as opposed to that earned by Sumitomo Corporation (''SC'') for the Guard sale. Because MHI did not provide the actual costs incurred by the trading company involved in the

Piedmont sale, the petitioner proposes that the Department apply the effective rate of the SC commission (*i.e.*, the reported SC commission as a percentage of the Guard sales value) to the value of the Piedmont sale.

MHI maintains that its sale to Piedmont is through a company which is not affiliated under the objective statutory criteria. MHI argues that the Department should reject the petitioner's request to adjust upward the reported commission paid by MHI for the Piedmont sale. MHI argues that investments between companies are not covered under the statute, specifically joint ownership of subsidiaries. MHI argues that the antidumping law concentrates on the actual *control* of parties, and that mere joint ownership does not rise to the level of control required to find affiliation because the trading company involved does not exert direct control through its stock holdings. MHI argues that the relationships among ''Mitsubishi companies'' are insufficient to allow MHI to control the trading company in the Piedmont sale, or to allow the trading company to control MHI.

MHI argues that petitioner's assertions that MHI and the trading company are affiliated through: membership in a Keiretsu, common name and a logo, traditional business relationships, significant cross-ownership of stock, and cross lending and borrowing, fail to satisfy the ''control'' test for affiliation. MHI argues that the SAA does not presume that members of family groupings are affiliated and that this is only one factor for consideration. MHI also argues that nowhere does the antidumping law or the SAA suggest that common name, logo, and traditional business relationships establishes control. MHI also argues that affiliation through stock ownership is measured by a five-percent-or-greater threshold and the antidumping law does not deem shareholders as affiliated based on comparative (*i.e.*, cumulative company group) share holdings. Furthermore, MHI argues that MHI and the trading company in the Piedmont sale have no financing arrangements.

MHI further argues that the commission paid for the Piedmont sale is an arm's length transaction requiring no adjustments. MHI explains that the commission for the Guard sale was much greater because the role played by SC was more substantial than played by the other trading company in the Piedmont sale. Enumerating some of the additional functions performed by SC, MHI noted that it prospected for U.S. customers, provided U.S. sales strategy, and negotiated the sale.

DOC Position: The Department disagrees with the petitioner's argument that the sale through the trading company to Piedmont should be treated as an affiliated party transaction for purposes of this final determination. Although MLP is owned jointly by MHI and the trading company, the Department does not view the joint ownership, in this particular situation, as a sufficient indication that MHI's relationship with the trading company is such that either is ''operationally in a position to exercise restraint or direction'' over each other, as opposed to over MLP. We agree that cross-ownership of stock, cross-lending and cross-borrowing, a tradition of company cooperation, and particularly, combinations of significant degrees of such relationships, are possible indicators of affiliation. However, the Department stated in its February 23, 1996, Concurrence Memorandum that the extent of stock ownership in subsidiary organizations greater than five percent between the companies (*i.e.*, their joint ownership of numerous enterprises, particularly LNPP enterprises) is, by itself, an insufficient indication of affiliation. We also maintain that the degree of cross-ownership and the level of joint-financing between MHI and the trading company are not significant enough to be indicators of affiliation.

In its March 8, 1996, submission, MHI provided the proportion of sales made by MHI through the trading company to the number of total sales made by the trading company as well as the proportion of sales made by MHI through the trading company to the total sales made by MHI (*i.e.*, comparative dependence data), basing the trading company's figures on publicly available trade data. MHI also provided additional information on stock ownership in a third party, which was zero. The Department requested MHI to provide the Department with commissions received by the trading company from other parties not affiliated with it, to use in case the Department determined MHI and the trading company to be affiliated and rejected MHI's claim that the commission for the trading company was at arm's length. We also recommended that MHI request the trading company to provide the trading company's selling expenses and G&A for the services provided to MHI in making this transaction. However, MHI stated that it asked the trading company to provide the relevant sales information and that the trading company refused by explaining that it was not affiliated in any way to MHI, and therefore under no obligation to cooperate on MHI's behalf.

The MLP joint venture between MHI and the trading company does not in and of itself constitute control between MHI and the trading company. Moreover, MHI has cooperated and attempted to provide information requested by the Department for its sale through the trading company. Whether the trading's companies lack of full cooperation vis-a-vis reporting its expenses, as an unaffiliated party, should impute any lack of cooperation to MHI is moot in this instance because MHI was able to obtain the comparative dependence data from its own and public sources which was an important factor in our analysis of potential affiliation. Because the information currently on the record allows us to determine that for purposes of this investigation, the trading company is not affiliated with MHI, the data which the trading company did not submit is not required as part of our margin calculations.

For purposes of this final determination, we have decided to treat the Piedmont sale as a sale through an unaffiliated trading company and have used the commission as reported in our final calculation. We note, however, that the Department will continue to develop an analytic framework to take into account all factors which, by themselves, or in combination, may indicate affiliation, such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other. In future investigations and administrative reviews, the Department may need to re-analyze the different aspects of the Mitsubishi group first examined here, based on policy developments.

Comment 3 Proposing a Discount on the Guard Sale: The petitioner proposes that the Department treat an unpaid payment reported by MHI as a direct deduction from the gross Guard contract price, in effect labeling the unpaid payment a discount. The payment was not made because of a dispute between Guard and MHI, the nature of which is proprietary, and discussed in greater detail in the July 15, 1996, calculation memorandum.

MHI argues that the unpaid amount reported by MHI should not be treated as a discount. MHI explains that from a purely commercial perspective, it would make no sense to grant a discount because the unpaid amount is significantly greater than the cost of the item in dispute.

DOC Position: We agree with petitioner that the adjustment to the gross price of the Guard sale should be made by treating the unpaid amount as a discount. In the *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From Mexico*, 58 FR 43327 (August 16, 1993), the Department applied BIA (now facts available) to those instances ''where three U.S. customers refused to pay the full amount of [respondent] ITCO's invoice'' even though ''ITCO continued to carry the unpaid amounts as outstanding balances on their accounts and continues to demand payment.'' We drew an adverse inference and reduced reported prices for these ''unauthorized discounts'' because there was ''no indication of reasonable expectation of payment.'' In the instant investigation of the Guard sale, there is again no indication of reasonable expectation of payment. Further proprietary details have been discussed on the record in the Department's July 15, 1996, calculation memorandum.

Comment 4 The Nature of the Guard Sale, Including the Date of Sale: The petitioner maintains that the transaction which the Department classified as a sale by MHI through SC to the Guard Publishing Company should instead by treated as a sale from MHI to the SC, and that this price should be the basis for U.S. price. The petitioner disagrees with MHI's characterization of SC's role as that of a mere commission agent, primarily because MHI was not a signatory party to the contract which established the sale to Guard. Because the only sales contract to which MHI was a party is the purchase contract issued by SC to MHI, the petitioner believes that the Department's trading company rule requires the Department to treat the sale as made between MHI and SC. Citing the *Final Determination: Certain Forged Steel Crankshafts from Japan*, (52 FR 36984, October 2, 1987) (''*Forged Crankshafts*'') and the court ruling *Peer Bearing Co.* v. *United States*, 800 F. Supp. 959, 964 (CIT 1992) (''*Peer Bearing*''), the petitioner states that the trading company rule provides that a sale to a trading company in a foreign market is a sale to the United States if the manufacturer knows that the merchandise is destined for the United States at the time the sale is made.

First, the petitioner maintains that the evidence examined by the Department establishes that MHI sold the Guard LNPP system to SC. The petitioner stresses that the contract for sale from SC to Guard establishes this as fact. Petitioner criticizes the Department's acceptance of several subsidiary documents as evidence of MHI's involvement in the transaction between SC and Guard. According to the petitioner's analysis of relevant documents, SC could not have acted as MHI's sales agent because MHI obviously confirmed that SC was not authorized to bind MHI to the sales agreement between SC and Guard. The petitioner maintains that there is no documentary evidence that MHI participated in the SC/Guard negotiations, especially with respect to the paramount issue of contract price. While recognizing the necessity that SC consult with MHI on technical matters such as press configuration and installation planning, the petitioner emphasizes that there is no evidence on the record indicating MHI's involvement in establishing the price to Guard and the payment schedule from Guard to SC.

Second, the petitioner maintains that SC's actions throughout the course of the Guard transaction establish that it was an independent trading company and not a commission agent of MHI. According to the petitioner, SC acted in the capacity of an independent trading company: it negotiated, established, and subsequently modified, on its own authority and behalf, the terms of sale of the LNPP system to Guard. The petitioner provides its interpretation of the basic documentation underlying the commission paid by MHI to SC, concluding that SC was not merely a commission agent.

The petitioner states that the Department should consider the date of sale to be that for the purchase order placed between SC and MHI and that the Department was incorrect in its preliminary analysis, which concluded that MHI's role was tantamount to that of a seller in the original transaction between SC and Guard, based on (1) MHI's offer to be responsible for SCs obligations to Guard if there were to be a failure of performance by SC, and (2) MHI's commencement of the design and construction of the press prior to a written agreement between MHI and SC. According to petitioner's interpretation, the unilateral offer by MHI to guarantee SC's obligation to provide a conforming press system does not alter the fact that SC sold the subject merchandise to the Guard, but should be interpreted as a warranty by the press manufacturer that it would ultimately produce the goods sold by the independent trading company. The objection is raised that the Department misreads the U.C.C. provision on performance in connection with MHI's initial design and production activities. While the petitioner does not dispute that in certain circumstances partial performance may ratify an unexecuted contract, it maintains that the Department ignores the fact that the only contract to which MHI was a party, and which could thus be ratified, was the purchase order fully consummated later between MHI and SC, and which incorporated in it the terms of the earlier contract between SC and Guard. Because the material terms of sale, particularly price and quantity, were established between MHI and SC at a date later than the contract between SC and Guard, the petitioner maintains that the later date should be used in the antidumping analysis as the correct date of sale. Accordingly, it was only at this point in time that the essential terms were firm so that the parties could no longer unilaterally alter them.

MHI argues that the Department properly analyzed the sale to Guard as a sale between MHI and Guard. MHI disagrees with the petitioner's argument that MHI never had a contractual relationship with Guard. First, MHI argues it played an integral part in making the sale, such as developing cost estimates used to set the price, signing the contract as a witness, and issuing a letter to Guard guaranteeing performance. Second, MHI argues the law of agency provides that when a party holds itself as an agent, it has the ability to bind the principle. Third, MHI asserts that the petitioner's argument that MHI must have produced this LNPP system as a ''subcontractor'' is presented without evidence.

MHI further argues that SC was a commissioned sales agent of MHI, as evidenced by the documentation submitted by it, and agrees with the petitioner when it says the commission agreement did not create a sales contract. MHI maintains that it is a document which establishes the basis for a commission arrangement between a manufacturer and a sales agent and that the amount of SC's commission never involved post-sale negotiation.

MHI also argues that the Department's ''trading company'' rule is not applicable to this sale. More specifically, MHI maintains the petitioner's contention that the Department should treat the purchase orders between MHI and SC as constituting the actual sale is wrong. First, MHI contends that the Department recognized that MHI did not sell a press to SC. Second, MHI contends that the trading company rule allows the Department to capture a respondent's sales which are delivered to the United States, where the respondent knows at the time of sale that the merchandise is destined to the United States. MHI

argues that the essential function of the rule is to determine which of a respondent's sales should be included in the dumping calculation, and contends that the trading company rule has been used to establish the proper U.S. price when the trading company acts as an independent reseller of subject merchandise. Accordingly, a different interpretation is given to *Peer Bearing* whereby MHI holds that the ruling does not require the Department to use the price contained on the purchase order, but stands for the proposition that the trading company rule is discretionary, based on the facts of the case. MHI also maintains that the *Forged Crankshafts* does not apply because in that case the trading company was responsible for setting the price and MHI was responsible for establishing the final price in this investigation. Thus, application of the trading company rule under these circumstances would be inappropriate.

With respect to the date of sale debate, MHI argues that the Department correctly determined the proper date of sale. MHI cites *MTPs Final Determination (1990)* which states that, for sales of custom-built merchandise, the Department should establish a date at the earliest date when terms are fixed. MHI explains that there was confusion regarding MHI's sales process in the home market for certain sales because the essential terms of the sale were not fixed until the purchase order to the trading company was issued. MHI maintains that the Guard sale is quite different, because MHI signed the sales contract.

DOC Position: The Department agrees with MHI that the preliminary determination properly treated the sale to Guard as a sale between MHI and Guard. In the Department's February 23, 1996, decision memorandum, we stated that one of the main issues was whether the sales price between MHI and SC or the sale price between SC and Guard is the appropriate price for our dumping analysis. Because MHI originally only reported the price from MHI to Guard, we requested that MHI submit the price of its sale to SC, as well as provide all basic documentation relating to the roles of Guard, SC, and MHI in this transaction. In our preliminary determination, we explained that the sales documentation provided by MHI demonstrated its integral involvement in the Guard transaction. No information placed on the record since that time, nor any information reviewed during verification, contradicts that conclusion. Following the commission agreement between MHI and SC, MHI was kept fully apprised of the negotiations between SC and Guard. Moreover, MHI's role as signatory witness on the contract between SC and Guard is evidence of MHI's direct involvement with the sale of the product in the U.S. market. The nature of this product shows that each sale involves merchandise which must meet the unique specifications of the customer, and the record shows that MHI began to design and construct the merchandise shortly after witnessing the contract for sale arranged by SC on its behalf. Therefore, we determined that the appropriate transaction for use in our antidumping analysis is the price established in the sale of LNPP from MHI through SC to Guard.

The Department disagrees with the petitioner when it states that the date of sale should be that for the purchase order placed between SC and MHI. As stated in the preliminary determination, section 773(a) of the Act mandates the Department to compare the appropriate transaction to the ''normal value'' of the subject merchandise. Neither the statute nor the regulations determine the precise ''date of sale.'' Our proposed regulations provide that the Department will ''normally'' rely on the date of a company's invoice date as the date of sale. Our practice must also allow for specific instances where commercial realities dictate the use of some other instrument to set the date of sale. Our proposed regulation recognized that the invoice date ''may not be appropriate in some circumstances.'' In this instant investigation, where the long-term sales negotiations, design, production, shipment and installation of LNPPs require contractual documentation, the date of sale of the subject merchandise is best established by the date a contract is signed. Consistent with case precedents involving complex merchandise, such as LNPP, which is custom-made, the Department exercised a greater degree of flexibility in finding the existence of a firm agreement. See *MTPs Final Determination (1990).* The Department's determination of the date of sale was supported by its examination of the sales documentation submitted by MHI. We also looked to contract law (see, *e.g., Gray Portland Cement and Clinker from Mexico,* 55 FR 29,249 (1990)) to identify the point in time when the essential elements of the sale are firm, thus demonstrating an intent to be legally bound.

While the date set by the contract signed by SC and Guard clearly identifies the seller (SC) and buyer (Guard) and sets the quantity and price for this transaction, MHI witnessed the sales agreement between SC and Guard and accepted responsibility for providing the merchandise which fulfilled SC's obligations to Guard. Moreover, after MHI signed the contract between SC and Guard as a witness, it began to design an LNPP system to Guard's unique specifications. Thus, it demonstrated its intent to be legally bound to the agreement through written instruments and its own performance on the contract. *See* U.C.C. § 2–201(3)(a). At verification, the Department examined the written evidence and confirmed the actual company performance to support its conclusion for date of sale. Based on this evidence, the Department determined that, by virtue of MHI's participation in the sales process and its performance to fulfill the terms of the contract, MHI was a party to the sales agreement with Guard.

Comment 5 Treatment of Technical Service Expenses: MHI maintains that the Department erred in its treatment of technical service expenses for the following reasons. First, MHI posits that, even assuming arguendo that installation is treated as further manufacturing activity, the technical services MHI provided had nothing to do with further manufacturing as they were incurred after installation and should not be treated as a part of installation. Second, MHI argues that the Department has usually treated technical service expenses as circumstance of sale adjustments, and should do so again.

The petitioner argues that in the Department's preliminary determination it appropriately treated MHI's ''technical service'' expenses as an installation expense, because when the addendum to the contract covering how such expenses are to be incurred is read in conjunction with the original terms of the contract, it is clear that these technical service expenses relate directly to an alternative method of ensuring the customer that MHI would provide trouble-shooting and other services associated with installation.

DOC Position: We disagree with the respondent. The Department correctly included technical service expenses as a part of total installation expenses. The sale of an LNPP involves the sale of a functional large newspaper printing press. The processes involved in installing the LNPP equipment include all those steps necessary to bring the equipment to a functional stage. This perspective also underlies our classification of the total installation costs as part of further manufacturing. All expenses, including component assembly, integration of newly sourced auxiliary components, site preparation, installation supervision, technical servicing, equipment testing, which

make the LNPP physically functional, are part of an installation process which creates the actual LNPPs which ''are capable of printing or otherwise manipulating a roll of paper more than two pages across'' in the production of newspapers. The Department is treating training expenses, where possible, as a separate category of direct selling expenses, since training involves the development of customers' personnel's operation skills, not the physical preparation and necessary modification of the actual merchandise which produces newspapers.

Comment 6 Inclusion of Indirect Selling Expenses Allocable to Spare Parts: MHI maintains that it reported MLP indirect selling expenses for U.S. sales based on the total contract price of each U.S. sale, inclusive of the value of spare parts. Accordingly, MHI maintains that its calculation of those indirect selling expenses pertained to both LNPP systems and spare parts covered by the contract. Because the sales contracts for MHI's U.S. sales separately identified the value of spare parts, in its preliminary determination, the Department deducted the value of spare parts from the starting price. MHI argues that because it allocated its indirect selling expenses based on the total contract price of the LNPP and spare parts, the Department should exclude an allocable amount for indirect selling expenses incurred on behalf of these spare parts.

The petitioner argues that MHI's argument that the indirect selling rate should be multiplied by the price of an LNPP less spare parts is methodologically inconsistent, since in any rate-based allocation, the transaction-specific value to which the rate is applied should be calculated in the same manner as the denominator used in the rate calculation itself. The petitioner asserts that the denominator used in the calculation of the indirect selling rate includes the value of spare parts. Therefore, the petitioner states that it would be inconsistent to apply the rate to the price of LNPP less spare parts. Furthermore, the petitioner argues that spare parts are not sold but are included free-of-charge in the LNPP sale and are thus a selling expense themselves, and should not carry the burden of an additional selling expense. Accordingly, the Department should continue to allocate total LNPP indirect selling expenses to the total LNPP sales.

DOC Position: The Department disagrees with the respondent's argument that the Department should exclude an allocable amount of indirect selling expenses incurred on behalf of spare parts. We agree with the petitioner that it would be methodologically inconsistent for the Department to multiply the price of LNPP less spare parts when the indirect selling expense ratio includes indirect selling expenses for spare parts in the numerator and spare parts revenue in the denominator.

Comment 7 Interest Rate Used for Calculation of Imputed Credit Expenses: MHI argues that the Department's practice of matching the denomination of the interest rate used in calculating imputed credit to the currency in which the sales are denominated is not applicable in this case. MHI explains that it is inconsistent with the requirement articulated in *LMI-La Metalli Industriale, S.p.A.* v. *United States* 912 F.2d 455, 460 (Fed. Cir. 1990) (''*LMI*'') and interpreted by the CIT in *United Engineering & Forging* v. *United States*, 779 F. Supp. 1375 (CIT 1991), aff'd, 996 F.2d 1236 (Fed. Cir. 1992) that the interest rate used for imputed credit accord with ''commercial reality'' and must be ''on the basis of usual and reasonable commercial behavior.'' MHI argues that the Department's approach used in the preliminary determination is inconsistent with the principles of determining credit expenses based on the lowest available interest rate, and on the lowest rate of the country of manufacture when foreign borrowing is not available to the respondent.

Moreover, MHI contends that the Department ignores the commercial reality for MHI, which is that all of its short-term debt was denominated in yen, so that MHI financed its working capital and accounts receivable for both domestic and export sales with yen-denominated financial instruments. MHI maintains that it would have been irrational, in view of the lower interest rates available in Japan, for it to borrow in dollars. MHI maintains that the use of different interest rates for U.S. and Japanese sales is unreasonable since production costs for LNPPs sold in both markets were incurred in the same factory. MHI explains the circumstance of sale adjustment for differences in credit terms between the U.S. market and comparison market is designed to separate true price discrimination from differences in prices that arise from differences in commercial credit terms in each market.

The petitioner argues that the Department correctly applied a U.S. dollar-denominated interest rate to compute MHI's imputed credit expenses on U.S. sales. The petitioner contends that the Department followed its established policy of basing imputed credit expenses on the interest rate of the currency in which the sales are denominated to correctly reflect the time value of U.S. dollars, the currency of transaction. The petitioner cites the *Final Results of Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 15772, 80 (April 9, 1996) and the *Final Results of Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia*, 61 FR 14049, 54 (March 29, 1996) to support its argument that sales are matched to the currency in which the sale is denominated. Furthermore, the petitioner argues that the Department's approach is consistent with *LMI* where the court stated that ''the imputation of credit cost itself is a reflection of the time value of money. * * *''

DOC Position: We disagree with MHI's argument that the Department's practice of matching the denomination of the interest rate used in calculating imputed credit to the currency in which the sales are denominated is not applicable in this case. As cited in our February 23, 1996, Concurrence Memorandum for the preliminary determination, the Department explained its policy in selecting the interest rate applicable in calculating imputed credit expenses in the *Final Determination of Sales at LTFV: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33555 (June 28, 1995) (''*OCTG from Austria*''):

> A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

The Department disagrees with MHI's statement that the interest rate used by the Department is not in accord with ''commercial reality.'' The ''commercial reality'' should be evaluated on the basis of recognizing imputed credit on the time value of money and the effect of currency fluctuations on repatriating revenue. Furthermore, at verification the Department noted that MHI had U.S. short-term borrowing from an affiliated company. Thus, while the Department would not use the actual interest rate of the borrowing from an affiliated institution (as it is of questionable arm's-length nature), its existence indicates the ability and readiness of MLP, in general, to support its LNPP

activities which result in U.S. dollar-denominated revenues by borrowing in U.S. dollars. Thus, the Department's approach is consistent both with its practice in *OCTG from Austria* in that the first priority is to match the denomination of the interest factor to the denomination of the receivables in question and with *LMI* in that credit costs are imputed ''on the basis of usual and reasonable commercial behavior.''

Comment 8 U.S. Dollar Short-Term Borrowing from Unaffiliated Lenders: MHI notes that as observed in the MLP sales verification report, MLP had a small amount of U.S. dollar-denominated borrowing from an affiliated company but also maintains that this fact does not warrant any revision to MHI's reported data. Stating that it had no borrowing in U.S. dollar-denominated instruments from any unaffiliated lenders, and that since the Department's normal practice is to exclude borrowings from affiliated lenders in the computation of short-term interest rates for imputed credit, MHI claims that the affiliated borrowing is technically irrelevant to the margin calculations.

DOC Position: The Department agrees with MHI that it is the Department's practice to apply only short-term borrowing which is from unaffiliated parties. Therefore, the Department will not make any adjustments to imputed credit using the short-term interest rate from MHI's affiliated company.

Comment 9 Guard Commission: MHI maintains that the amounts it reported for its commission payments on the Guard sale were verified and contends that the values it reported are correct and accurately reflect the structure of this complicated transaction. If the Department were to modify the amount of commission reported, then MHI argues that the Department should ensure that it makes a comparable adjustment in the imputed credit earned by MHI on the sale.

The petitioner argues that verification confirmed that MHI misreported the total ''commission'' earned by SC on the Guard sale and argues that SC retained a payment and mark-up, plus an additional amount not factored into the commission calculation. In order to argue that the additional amount was interest earned on payments from the Guard to SC which was ''kept by SC in agreement with MHI,'' the petitioner cites directly to the Department's verification report. The petitioner asserts that even though the additional income was used to cover U.S. duties and brokerage, it should be included as commission expense.

DOC Position: We disagree with the petitioner, in part. The direct payment portion of the commission, together with the amount of ''mark-up'' between the contract value at which Guard purchased the LNPP and the invoice price which was owed by SC to MHI, have both been treated as the total commission amount on the sale. As noted in MHI comment 4, above, the Department has determined that the correct sale is from MHI to Guard, and that the correct starting price is the price paid by Guard. We must therefore deduct from the starting price whatever actual *sales* revenue was not received by MHI, that is, the mark-up between the purchase price between MHI and SC and the amount paid by Guard to SC. We disagree, however, with the petitioner's suggestion that the additional amount of *interest* income earned on payments from the Guard to SC and kept by SC in agreement with MHI, be deducted from the reported gross price. The majority of the interest earned on the payments from the Guard to SC was retained by SC. Only a small portion of the interest earned was transferred to MLP and included by MHI as a U.S. price increase. The amount of interest income retained by SC represents the time value of SC holding payments from Guard. Our imputed interest calculations begin measuring credit income/expense from the time payments begin to be made from SC to MHI. Because we verified payments as received and recorded by MHI (SC being an unaffiliated party not subject to verification), we should not use Guard's payment structure to SC as the framework for our imputed interest calculation. Thus we should not include the measure of the time value of holding payments during that same time frame, *i.e.*, as payments flowed from Guard to SC, in determining the extent of the commission. However, as a corollary, we should not, and do not, include the additional payments from SC to MHI which resulted from interest income earned but *not kept* by SC for that same time frame—such amounts, because they exceeded the limits on actual interest income agreed to with MHI, were turned over to MHI by SC.

Comment 10 Cost of Services and Materials Provided to MHI's Customers: MHI disagrees with the conclusion stated in the MHI sales verification report that the net value of free services and materials provided on the Guard sale were not reported in MHI's response. MHI contends that all costs associated with both parts and services were reported to the Department.

DOC Position: The Department agrees that MHI reported the costs associated with the free parts and free services, but would modify its conclusion to state that MHI did not report the net value of the free parts and services as an adjustment to the gross price; this is important because MHI did provide the value of other free materials both in the form of a deduction from gross price and, alternatively, as an addition to total contract costs. Since the Department, in its preliminary determination, deducted similar free options from the total contract price wherever possible, instead of increasing CV by the associated costs, our verification report note was intended to reflect that MHI had not used the same identifiable format for the materials and services in question. Because the costs of free services were subsumed in the total expenses reported to the Department, and used in the current format of the calculations, no modification to the U.S. price for the free services is required. However, because the production cost of free parts is not being included in CV, the total value of free materials reported to the Department for the Guard contract has been increased by the value for the additional free parts observed at verification. The proprietary details are contained in the July 15, 1996, MHI Calculation Memorandum.

Cost Issues

Comment 11 Allocation of Further Manufacturing G&A: The petitioner agrees that the investigation period for MHI provides an adequate time frame to sufficiently alleviate annual fluctuations and provide a representative U.S. G&A rate for MLP. However, the petitioner objects to the methodology employed at the preliminary determination in applying this rate to individual U.S. sales. According to the petitioner, MHI calculated the U.S. G&A rate by dividing MLP's total LNPP G&A expenses by total LNPP sales revenue. Petitioner protests that the Department incorrectly allocated U.S. G&A expenses back to individual U.S. sales in the preliminary determination by multiplying this U.S. G&A rate by the costs associated with U.S. further manufacturing only. According to petitioner, the Department has two remedies available: (1) If the Department continues to accept a U.S. G&A expense ratio based on total LNPP sales revenue, then it must apply that rate to the entire value of each sale, or (2) the Department may recalculate a U.S. G&A rate based on MLP's LNPP cost of sales for the relevant period and multiply this revised rate by the total cost of sales (*i.e.*, the foreign COP plus U.S. further-manufacturing costs) of each transaction.

While the petitioner asserts that the Department under-allocated U.S. G&A expenses, MHI maintains that U.S. G&A expenses were over-allocated. MHI argues that the rate computed was based on an allocation of both G&A and indirect selling expenses over MLP's cost of goods sold and not over sales value, as petitioner claims. MHI asks that the Department utilize the allocation formula presented in its case brief for purposes of the final determination.

DOC Position: We agree with petitioner that in the preliminary determination, a G&A rate which was based on MLP's total LNPP sales was applied to only the costs associated with further manufacturing. For the final determination, we recalculated a G&A rate based on MLP production costs incurred in the U.S. and applied the rate to MLP's further manufacturing costs. This method effectively allocates G&A expenses to the individual U.S. sales on the same basis used to calculate the rate. In our computation of the G&A rate, we excluded the indirect selling expenses that were erroneously included in the submitted MLP G&A rate used in the preliminary determination.

Comment 12 The Application of the Major Inputs Rule: MHI argues the Department misapplied the major inputs rule and maintains that the rule is appropriate only in the context of diversionary dumping. MHI argues that the Department's application of the major input rule cannot be reconciled with the purpose of the rule. MHI states that major input prices can be adjusted only when the Department has received a specific allegation of below-cost sales of major inputs. In this investigation, the Department has not received any request from the petitioner to investigate below-cost sales of major inputs. MHI claims the Department requested COP information from MHI suppliers it deemed affiliated without the ''reasonable grounds'' necessary for such a request.

Furthermore, MHI argues that, if the Department were to argue that its application of the major inputs rule in this case was an application of the ''transactions disregarded'' rule, then such an approach would still be contrary to the Department's administrative practice for investigating and adjusting the input prices for affiliated parties. MHI contends that the methodology employed at the preliminary determination differs radically from that used in other proceedings initiated since enactment of the URAA insofar as the Department has normally defined a ''major'' input as an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs to produce one unit of the merchandise under review. MHI refers to antidumping questionnaires issued by the Department in recent proceedings to support this definition of a major input. MHI argues that the Department's thresholds of two percent for components and five percent for the system are not representative and that a range of ten to twenty percent is more representative.

Petitioner asserts that MHI has misconstrued the statute. Petitioner states that the statute does not require the Department to have ''reasonable grounds'' to believe or suspect that an input was sold at less than cost of production in order to allow it to investigate affiliated supplier transactions. Petitioner indicates that the statute's requirement is that the Department have such ''reasonable grounds'' in order to permit determination of the value of the major input on the basis of information available regarding such cost of production, citing section 773(f) of the Act.

Petitioner disputes MHI's contention that the Department's thresholds for major inputs of two percent for components and five percent for the system are arbitrarily low. Petitioner claims MHI's position is based on considering only the relative value of an input compared to the total production costs of an LNPP, failing to consider the value of the input in absolute terms, which may be significant even when the relative percentage is not.

DOC Position: We disagree with MHI that the Department inappropriately obtained cost information from MHI suppliers deemed affiliated. MHI incorrectly interprets section 773(f)(3) of the Act to mean that the Department must have reasonable grounds to believe or suspect that a transaction between two affiliated parties occurred at below-cost prices in order to request cost information from the respondent's affiliated suppliers. In *NSK Ltd. et. al.* v. *United States,* Slip Op. 95–178 at 14–45 (CIT November 14, 1995) the CIT ruled that the purpose of section 773(f)(3) of the Act is to permit Commerce to use best evidence available (*i.e.*, the cost of producing the input) when it has reasonable grounds to believe or suspect that below-cost sales occurred. The Court stated that there is no support in the legislative history of section 773(f)(3) of the Act for the claim that the Department must have reasonable grounds to believe or suspect that below-cost sales occurred in order to request COP data from an affiliated supplier.

We disagree with MHI that the Department failed to apply its normal ''significance'' test in determining that an input which represents at least two percent of the total cost of materials, labor, and overhead for any one of the five press components represents a major input in accordance with section 773(f)(3) of the Act. In a typical case in which the subject merchandise only requires a few inputs, we agree that a threshold of two percent for defining a major input appears low. However, in this case, LNPPs require thousands of inputs, with no single input representing a large share of the total LNPP cost. MHI obtained from affiliated suppliers numerous inputs representing over two percent of the total cost of a component (none of which represent more than five percent of the LNPP total production cost), the sum of which represents a significant portion of the total LNPP cost of production. Accordingly, since the inputs we tested represent the most significant inputs used to produce the subject LNPPs, we consider it appropriate in this instance to categorize inputs meeting the two percent threshold as major inputs. Our point is best highlighted by the following hypothetical situation. Suppose 100 percent of the inputs to a press were obtained from affiliated suppliers, with no one supplier providing more than two percent of the total. Under MHI's interpretation, the Department would have no authority to test whether affiliated supplier purchases occurred at above cost prices even though 100 percent of the LNPP inputs were obtained from affiliated suppliers. Even MHI recognizes the unique nature of this case in determining what constitutes a major input. In an August 24, 1995 letter from MHI's counsel, MHI stated that:

> [W]ith respect to suppliers of parts, materials or services incorporated into large newspaper presses, the Department should request ''affiliated party'' information only from suppliers of ''major inputs'' of parts, materials or services * * *. For example, if a major input were defined as any input accounting for one percent of total purchase price * * * 90 percent of the * * * suppliers could be ignored because their sales fall below this figure.

Comment 13 Definition of An Affiliated Supplier: MHI argues that the Department failed to provide an explanation of its selection of affiliated suppliers, thereby acting unreasonably. MHI argues that a statement of reason (*e.g.*, that a party is ''legally or operationally in a position to exercise restraint or direction over {an}other

person)'' is required, citing *A. Hirsch* v. *United States,* 729 F. Supp. 1360, 1363 CIT. Instead, the Department's section D questionnaire suggests that the Department defines ''control'' in terms of sales dependence, insofar as the questionnaire requested that MHI ''list the major inputs received from all affiliated suppliers as well as from suppliers that furnish more than 50 percent of their total annual sales to {MHI}.'' MHI claims the Department erred in using what it believes to be a 50 percent threshold of total annual sales to determine affiliation because such a delineation is excessively low, lacks predictive value, and is inconsistent with the stringent statutory criteria for determining affiliation. MHI states that the Department should apply the criteria listed in the statute including formal criteria that indicate an actual, legal ability to exert control: membership in a corporate family; common officers and directors; partnership; employer-employee relationships; and direct or indirect ownership or five percent or more of the outstanding stock of an organization. MHI contends that the Department's greater-than-fifty-percent sales dependence test is clearly inconsistent with these other criteria. Because sales dependence is not an actual, legal means for exerting direction or control, its predictive value is potentially less than that of the other statutory affiliation criteria. MHI suggests that a very high sales-dependence threshold, such as a weighted-average of 80 percent over four years, would make the Department's affiliation test predictive.

Petitioner contends that determination of affiliation may be based on a close supplier relationship. Petitioner quotes the SAA, which states ''A company may be in a position to exercise restraint or direction, for example through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other''. Petitioner asserts that a company that purchases over 50% of a supplier's sales could extract price and other concessions from the supplier by threatening to purchase the products from another vendor. Because such an action would severely impact the business of the supplier, the purchasing company is in a position to control the related supplier by exerting restraint or direction over the supplier. Thus, petitioner argues that the Department's definition of affiliated suppliers is in accordance with the statute.

DOC Position: The Department agrees with petitioner that determination of affiliation may be based on a close supplier relationship. Section 771(33)(G) of the Act, in addressing affiliated persons, defines such affiliation by the following: ''any person who controls any other person and that other person will be considered affiliated persons.'' Section 771(33) of the Act makes clear that control exists if one person is ''*legally or operationally* in a position to exercise restraint or direction over the other person.'' Further, the SAA, at 168, cites a close supplier relationship as an example of such a situation. The SAA explains that ''the traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm operationally in a position to exercise restraint or direction over another'' and that ''a company may be in a position to exercise restraint or direction, for example through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.'' These SAA quotations refute MHI's assertion that we should determine affiliation based solely on a person's *legal* ability to exert control over another person.

Early in this investigation, we requested information regarding each supplier identified as providing MHI with a production input representing greater than two percent of the total cost of manufacturing (''COM'') for any one component of an LNPP. From this information, we selected a sample of MHI suppliers based on either a combination of supplier reliance and employee relationships, or on significant supplier relationships over an extended period of time. We requested and were provided with cost information for these suppliers (except that, for one supplier, MHI informed the Department that the supplier could not segregate costs on a product-specific basis, and for two others MHI did not submit cost data because it maintained that the suppliers were not affiliated). Although we requested MHI to list inputs obtained from suppliers that furnished more than 50 percent of their total annual sales to MHI, we never indicated that this constitutes affiliation.

Our treatment of close supplier relationships in this case is not necessarily an indication of our future practice. Since this part of the law is new to the Department, we need to refine our interpretation and application of the close supplier provision over time. We note that the Department will continue to develop an analytic framework to take into account all factors which, by themselves, or in combination, may indicate affiliation, such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other. In future investigations and administrative reviews, the Department may need to reanalyze the different aspects of the Mitsubishi group first examined here, based on these developments.

Comment 14 Facts Available for Affiliated Suppliers: MHI argues that, by failing to apply a reasonable affiliated parties methodology, the Department incorrectly relied upon the use of ''facts available'' and thus overstated MHI's estimated preliminary dumping margin. MHI maintains that the Department was incorrect in penalizing MHI for those suppliers that did not report their production costs to the Department. MHI argues that the Department did not give due consideration to the constraints contained in section 782(c)(1) of the Act, which provide that if an interested party promptly notifies the Department that it is unable to submit the requested information, the Department ''shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.'' MHI argues that two of its suppliers were unable to submit the requested information and that it promptly notified the Department. MHI claims that it is affiliated to neither of these suppliers. One supplier stated that it is not in any way affiliated with MHI or subject to MHI's direction or restraint. The other supplier explained that it was a small company and does not maintain cost records by product line. MHI argues that because the company is not affiliated to either of the two suppliers, the Department should not assume that MHI purchased the inputs from these suppliers at below-cost prices. Therefore, MHI claims that the Department should not have adjusted the prices to MHI from these suppliers.

Petitioner claims that MHI's assertion that the Department misapplied facts available is entirely without foundation. Petitioner asserts that by applying a weighted-average affiliated supplier adjustment to the prices of the non-reporting affiliated suppliers, the Department adjusted the non-reporting affiliated suppliers' prices to reflect the differences between the transfer prices and the costs of production for the reporting affiliated suppliers. Petitioner argues that the application of such an

actual weighted-average cost-of-production adjustment is a reasonable and accurate method of adjusting the transfer prices for the affiliated suppliers that did not report their cost of production. Further, petitioner asserts that the Department would have been justified in applying adverse facts available by applying the highest cost of production adjustment available on the record.

DOC Position: We disagree with MHI that the Department's affiliated supplier input cost adjustment constituted use of facts available. The Department computed weighted-average loss percentages for inputs acquired from a sample of affiliated suppliers based on the transfer prices and cost of production data submitted by MHI. The use of this sample, we believe, reduced the burden on MHI. We applied the weighted-average loss percentages resulting from our sample to the total of affiliated supplier transfer prices as reported by MHI. MHI submitted no evidence to support their assertion that the amounts reported to the Department as ''Affiliated Purchases'' (which represents the base to which our affiliated party adjustment was applied) includes the company's purchases from either of the two suppliers in question.

Comment 15 Calculation of CV Profit: MHI states that the Department failed to include freight costs in the total costs deducted from contract prices in its home market profit calculation. MHI maintains that by failing to subtract freight costs from home market prices to measure CV profit, the Department overstated the CV profit rate.

MHI also claims that the Department failed to reduce home market prices by the costs incurred to pack the merchandise. MHI contends that under the approach taken by the Department, CEP profit calculations should include a deduction from gross contract prices of the total expenses incurred in selling the foreign like product in Japan, including packing expenses.

The petitioner argues that the Department did subtract packing costs in determining the CEP profit. The petitioner argues that the packing was included in the cost of production. The petitioner suggests that if the Department decides to deduct packing from home market prices, then it should recalculate home market production costs to exclude packing.

DOC Position: We agree with MHI. We recalculated the home market profit rate applied in our CV calculation to reflect the deduction of freight costs from home market sales prices. We also recalculated the CEP profit rate to reflect the deduction of home market packing costs. Although petitioner argues that we included packing costs in the cost of production (''COP'') in our CEP profit rate calculation, the support petitioner offers in its argument documents our inclusion of packing costs in COP in our home market profit calculation rather than our CEP profit calculation. Petitioner is incorrect in its assertion that we included packing costs in the COP in our preliminary CEP profit rate calculation.

Comment 16 SG&A as Applied to Further Manufacturing for Guard: MHI argues that the Department erroneously included selling expenses in its G&A expense ratio for the sale to Guard. MHI states that MLP did not participate in the sale to Guard and that, since the Department's stated intention was to allocate only MLP's G&A expenses to the cost of auxiliary parts and installation activities, the Department's inclusion of selling expenses is incorrect.

DOC Position: We agree with MHI that the Department inadvertently included selling expenses in its allocation of MLP's G&A expenses to the costs of auxiliary parts and installation activities. In one of MHI's submissions it reported an MLP ''G&A Rate'' which the Department assumed was based solely on G&A expenses and included no selling expenses. At verification, we learned that this rate included indirect selling expenses. For the final determination, we adjusted the MLP G&A rate to exclude those indirect selling expenses.

Comment 17 SG&A as Applied to Further Manufacturing for Piedmont: For the sale to Piedmont, MHI states that the Department double-counted a portion of MLP's SG&A expenses. MHI maintains that since the Department deducted from U.S. price indirect selling expenses which included an allocated amount for common G&A expenses based on sales value, all SG&A expenses attributable to the sale were fully allocated and deducted. Thus, MHI argues, the Department should not allocate MLP SG&A expenses to auxiliary parts and installation, effectively allocating the same portion of MLP's indirect expenses to the Piedmont sale twice.

DOC Position: We agree with MHI that the Department inadvertently included indirect selling expenses in its allocation of MLP's G&A expenses to the costs of auxiliary parts and installation activities. The explanation for the inclusion of the selling expenses in the G&A allocation is addressed in the immediately preceding comment regarding the same issue applied to the Guard sale. MHI is also correct in their assertion that the indirect selling expenses which were deducted from U.S. price included an allocated amount for common G&A expenses. For the final determination, we adjusted the MLP G&A rate to exclude those indirect selling expenses and we excluded G&A expenses from the indirect selling expenses that were deducted from U.S. price.

Comment 18 G&A Expenses as a Portion of Total Further-Manufacturing Costs: According to MHI, the Act states that the starting price used to establish CEP shall be reduced by the amount of any expenses and profit associated with economic activity in the United States. MHI claims that the Department should not include G&A expenses incurred by MHI in Japan in the CEP, as these expenses are not U.S. economic activity, but instead pertain solely to activities of MHI's corporate administrative staff.

The petitioner maintains that section 772(d)(2) of the Act does not state that only costs physically incurred in the United States are deductible from the CEP. The petitioner states that the statute says the Department shall reduce CEP by the cost of any further manufacturing or assembly including additional material and labor. The petitioner contends that ''the Department allocates a proportion of total corporate overhead, including G&A and interest expenses, to U.S. further manufacturing because U.S. activities derive significant benefit from parent corporate operations and oversight.'' Petitioner also observes that MHI's G&A rate was computed based on its consolidated financial statements, which include the further manufacturing costs. Therefore, petitioner concludes that the MHI G&A rate should be applied to the further manufacturing costs.

DOC Position: The Department agrees with petitioner that the MHI G&A rate should be applied to the further manufacturing costs. As indicated by petitioner, MHI's G&A rate was calculated based upon consolidated CGS , which included further manufacturing costs. Therefore, in order to be mathematically consistent, MHI's consolidated G&A rate should be applied to the further manufacturing costs.

Comment 19 U.S. Credit Expenses: MHI argues that the Department double-counted a portion of MHI's interest expenses associated with further-manufacturing activities. MHI maintains that the Department allocated actual interest expense to MHI's further manufacturing expenses and then imputed interest on not only the same further manufacturing expenses but also

on the actual interest expense. MHI maintains that if the Department continues to consider installation a further-manufacturing activity and to calculate an imputed credit associated with such further-manufacturing activity, then it should not also allocate an amount for MHI's actual interest expense to these same activities.

The petitioner argues that MHI confuses the actual corporate financing costs associated with LNPP operations with imputed credit costs. The petitioner asserts that imputed credit expenses should be included with the actual financing expenses in the unadjusted CV because any potential double counting is eliminated in the circumstance of sale adjustment for the imputed credit. Further, the petitioner argues that because the Department constructs a value for the product as imported into the U.S., rather than the further manufactured product, the Department correctly deducted all further-manufacturing costs (including financing expenses) in determining the CEP in order to ensure an apples-to-apples comparison.

DOC Position: The Department stresses once again that the regular interest expense allocation and the imputed interest adjustments have different purposes and require independent analyses. *See* Japan ''Common Issues'' comment 8. MHI is incorrect in its assertion that by deducting both interest and imputed credit in our CEP calculation we have double counted the further manufacturing interest expense. The regular interest expense charged to further manufacturing represents a legitimate LNPP production cost. The imputed credit adjustment should be applied to the full production cost of the LNPP, including the regular interest expense. *See* MHI comment number 20. It is appropriate to impute interest on all production costs expected to be recovered upon sale of the LNPP. Therefore, the Department imputed interest on all the further manufacturing costs, including the actual interest expense.

Comment 20 SG&A Applied and U.S. Credit Expenses: MHI claims that the Department should not have allocated SG&A expenses to MHI's U.S. credit expense adjustment. According to MHI, the Department's preliminary determination stated that its intention was to compute credit on MHI's production activity alone, not on SG&A activities. Furthermore, MHI maintains that the Department did not calculate MHI's Japan market credit expense adjustment based on production plus SG&A. According to MHI, SG&A expenses should be excluded because they are not production costs and are recognized in the year in which they were incurred. MHI also argues that since the Department's decision to compute credit expenses based on production costs was based on the requirement in this industry for substantial capital expenditures over an extended period of time, SG&A expenses should not be included, as they are not capital expenditures and are expensed in the year in which they were incurred.

The petitioner argues that the Department should include SG&A in its imputed credit calculation and maintains that the Department applied the same methodology to both U.S. and home market imputed credit costs. The petitioner alleges that MHI is confusing manufacturing costs with production costs. The petitioner concludes that the Department's statement in the preliminary determination that it has calculated imputed credit on production costs is in fact reflected in the methodology evident in the calculations themselves, since the antidumping term ''cost of production'' includes selling, general, and administrative costs. The petitioner maintains that the Department's inclusion of these costs reflects the fact that, just like material, labor, and factory overhead, SG&A expenses are incurred and must be paid over the lengthy period between the receipt of the first installment payments and the receipt of final payment. Accordingly, the petitioner states that, since, on the revenue side of the equation, the imputed credit formula captures the whole price of the press (*i.e.*, total production costs plus profit), the methodology should include all production costs on the expense side of the equation.

DOC Position: We agree with petitioner that SG&A expenses should be charged with imputed credit costs. As petitioner states, it is the total cost of production rather than manufacturing costs that should be assessed with imputed credit. Because SG&A expenses, by definition, are included in COP, and because the purpose of the imputed credit adjustment is to reflect the interest cost associated with the production costs incurred and the progress payments received during the production phase of the LNPP, it is appropriate to include SG&A expenses in the imputed credit calculations. Further, as also stated by petitioner, because the revenue side of our calculation captures the entire LNPP price, the cost side of the calculation should capture all production costs.

MHI is mistaken in its contention that we excluded SG&A expenses from our home market credit calculations. Appendix Q of the proprietary version of our preliminary determination memo of February 23, 1996 clearly indicates that in our imputed interest calculations we adjusted production costs to reflect an adjusted ''total cost'' (which includes SG&A).

Comment 21 Research & Development Costs: MHI argues that no adjustment for its reported research and development (''R&D'') expenses is warranted. MHI maintains that it reported these costs in the same manner in which they are normally calculated in its job cost system. MHI maintains that since its normal business practice is to calculate R&D costs on a product-specific basis and to allocate such costs to specific sales based on sales value, it was correct for MHI to report the costs to the Department as calculated on that same basis.

DOC Position: Although MHI allocated R&D costs using its normal sales-value accounting methodology, the Department considers such an allocation inappropriate in an antidumping proceeding. Where there is an allegation that a product is being exported and sold at unfair prices (as compared to prices in the exporter's home market), we generally consider it inappropriate to allocate costs incurred for manufacturing operations based upon those same prices. Therefore, we reallocated MHI's R&D costs to all LNPP contracts based on the relative manufacturing costs incurred for each contract.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of LNPPs from Japan, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after March 1, 1996, the date of publication of our preliminary determination in the Federal Register.

Furthermore, we are also directing the U.S. Customs Service to continue to suspend liquidation of all entries of elements (parts or subcomponents) of components imported to fulfill a contract for a LNPP system, addition or component, from Japan, that are entered, or withdrawn from warehouse on or after March 1, 1996. Such suspension of liquidation will remain in effect provided that the sum of such entries represent at least 50 percent of the value, measured in terms of the cost

of manufacture, of the subject component of which they are part. This determination will be made by the Department only after all entries of the elements imported pursuant to a LNPP contract are made and the finished product pursuant to the LNPP contract is produced.

For this determination, all foreign producers/exporters and U.S. importers in the LNPP industry be required to provide clearly the following information on the documentation accompanying each entry from Japan of elements pursuant to a LNPP contract: (1) The identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, and (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of the cost of manufacture of the LNPP component of which they are part.

With respect to entries of LNPP spare and replacement parts, and used presses, from Japan, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service to continue not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry shall continue to be required to provide certification that the imported merchandise would not be used to fulfill a LNPP contract. As indicated above, we will also continue to request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price, as shown below.

The weighted-average dumping margin is as follows:

Exporter/ manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd	62.96
Tokyo Kikai Seisakusho, Ltd	56.28
All Others	58.97

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: July 15, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18541 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–821]

Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or William Crow, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–6320 or (202) 482–0116, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Rounds Agreements Act (''URAA'').

Final Determination

We determine that large newspaper printing presses and components thereof (''LNPPs'') from Germany are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act.

Case History

Since the publication of the preliminary determination of sales at LTFV (60 FR 8035, March 1, 1996), the following events have occurred:

On February 27, 1996, the Department disclosed to the petitioner (Rockwell Graphics, Inc.) and the respondents (MAN Roland Druckmaschinen AG (''MRD'') and Koenig Bauer-Albert AG (''KBA'')) the calculation methodologies used in the preliminary determination. On March 4 and 5, 1996, the petitioner and MRD, respectively, alleged that the Department made certain ministerial errors in its preliminary calculations. On March 15, 1996, the Department determined that none of the allegations constituted ministerial errors. See March 15, 1996, Memorandum from the Team to Richard W. Moreland Re: Alleged Ministerial Errors in the Calculation of the Preliminary Antidumping Duty Margin for MAN Roland Druckmaschinen AG.

On March 4 and 6, 1996, the Department issued supplemental cost and sales questionnaires to MRD and its U.S. subsidiary MAN Roland Inc. (''MRU''). MRD submitted responses to these questionnaires on March 13, 1996.

On March 7, 1996, we met with members of the German Ministry of Economics to discuss the status of the proceeding.

On March 14, 1996, the Department returned the updated cost information submitted by MRD in its March 13, 1996, submission which was determined to be untimely.

In March and April 1996, we conducted verification of the cost and sales questionnaire responses of MRD in Germany and the United States. On April 3 and 25, 1996, MRD submitted the corrections to its response that were presented at verification. On May 14 and 16, 1996, the Department issued its reports on verification findings.

On May 8, 1996, the Department received comments it solicited from interested parties in its preliminary determination regarding scope issues. KBA refiled its scope comments on May

17, 1996, pursuant to the Department's request to exclude new information determined to be filed untimely.

The petitioner and the respondents submitted case briefs on June 3, 1996, and rebuttal briefs on June 10, 1996. On June 11, 1996, the Department requested that MRD revise its case brief to exclude untimely new factual information. MRD submitted revised briefs on June 13, 1996. The Department held a public hearing for this investigation on June 17, 1996.

Facts Available

KBA failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because KBA failed to respond to the Department's questionnaire, we must use facts otherwise available with regard to KBA.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action (''SAA''), at 870. KBA's failure to reply to the Department's questionnaire demonstrates that KBA has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to KBA, an adverse inference is warranted. As facts otherwise available, we are assigning to KBA the margin stated in the notice of initiation, 46.40 percent.

Section 776(c) provides that when the Department relies on secondary information (such as the petition) in using the facts otherwise available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margin. This estimated dumping margin was based on a comparison of the bid price for a sale of a LNPP system made by MRD to an unrelated U.S. customer and the constructed value (''CV'') of that LNPP system. As a result of that analysis, the Department modified the CV methodology that the petitioner relied upon in calculating the estimated margin. On the basis of those modifications, the Department recalculated the estimated dumping margin and found it to be 46.40 percent. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose at that time. For purposes of the preliminary determination, the Department re-examined the price information provided in the petition in light of information developed during the investigation, and found that it continued to be of probative value. For purposes of the final determination, we compared the petition price information against verified data, and again found that it continued to be of probative value. *See Comment 1* of the ''Company-Specific'' subsection of the ''Interested Party Comments'' section of this notice.

Scope of Investigation

Note: The following scope language reflects certain modifications from the notice of the preliminary determination. As specified below, we have clarified the scope to include incomplete LNPP systems, additions and components. We have also clarified the scope to include ''elements'' (otherwise referred to as ''parts'' or ''subcomponents'') of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of the LNPP component of which they are a part. We have also excluded from the definition of the five subject LNPP components any reference to specific subcomponents (i.e., the reference to a printing-unit cylinder in the definition of a LNPP printing unit). In addition, we have excluded the following Harmonized Tariff System of the United States (''HTSUS'') subheadings from the scope: 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, and 8524.99.00. *See* ''Scope Comments'' section of this notice and the July 15, 1996 Decision Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

Scope: The products covered by these investigations are largenewspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper. In addition to press systems, the scope of these investigations includes the five press system components. They are:

(1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) a reel tension paster (''RTP''), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) a computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in

order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

The petitioner and the respondents in this investigation and the concurrent investigation of LNPPs from Japan submitted comments in their case and rebuttal briefs on several scope-related issues. These scope issues pertain to: (1) the treatment of elements (parts or subcomponents) of LNPPs; (2) the use of the ''to fulfill a contract'' language; (3) the inclusion of HTSUS subheading 8524 which encompasses magnetic tapes; and (4) the treatment of imported merchandise of U.S. origin. Although certain issues were raised by the parties within the context of either the German or Japanese investigation, we have consolidated them for purposes of the final determinations because the resolution of these issues impacts the scope of both investigations. Each of these issues, the interested parties' comments and the Department's position are summarized below. For the complete discussion and analysis, see the July 15, 1996 Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

1. Elements of LNPPs

As stated in the ''Scope of Investigation'' section above, the scope of the LNPPs investigations covers LNPP systems, additions and the five major press system components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. Because of their large size, LNPPs are typically imported into the United States in either partially assembled or disassembled form, in multiple shipments over an extended period of time, and may require the addition and integration of non-subject elements prior to or during the installation process in the United States. Consequently, we stated in our notice of initiation that ''any of the five components, or collection of components, the use of which is to fulfill a contract for an LNPP system, addition, or component, regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of [these] investigation[s].'' The interpretation of the intent of this language in the scope resulted in significant controversy among the interested parties in these investigations. Generally, the petitioner has interpreted it to mean that incomplete components and their constituent elements from a subject country are covered within the scope. The respondents have generally interpreted our initiation scope language to include only complete components, arguing that the inclusion of incomplete merchandise in the scope would necessarily precipitate the inclusion of elements which would conflict with the Department's industry support determination.

To clarify the issue, in our preliminary determinations, we stated that we interpreted the current scope to ''include those elements or collection of elements imported from a subject country insofar as they constitute any one of the five covered components which are, in turn, used to fulfill a contract for a LNPP press system, press addition or press component.'' We also stated that ''individual parts *per se* are not covered by the scope of these investigations unless taken as a whole they constitute a subject component used to fulfill an LNPP contract.'' This interpretation, however, raised the question: at what point do the elements imported from a subject country rise to the level of a LNPP component, addition or system subject to the scope of these investigations? This question was particularly difficult to answer in light of the complex nature of the importation of LNPPs—*i.e.,* the high degree of disassembly and/or incompleteness and the multiple shipments of parts and subcomponents in various combinations over an extended period of time. Therefore, we had to decide on a reasonable and practical approach in determining what constitutes a subject LNPP component, addition or system, and in so doing, establish the basis on which we will include elements in the scope.

We considered primarily two alternative approaches for analyzing what governs the inclusion of parts or subcomponents within the scope of these investigations (other than spare or replacement parts which are expressly excluded from the scope if they are separately identified and valued in a LNPP contract), and solicited comments from interested parties on the merits of these approaches. One approach considers, on a case-by-case basis, whether the imported parts or subcomponents when taken together are essentially a LNPP system, addition or component. This so-called ''essence'' approach focuses on the question of which parts are most critical to the operation of the subject merchandise so that when taken together they constitute an essentially complete LNPP component, addition or system. A second approach considers the value of the imported parts or subcomponents relative to the total value of the finished LNPP component, addition or system in the United States. That is, we would determine that the imported parts or subcomponents would be within the scope if they comprised a certain minimum percentage of the value of the parts or subcomponents of a finished LNPP system, addition or component. This value would be measured in terms of the cost of manufacture, rather than price, because (1) we are primarily concerned with where the actual manufacturing is occurring and not the market value, and (2) the imported elements are not normally priced separately from the LNPP which they comprise in the ordinary course of business.

In general, the interested party comments received on this issue reflect widely diverging views. The basis of the controversy among the parties centers on the interpretation of the following excerpts from the current scope language: (1) ''regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation;'' and (2) ''individual elements when taken as a

whole constitute a subject component.'' The petitioner views this language as necessarily referring to both complete and incomplete components given the nature of the imported merchandise, and proposes that the Department clarify the scope to include incomplete merchandise from a subject country insofar as it includes any one of 16 key elements, which it defines to be critical to the functioning of a LNPP. KBA and the respondents in the Japan investigation, Mitsubishi Heavy Industries, Ltd. (''MHI'') and Tokyo Kikai Seisakusho, Ltd. (''TKS''), view the scope language as referring to complete merchandise. Alternatively, KBA argues for a value test whereby imported elements would be covered if their value exceeded at least 60 percent of the value (or 50 percent of the cost) of the finished system (or at least 90 percent of the value of any individual LNPP component), while MHI advances arguments for an essence approach that would be predicated upon the importation of all elements which it defines to be critical to the functioning of a LNPP. MRD generally supports an essence approach assessed on a case-by-case basis but favors maintaining flexibility on the issue, while TKS offers no option, arguing that both approaches would result in the unlawful expansion of the scope to include parts and subcomponents.

We agree with the petitioner that incomplete merchandise by necessity must be included in the scope of these investigations. Given the very large size of LNPPs and the complex importation process, complicated by the further manufacturing and/or installation activities performed in the United States by the respondents, it was the Department's intent to use the language at issue to avoid creating loopholes for circumvention, including those arising from differing degrees of completeness of the imported merchandise. The Department is concerned that, because of the great number of parts involved, there is the potential that a party may attempt to exclude its merchandise from the scope of these investigations on the basis of a lack of completion. From the Department's standpoint, it is not (and never has been) the individual elements per se that are the issue, but the combination of these elements that would rise to the level of covered merchandise whether by essence or by value (*i.e.*, the sum of importations pursuant to a LNPP contract, not the individual importations or parts themselves). Given the significant controversy that has been generated over the scope of these investigations, we believe that clarification of the scope is warranted in this case. We note that the Department has the authority to clarify the scope language at any time during an investigation. See *Final Determination of Sales at Less Than Fair Value: Small Diameter Seamless Carbon and Alloy Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31984, 31987 (June 19, 1995); *Minebea Co., Ltd.* v. *United States*, 782 F. Supp. 117, 120 (CIT 1992); and *Kern-Liebers USA* v. *United States*, 881 F. Supp. 618 (CIT 1995).

The parties' diverging views on the approach the Department should pursue in resolving the issue attests to the fact that there is no perfect solution to the problem. The selection of one or the other approach for purposes of the final determinations, however, is unavoidable if our scope is to have reasonable clarity and administrability, given the complexity of the importation of the subject merchandise and the potential for circumvention. The pursuit of either approach necessitates clarification of the scope to include explicitly incomplete Japanese- or German-origin LNPPs. Given that the minimum level of scope coverage is any of the five LNPP components, both the essence and value approaches must be examined on a component-specific basis.

The essence approach has superficial appeal because it seeks, in principle, to capture what a particular subject LNPP component actually is—*i.e.*, the ''heart'' of it. However, the information obtained from the interested parties and other sources make it difficult, if not impossible, to state that a particular element is the ''essence'' of a LNPP component. In past cases in which the number of parts and subcomponents comprising the subject merchandise was limited, we have identified specific elements, or groups of elements, as constituting the ''whole'' or ''essence'' of the subject merchandise. See e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996); *Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan*, 58 FR 30144 (May 26, 1993); and *Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, from the United Kingdom*, 56 FR 32172 (July 15, 1991). In this case, however, given the large number of parts and subcomponents which are combined to produce a subject LNPP component, we believe that it is impossible to conclude, for example, that a side frame or a blanket cylinder is the ''essence'' of a printing unit, as suggested by the petitioner.

Added to the difficulty of accepting the petitioner's ''essence'' proposition in general is the fact that many of the critical elements identified by the petitioner individually represent an insignificant portion of the total value of the LNPP component of which they are part, and the identification of named elements may require modification over time due to technological advances. Furthermore, there is the unresolved question of whether a critical element would constitute the ''essence'' of a subject component if it itself were incomplete in some minor way. In other words, the problem faced in this case is qualitatively unlike the problems faced in the other cases, cited above, where it was possible to reduce the ''essence'' definition to a single, non-contradictory definition.

Therefore, if no single element can be identified as the ''essence'' of a particular LNPP component, and if requiring that all of the ''essential'' elements listed by the petitioner or other parties be of subject country origin would unacceptably limit the intended scope of these investigations, then the ''essence'' approach is unworkable.

We believe that the value approach is consistent, predictable, and administrable. According to this approach, imported elements are covered if they constitute a certain minimum percentage of the value, *based on the cost of manufacture*, of the particular component of which they are a part. We acknowledge, however, that in order to perform the value test, we will have to wait until after all of the elements comprising the LNPP component are imported and the LNPP component is produced, and that we will suspend liquidation on all imported elements in the meantime. In addition, the argument has been made that the value approach is more uncertain with respect to duty assessment, as all shipments would need to be completed before the value test on a finished product basis would be assessed. However, we note that this would also be true if we took the ''essence'' approach, in that the identification of critical elements could only take place after all importations have been made.

Furthermore, we have instituted the concept of a value test in the past where the nature of the merchandise and its importation lent itself to circumvention. *See Final Determination at Sales at Less Than Fair Value: Cellular Mobile Telephones and Subassemblies from Japan*, 50 FR 45447, 45448 (October 31,

1985); and *Mitsubishi Elec. Corp.* v. *United States,* 898 F.2d. 1577, 1582 (Fed. Cir. 1990).

In this case, exercising our discretion to develop an administrable scope, we determine that if the sum of the value of elements imported to fulfill a LNPP contract is at least 50 percent of the value, measured in terms of the cost of manufacture, of any of the five named components covered by the scope into which they are incorporated, then the imported elements are covered by the scope. An individual component is covered by the scope if the imported elements comprising it represent at least 50 percent of the value of the component, even if the contract pursuant to which the elements are imported is for an entire LNPP system and the remaining components are not within the scope.

We believe that this 50 percent threshold is a workable standard and is sufficiently significant to capture certain critical elements as well. We also believe that pursuing the value test on the basis of cost of manufacture, rather than price, is less susceptible to manipulation and more readily traceable to company records because the imported elements are normally not priced separately from the LNPP which they comprise in the ordinary course of business.

In addition, given our rejection of the essence approach for the purpose of the scope, we believe that including any references to specific subcomponents of covered components (*i.e.,* printing-unit cylinder) in the definition of the five covered components would be improper. Therefore, we have excluded them from the scope.

Based on the foregoing analysis, we have clarified the scope to include incomplete LNPP systems, additions or components. For the reasons explained above, we note that this does not constitute an ''expansion'' of the scope, as the respondents allege, but merely a necessary clarification.

For purposes of these investigations, incomplete LNPPs will be defined as any element or group of elements of a LNPP system, addition or component that are imported from a subject country lacking one or more elements needed to fulfill a contract for a LNPP system, addition or component. Such elements would be covered by the scope of these investigations if they represent at least 50 percent of the value, measured in terms of the cost of manufacture, of the finished component of which they are a part. Therefore, as stipulated in the ''Continuation of Suspension of Liquidation'' section of this notice, we are instructing the Customs Service to suspend liquidation on all entries of elements of LNPP components imported to fulfill a contract for a LNPP system, addition or component, in order to assess the cost of manufacture of these imports relative to the cost of manufacture of the finished component of which they are part. The 50 percent value test will be administered by the Department after all entries of such merchandise have been made and the component of which they are part is produced.

To facilitate the Department's performance of the value test, all foreign producers/exporters and U.S. importers in the LNPP industry shall be required to provide clearly the following information on the documentation accompanying each entry from Germany and Japan of elements pursuant to a LNPP contract: (1) the identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of cost of manufacture of the LNPP component of which they are part.

2. ''To Fulfill A Contract'' Language in the Scope

The current scope of these investigations ties subject merchandise to a contract for the sale of a LNPP system, addition or component, and the issue has been raised by one respondent as to whether such provision is lawful. Specifically, MHI argues that the ''to fulfill a contract'' provision in the scope definition incorrectly applies the antidumping law and the assessment of antidumping duties to contracts instead of products, creates an unacceptable uncertainty as to the scope of products covered by these investigations, and risks being overinclusive. The petitioner argues that the Department has not applied the antidumping law to contracts. It asserts that the language at issue does not mean that the contract itself is the subject of the investigation, although it is an indispensable consideration in the investigation because it determines the price.

We disagree with the respondent. A contract is neither the object of our investigations, nor the object of the assessment of tariffs. Instead, a contract is a documentary instrument for facilitating the identification of the subject merchandise for the assessment of duties arising from an antidumping order. As such, a contract is similar to customs entry forms and company invoices commonly used in the process of liquidating foreign products entering the customs territory of the United States. Therefore, we disagree with MHI's contention that the Department would be replacing products with contracts as the object of the investigation.

Given the complex nature of the importation of the product (*i.e.,* a high degree of disassembly/incompleteness, and multiple shipments of innumerable parts and subcomponents over an extended period of time), the reference to a LNPP contract in this context is the only administrable means of identifying the subject merchandise. Therefore, we have continued using the ''to fulfill a contract'' language in the scope and in our continuation of suspension of liquidation instructions to the Customs Service.

3. HTSUS Subheading 8524

MHI maintains that the Department should amend the scope of these investigations to exclude those tariff categories that encompass magnetic tape—*i.e.,* HTSUS numbers 8524.51.30, 8524.52.20. 8524.53.20, 8524.91.00 and 8524.99.00—because the subject merchandise does not include magnetic tape. According to MHI, the only component covered by the scope that could possibly include such a product, the computerized control system, instead includes hard and floppy disks. MHI contends that if the Department includes the HTSUS classifications for either magnetic tape or other generic computer components, it will inappropriately interfere with the liquidation of a multitude of computer-related products that are not relevant to the LNPP investigations.

HTSUS 8524 covers ''records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and meters for the production of records,'' but excluding photographic or cinematographic goods. The above-specified HTSUS numbers currently included in the scope refer to ''other magnetic tapes,'' ''other video tape recordings'' and ''other recorded media for reproducing phenomena other than sound or image.'' HTSUS 8524 was included in the scope at the initiation stage of these investigations, pursuant to a conversation with the National Import Specialist who, at that time, advised the Department that the LNPP computerized control system may enter the U.S. Customs territory under the HTSUS

subheading 8524. *See* July 20, 1995, Memorandum to the File Re: Scope Definition-Discussion with National Import Specialist; and the February 15, 1996, Memorandum to the File Re: HTSUS Subheadings.

Pursuant to further conversations with the National Import Specialist for the merchandise at issue, we learned that imported software or media regardless of application is separately identified in the HTSUS for Customs valuation purposes, and that records, tapes and other recorded media of heading 8524 remain classified under that heading, whether or not they are entered with the apparatus for which they are intended. Therefore, theoretically, computer subcomponents such as the software destined for use in a LNPP could be classified as ''other recorded media'' under HTSUS 8524. However, in practice, this classification may not necessarily apply to LNPPs. We note that there is no evidence on the record of these proceedings at the present time indicating that the software of computerized control systems imported to fulfill LNPP contracts is entered under the HTSUS subheading at issue.

Our practice in crafting the scope of any investigation is to include language that states that ''[a]lthough the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope . . . is dispositive.'' This language means that it is the description of the merchandise, and not its Customs classification, that is controlling for the assessment of antidumping duties. Therefore, notwithstanding the HTSUS numbers under which the software of a LNPP computerized control system is imported from Germany or Japan, it would be covered if it met the criteria set forth in Scope Comment 1 above.

In this case, however, because we have no evidence on the record to indicate that computer control subcomponents are imported under the category at issue, we see no need to continue to include the above-specified HTSUS numbers in the scope of these investigations.

Therefore, we have excluded them from the scope of these investigations for purposes of the final determinations.

4. U.S.-Origin Goods Returned

KBA requests clarification that U.S.-origin elements and components would not be subject to antidumping duties if any are reimported, in accordance with the HTSUS which provides that such ''U.S. goods returned'' are not subject to any duties.

HTSUS 9801 generally provides that articles produced in and exported from the United States and subsequently returned to the United States, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, are exempt from duties. HTSUS 9802 generally provides that articles returned to the United States, after having been exported to be advanced in value or improved in condition by any process of manufacture or other means, are dutiable on the value of the processing conducted outside of the United States. Articles returned to the United States that have not lost their physical identity and have not undergone such advancement in value or improvement in condition abroad, except assembly and operations incidental to that assembly, would be subject to duties on the value of the imported article less the cost or the value of the U.S. content.

Therefore, under HTSUS 9801, the respondent's proposition is valid if the U.S.-origin elements are returned to the United States in the same manner as they were exported from the United States. Under HTSUS 9802, the issue is less clear for antidumping purposes. While U.S. Customs law provides for a partial exemption of duty for U.S.-articles sent abroad for processing or assembly and returned to the United States, the Department has concluded in the past that the general rule applicable to ordinary customs duties is not controlling with respect to antidumping duties, and that the United States Customs Service American Goods Returned (''AGR'') program, pursuant to HTSUS 9802, is subject to the collection of antidumping duties on the full value of the merchandise, including the U.S. portion. The Department has stated that any interpretation which sought to limit the application of antidumping duties on AGR goods to the foreign content would be inconsistent with the Department's statutory mandate to assess antidumping duties on the extent to which the normal value (''NV'') (previously referred to as ''foreign market value'') exceeds the export price (previously referred to as ''United States price''). Application of antidumping duties only on the foreign processing or content portion of the import might mean that the margin of dumping would not be fully offset. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Products from Canada* (58 FR 37099, July 9, 1993), as affirmed by the Binational Panel under the United States-Canada Free Trade Agreement (*In the Matter of: Certain Corrosion-Resistant Carbon Steel Products from Canada;* USA–93–1904–03 (October 31, 1994)).

In other words, if the U.S.-origin elements were combined with other elements prior to reimportation into the United States to produce a subject LNPP in accordance with the criteria set forth in Scope Comment 1 above, antidumping duties would be assessed on the full value of the import, inclusive of the U.S. content. Therefore, based on the foregoing analysis, we have not clarified the scope in the manner suggested by KBA.

Period of Investigation

The POI for MRD is July 1, 1993 through June 30, 1995. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 8035, March 1, 1996) (''*LNPPs Preliminary Determination*'').

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based NV on CV because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. *See LNPPs Preliminary Determination.*

Fair Value Comparisons

To determine whether MRD's sales of LNPPs to the United States were made at LTFV, we compared Constructed Export Price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs. *See LNPPs Preliminary Determination.*

Constructed Export Price

MRD reported its sales as either CEP or EP. We classified all of MRD's sales as CEP sales because its affiliated U.S. sales agent acted as more than a processor of sales-related documentation and a communication link with the unaffiliated U.S. customers; and the U.S. affiliate engaged in a broad range of activities including installation support, which we have classified as further manufacturing. See *Comment 2* and *Comment 3* of the ''Common Issues'' subsection of the

''Interested Party Comments'' section of this notice. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for those sales to the first unaffiliated purchaser by a seller affiliated with the producer/exporter that took place before importation and involved further manufacturing in the United States.

We excluded MRD's sale to The Charlotte Observer (''Charlotte'') from our final analysis because it involved the importation of parts and subcomponents, the sum of the cost of manufacture of which was less than 50 percent of the cost of manufacture of the LNPP component of which they are a part. See ''Scope of Investigation'' and ''Scope Comments'' sections of this notice. See also *Comment 2* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

(1) Where appropriate, we revised/updated the respondent's data in accordance with verification findings. See May 14, 1996 Memoranda for David L. Binder from V. Irene Darzenta Re: the Verification of the Questionnaire Responses of MAN Roland Druckmaschinen AG and MAN Roland Inc. (''MRD and MRU Sales Verification Reports.'').

(2) We excluded all post-POI price amendments. See *Comment 3* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(3) We deducted from CEP those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Germany, and irrespective of where recorded, after making certain adjustments. We recalculated those indirect selling expenses incurred by MRD in Germany in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the ''Common Issues'' subsection of the ''Interested Party Comments'' section of this notice. We recalculated those indirect selling expenses incurred by MRU in the United States using the verified indirect selling expense rate for the POI based on sales revenues. See *Comment 5* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(4) For the Rochester and Wilkes Barre sales, we recalculated warranty expenses using the verified warranty expense factor applicable to MRD's historical experience in the home market for all LNPP products based on the respondent's representations at verification that MRD would be primarily responsible for any warranty servicing necessary for these two sales. For Fargo and Global, warranty expenses were recalculated based on the warranty expense factor reflecting MRU's historical experience, revised to reflect verification findings, given the respondent's representations that MRU is primarily responsible for any warranty servicing necessary for these two sales. See *Comment 6* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(5) We added warehousing income accrued on one sale.

Normal Value/Constructed Value

For the reasons outlined in the ''Product Comparisons'' section of this notice, we based NV on CV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's materials and fabrication costs, plus amounts for selling, general and administrative (''SG&A'') expenses and U.S. packing costs. We based our CV calculation on the same methodology used in the preliminary determination, revised to reflect verification findings, where appropriate, with the following exceptions:

(1) As facts available, we calculated the cost of manufacturing for the sales to Rochester and Wilkes Barre based on the respondent's submitted cost estimates, adjusted for the variance between estimated and actual costs for a completed sale of a similar Geoman press. See *Comment 9* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(2) In calculating MRU's further manufacturing general and administrative (''G&A'') rate, we divided POI G&A expenses by cost of sales recognized during the POI, excluding the cost for parts purchased from MRD. See *Comment 14* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

Price to CV Comparisons

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses, pursuant to section 773(a)(8) of the Act.

Verification

As provided in section 782(i) of the Act, we attempted to verify the information submitted by the respondent. We used standard verification procedures, including examination of relevant accounting and sales records and original source documents provided by the respondent.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MRD reported that forward currency exchange contracts applied to certain U.S. sales, we could not verify that these contracts were directly linked to the particular sales in question. See May 14, 1996 MRD Sales Verification Report at 37. Therefore, for the purpose of the final determination, we made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' For this final determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see, *Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434, March 8, 1996.). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the deutschemark did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

Interested Party Comments

Common Issues in the German and Japanese LNPP Investigations

The petitioner and the respondents in this investigation and the concurrent investigation of LNPPs from Japan raised certain common issues in their case and rebuttal briefs. Therefore, for purposes of these final determinations, we have consolidated the common issues in this notice in order to respond to them.

Comment 1 Deduction of U.S. Indirect Selling Expenses from CEP: The petitioner maintains that the Department failed to deduct most of the U.S. indirect selling expenses because they were recorded in the accounts of the foreign LNPP manufacturers. According to the petitioner, the Department should deduct all indirect selling expenses incurred on behalf of U.S. sales, irrespective of the location at which the expenses are actually incurred or the location of the company in whose books the expenses are recorded. The petitioner interprets section 351.402(b) of the proposed regulations (*Notice of Proposed Rulemaking and Request of Public Comments,* 61 FR 7308, 7381 (February 27, 1996)) which states that ''the Secretary will make adjustments to CEP under section 772(d) of the Act for expenses associated with commercial activities in the United States, no matter where incurred'' to mean that the actual physical location of those commercial activities is not a qualifying criterion. The petitioner maintains that much of the pre-contract sales activity is handled by the foreign manufacturer of LNPP and that the expenses incurred for such activity should be deducted from CEP. The petitioner states that if the Department deducts U.S. indirect selling expenses from CEP based on the geographic location in which they were incurred or booked, it would create an enormous loophole through which expenses directly associated with U.S. sales could simply disappear.

According to the petitioner, respondents in antidumping cases with CEP could increase net U.S. prices by merely shifting selling expenses from the books of their U.S. affiliates to those of the foreign parent companies.

The petitioner states further that, at a minimum, the Department should deduct from CEP all expenses included in the foreign manufacturer's accounts that relate to U.S. economic activity. These costs include: (1) All direct and indirect costs incurred for installation, warranty and technical servicing and training, regardless of where such expenses are originally incurred; (2) all indirect costs associated with pre-contract design, bid preparation, cost estimation, and negotiations for U.S. sales, regardless of where such expenses are originally incurred; and (3) all direct and indirect selling expenses which were originally incurred in the United States by either the U.S. affiliate or the foreign manufacturer, and have been recorded in the accounts of the foreign manufacturer. To the extent that a respondent has not specifically identified which portions of its U.S. indirect selling expenses booked by the foreign manufacturer are related to U.S. economic activity, the Department should deduct all such expenses from CEP.

MRD disagrees. MRD argues that neither the statute nor the proposed regulations support the petitioner's proposition. MRD states that in accordance with section 772(d) of the Act and the Department's proposed regulations, the deduction for indirect selling expenses is limited to expenses incurred in the United States for economic activities in the United States. MRD adds that its sales section in Germany responsible for U.S. sales activities performs these activities in Germany, and that the costs for these activities cannot be deducted from U.S. price under section 772(d).

MRD argues, however, that if the Department decides to deduct indirect selling expenses incurred outside the United States from U.S. price, then it should recalculate the amounts reported for U.S. sales. The respondent explains that to calculate the reported expenses, it first divided the actual MRD indirect selling expenses by the total value of sales recorded by MRD, and applied the resulting expense rate to the gross contract price for each U.S. sale. However, the MRD sales figures used to derive the expense rate include only the amounts for the sales from MRD to MRU and not the value added in the United States, whereas the gross contract price for each sale to which the expense rate was applied does reflects the total value of the presses delivered to the customer inclusive of the value added by MRU. Therefore, to make a consistent calculation, MRD argues that the Department should either recalculate the MRD indirect selling expense rate using figures that correspond to the gross contract prices, or it should use the existing rate but apply it only to the transfer price between MRD and MRU for each sale.

TKS maintains that the Department has adopted a new methodology for calculating indirect selling expenses pursuant to the enactment of the URAA which make petitioner's arguments moot. According to TKS, the Department has determined that the language of the SAA which refers to ''economic activity occurring in the United States'' is to be interpreted as activities of the respondent which physically occur in the United States. TKS cites to the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (June 14, 1996) (*''Pasta Final Determination''*) and the *Preliminary Results of Administrative Review: Certain Steel Wire Rod from France,* 61 FR 8915, 8917 (March 6, 1996) to support its contention that the petitioner's stance is inconsistent not only with the instructions of the SAA but with recent Department precedents.

MHI argues that the Department properly excluded from U.S. indirect selling expenses those costs incurred for non-U.S. economic activity. MHI argues that the methodology adopted by the Department was consistent with the SAA, section 772(d), and the Department's proposed regulations. Finally, MHI cites the *Pasta Final Determination* (at Comment 2), explaining that the Act requires the Department to make deductions to CEP only for those expenses associated with economic activity in the United States. MHI further argues that if the Department continues to treat MHI's U.S. sales as CEP sales, then it should continue to deduct only the indirect selling expenses incurred on behalf of economic activities occurring in the United States.

DOC Position: We agree with the petitioner in general. The SAA (at 823) states that: ''[U]nder new section 772(d), constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of expenses (and profit) associated with economic activities occurring in the United States,'' including, *inter alia,* ''any 'indirect selling expenses' '' (emphasis added). In the *Pasta Final Determination,* the Department determined that it was proper to deduct indirect selling expenses incurred in the home market in support of U.S. sales because such expenses were ''specifically related to U.S. commercial activity.'' *See Pasta Final Determination* at 30352. The indirect selling expenses reported by the respondents in these investigations are of the same class and nature as those determined to be associated with U.S. economic activity in the *Pasta Final Determination, i.e.,* they are general selling expenses incurred and booked by the parent company in the home market to support export sales, including those for the

United States. This approach is in conformity with the SAA at page 824, which directs that section 772(d)(1)(D) provides for the deduction of indirect selling expenses from CEP where those expenses ''* * * would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales.'' We have therefore deducted indirect selling expenses incurred in the home market on U.S. sales from CEP, after making certain necessary adjustments.

While we agree with the petitioner that all indirect selling expenses directly associated with U.S. economic activity, irrespective of the location where they were incurred, should be deducted from CEP, we do not believe that it is correct to use an indirect selling expense factor which is derived from a pool of expenses and sales revenue which covers both U.S. and non-U.S. sales. The indirect selling expense ratio reported by MHI for activities recorded at MHI's Japanese headquarters and factory sales offices consists of a numerator inclusive of common selling expenses as well as specific selling expenses supporting U.S. exports and other exports sales, divided by a denominator consisting of all export sales. Similarly, the indirect selling expense ratio reported by MRD for activities recorded at MRD's Augsburg facilities consists of data related to both the U.S. and other export markets. The indirect selling expense ratio reported by TKS for activities recorded at TKS's Tokyo headquarters consists of a numerator inclusive of common selling expenses as well as specific selling expenses supporting U.S. exports, other exports sales, and domestic sales, divided by a denominator consisting of world-wide sales. These allocations resulted in each company's reported indirect selling expense rate.

Each respondent's indirect selling expenses incurred in the home market were reported as including expenses generally associated with U.S. exports, although the respondents maintained that such expenses did not relate to ''U.S. economic activity.'' At verification, we were able to confirm that certain of the indirect selling expenses were associated with U.S. economic activity. We were unable, however, to quantify the portion of the total indirect selling expenses which were associated with the U.S. sales. Therefore, for these final determinations, we have deducted, as non-adverse facts available, only a portion of the total indirect selling expenses recorded in the home market using the following methodology. First, we calculated total indirect selling expenses by multiplying the reported rate referred to above by each CEP price. We then subtracted that amount from each CEP price. Next, we calculated a factor which is the proportion of all those adjustments to CEP made under section 772(d) of the Act divided by the contract price net of the total indirect selling expenses calculated previously. The resulting factor was then applied to the indirect selling expense amount. We then deducted the resulting value from CEP. This methodology applies the indirect selling expenses only to the portion of CEP price which differentiates CEP from export price (''EP'').

Comment 2 EP or CEP Sales—U.S. Subsidiaries' Activities: MHI contests the Department's preliminary conclusion that the U.S. LNPP transactions under investigation should be classified as CEP sales. MHI argues that MHI's U.S. sales should not have been treated as CEP sales because (1) the Department mischaracterized the extent of the U.S. economic activities of its U.S. subsidiary MLP (USA) Inc. (''MLP''), and (2) the Department should not have treated installation as further manufacturing.

MHI claims that MLP's sales activities were not as broad as characterized by the Department. According to MHI, MHI's sales clearly qualify as EP sales under Section 772(a) of the Act. MHI states that the Department generally has three criteria for determining if a sale is to be based on EP. MHI states that the third criterion, where an affiliated U.S. agent ''acted as more than a processor of sales-related documentation and a communications link with the unaffiliated United States customers * * *.'' was applied to MLP and was the main reason for applying CEP to MHI's sales. MHI claims that MLP's sales-related activities were limited. According to MHI, subcontractors were responsible for installation, and MLP only sent engineers to supervise. According to MHI, the primary role of MLP is to act as an interface between the MHI sales team in Tokyo and MHI's U.S. customers. MHI argues that MLP did nothing more than implement purchasing instructions from MHI for a certain limited number of parts.

MHI cites the *Final Results of the Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Korea* (61 FR 18547, 18562, April 26, 1996) (''*Flat Products from Korea*'') to support its contention that in setting up MLP's sales activities, MHI merely transferred these routine selling functions to its related selling agent in the United States and the substance of the transaction was unchanged. In *Flat Products from Korea,* the Department treated the respondent's sales as EP sales (formerly referred to as ''purchase price'') even though the U.S. affiliate had engaged in activity in the United States. The Department found that not all of the respondent's sales were delivered directly to the customer. However, the selling functions were normally undertaken by the exporter. According to MHI, the Department's analysis in *Flat Products from Korea* centered on what activities were conducted for the transaction as a whole and not on where the transaction took place. MHI explains that MLP's limited installation activities, limited sales activities, and limited parts procurement activities only represent a transfer of routine sales-related activities to the United States.

MRD maintains that the Department should analyze the Rochester and Wilkes-Barre sales as EP sales, rather than CEP transactions. This respondent states that the Department's preliminary decision to treat these sales as CEP sales was based on a misapplication of the standards used to distinguish EP from CEP sales. MRD maintains that the standard for such differentiation is whether the performance of functions by the U.S. subsidiary changes the substance of the transaction or the functions themselves. According to MRD, MRU's role in the Rochester and Wilkes-Barre sales does not transform the sales from EP to CEP sales, as it was not essential. MRD asserts that the functions performed by MRU for these sales—document processing, arranging for local sourcing of certain materials and services, communicating and coordinating with the customer—are the same functions that MRD routinely performs from Germany for third country sales. By contrast, the sales to Charlotte, Fargo and Global did require MRU's participation and are properly characterized as CEP sales, as they were either produced almost entirely at MRU's facilities in the United States or underwent substantial further processing there.

Furthermore, MRD argues that, because the Rochester and Wilkes-Barre sales were made prior to importation and were not sold from the U.S. affiliate's inventory or subject to further manufacturing in the United States, they must be treated as EP sales under the Department's established practice. Also, MRD contends that the minor warehousing required for these sales as a result of the logistical problems inherent in shipments of large capital equipment, and the addition of non-

German parts during the installation process, does not transform these sales into CEP sales. Additionally, MRD notes that the Department's reliance on *New Minivans from Japan* (57 FR 21937, May 26, 1992) (''*Minivans*'') and *Certain Internal-Combustion Forklift Trucks from Japan* (''*Forklifts*'') (53 FR 12552, April 15, 1988) in the preliminary determination to treat the sales at issue as CEP sales is misplaced. MRD states that, in *Minivans,* the Department concluded that the U.S. subsidiaries of the Japanese automobile manufacturers played such a significant role in the U.S. sales and distribution structure for their imported automobiles that the sales had to be classified as CEP sales. The types of efforts performed by these U.S. subsidiaries required a U.S. presence similar to that required for a sale from the U.S. subsidiary's own inventory. In contrast, none of the functions performed by MRU for the Rochester and Wilkes-Barre sales require a presence in the United States. MRD explains that, in *Forklifts,* the Department's reasoning for classifying sales made through an affiliated sales agent to an unaffiliated purchaser as EP sales hinged in part on the fact that the functions performed by the affiliated seller did not change the substance of the transaction, and in part on the fact that the sales were made prior to importation. Therefore, MRD asserts that, in accordance with the reasoning outlined in *Forklifts,* the sales to Rochester and Wilkes-Barre should be treated as EP sales.

The petitioner maintains that under the language of the statute, all U.S. sales made by all respondents in these investigations must be treated as CEP transactions. The petitioner argues that the export price definition contained in the statute does not apply to sales made by a U.S. selling affiliate of a foreign manufacturer or exporter. The petitioner states that, despite the apparent clarity of the statutory language, the Department's practice has been to consider a sale by an affiliate as an ''indirect'' export price transaction where the merchandise is shipped directly to the buyer without any inclusion in the selling affiliate's inventory, and where the U.S. sales affiliate acts only as a processor of documentation and as a communications link with the unaffiliated buyer. It maintains that the indirect export price definition in the respondents' case cannot be applied because the U.S. sales subsidiaries functioned as more than a mere processor of sales-related correspondence. The petitioner cites to the *Flat Products from Korea* and *Polyethylene Terephthalate Film, Sheet and Strip from Japan* (60 FR 32133, 32135, June 20, 1995) to support its contention that just as the lack of additional expenses such as technical services, advertising and warranties by an U.S. affiliate indicate the use of export price, so, conversely, where the U.S. affiliate performs additional functions such as technical support, training, and warranty servicing, the Department will treat the sale as a CEP transaction. The petitioner enumerates the various functions performed by the U.S. affiliates of MHI, TKS and MRD—marketing, sales promotion, training, warehousing and installation support, where applicable—and asserts that these activities constitute more than mere processing of sales documentation.

Furthermore, the petitioner notes that TKS recognized that the selling activities of its selling agent far exceeded the Department's minimal threshold for indirect export price sales and reported its U.S. sales as CEP and further-manufactured sales. The petitioner states that although MHI reported its sales as EP transactions, the Department correctly classified its U.S. sales as CEP-further-manufactured sales at the preliminary determination. According to the petitioner, this preliminary determination was confirmed during verification, where the Department reviewed the documentation of MLP's procurement of auxiliary parts and its sales servicing activities, both of which go well beyond the narrow confines established by the Department for indirect export sales.The petitioner disagrees with MRD's claim that the Department classifies a sale as EP unless the functions performed by the U.S. affiliate could not have been performed by the foreign producer/exporter without the U.S. affiliate. The petitioner asserts that it is the significance of the activities performed by the U.S. affiliate and not their transportability that counts in the CEP versus EP analysis. The petitioner also refutes MRD's analysis of the Department's decisions in *Minivans* and *Forklifts,* claiming that in both cases the Department focused on the functions performed by the U.S. sales affiliate. In addition, the petitioner states that the only exception to the rule that warehousing necessitates CEP treatment is when the producer provides warehousing at the customer's demand, which is not the case for the Rochester and Wilkes-Barre sales.

Finally, the petitioner maintains that CEP treatment is required because the installation activities of respondents' U.S. affiliates constitute further manufacturing, which by definition means that these affiliates were more than documentation processors and communication links. According to the petitioner, maintaining U.S. operations to oversee further manufacturing of LNPPs necessarily entails salaries for engineers and supervisors, and the general and administrative expenses to support them. Under such circumstances, the petitioner argues that characterization of a further manufactured sale as a standard export price transaction would ignore these substantial U.S. expenses related to the sale of subject merchandise, and would not result in a fair comparison. For all of these reasons, the petitioner argues that the substantial U.S. economic activities require the Department to treat the U.S. sales as CEP transactions.

DOC Position: We agree with the petitioner and have treated all of the respondents' U.S. sales as CEP sales. In past cases such as *Forklifts,* where the Department has ruled that sales such as those at issue (*i.e.*, sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation) are EP sales (formerly purchase price), it has examined several criteria, including: (1) Whether or not the sales were shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether or not the sales follow customary commercial channels between the parties involved; and (3) whether or not the function of the U.S. selling agent is beyond that of a ''processor of sales-related documentation'' and a ''communications link'' with the unrelated U.S. buyer. Where all three criteria are met (*i.e.*, sales are not inventoried, the commercial channel is customary and the function of the U.S. selling agent is not substantively more than a ''processor of sales-related documentation'' and a ''communications link''), the Department has regarded the routine selling functions of the exporter as ''merely having been relocated geographically from the country of exportation to the United States,'' and has determined the sales to be EP sales. In other words, where the functions are performed ''does not change the substance of the transactions or the functions themselves.'' See *Forklifts* at 12553. There are numerous cases where the Department has relied on the above-specified criteria to characterize sales as EP (formerly purchase price) or CEP (formerly exporter's sales price), including: *Minivans; Flat Products from Korea;* and *Final Determination of Sales at Less Than Fair Value: Stainless Steel*

Wire Rod from France (58 FR 68865, 68868–9, December 29, 1993).

With respect to MHI, we believe that the various activities of MHI's subsidiary MLP were substantially more than ''routine selling functions.'' Rather, MLP was significantly involved with the sale of LNPP in the following areas: selling agency, after-sales servicing, sourcing of non-subject parts, and supervision of installation. As MHI's principal sales agent in the United States, MLP was directly responsible for identification of Piedmont as a buyer, and cooperated with Sumitomo in the delegation of oversight for the Guard sale. With respect to after-sales servicing, MLP incurred warranty expenses for both sales. Also, for both sales, MLP supervised installation through the work of its engineers, and procured parts which were substantial in quantity, value and functional importance. For the Piedmont sale, MLP provided direct technical assistance, and for both the Guard and Piedmont sales MLP was responsible for direct oversight of installation performed by subcontractors, including payment of services rendered.

With respect to MRD, we also believe that the third EP criterion is not satisfied in the case of MRU. MRU's role with respect to the sales at issue is beyond that of a mere ''processor of sales documentation'' and ''communications link.'' MRU played a major role in the negotiations between MRD and the U.S. customer for the Rochester and Wilkes-Barre sales, from the bidding stage through to the final contracts and subsequent amendments to the final contracts, and incurred significant SG&A expenses in the process. The contractual documentation and sales-related correspondence viewed at verification attests to this fact. Furthermore, we verified that MRU supports MRD's activities in the shipment and installation process relevant to these sales. This is evidenced by the fact that MRU is responsible for the post-sale warehousing of the merchandise shipped from Germany (which, while performed to meet the customer''s timing needs, was not considered by the respondent to be a routine service performed under the terms of the original sales contract), as well as the contracting of rigging companies and the sourcing of auxiliary parts essential to the installation process in the United States. Given its parts procurement role, it is possible that MRU may engage in warranty servicing support activities for the Rochester and Wilkes-Barre sales in the post-installation and start-up period.

Furthermore, this reasoning is consistent with our decision to treat installation expenses as part of further manufacturing under section 772(d). See *DOC Position* to *Comment 3*, below. Maintaining U.S. operations to oversee further manufacturing of LNPPs necessarily entails significant expenses including salaries for engineers and supervisors, and the general and administrative expenses to support them. Under such circumstances, the characterization of a further manufactured sale as an export price transaction would ignore these substantial U.S. expenses related to the sale of subject merchandise and would result in an unfair comparison in the dumping analysis. We believe that the presence of a subsidiary's participation in further-manufacturing activities particularly bolsters the use of CEP analysis. We note that the Department has always analyzed further manufacturing in the context of CEP (formerly exporter's sales price) methodology. In the *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18794 (April 20, 1994), the Department considered the possibility of performing EP (formerly purchase price) analysis on certain sales which involved further processing by an unaffiliated subcontractor. The Department excluded the sales in question from its analysis because the removal of value added by the unaffiliated purchaser from the purchase price would have resulted in further manufactured purchase price sales, and thus would have been completely inconsistent with section 772 of the Act.

TKS reported all of its sales as CEP sales, so that the general issue of CEP analysis is moot. TKS maintains, however, that its Dow Jones sale is CEP but not a further-manufactured sale. For discussion of this issue, see TKS *Comment 5* in the companion Federal Register notice for LNPPs from Japan.

Comment 3 The Treatment of Installation Expenses: MHI argues that the Department should not treat installation expenses as further manufacturing. MHI refers to U.S. law and case precedent to support its claim that installation does not constitute further manufacturing. The respondent cites to the Senate Committee On Finance, et al., *Uruguay Round Agreements Act*, S. Rep. No. 412, 103d Cong., 2d Sess. 66 (1994), to support its contention that an adjustment for further manufacturing is appropriate for an increase in value based on a process of manufacture or assembly of the imported merchandise after importation and before the sale to an unaffiliated purchaser. MHI believes that these criteria form a temporal restriction whereby value must be added at a point after importation but prior to the date of sale of the subject merchandise. MHI therefore contends that the installation MHI provides on its U.S. sales cannot qualify for a further-manufacturing adjustment because it was provided after, and not prior to, sale and delivery to the customer's specified destination sites.

MHI argues that the principles in *Forklifts* and *Certain Small Business Telephone Systems and Subassemblies Thereof from Korea* (54 FR 53141, December 27, 1989) (''*SBTS*'') to which the Department referred at its preliminary determination, do not apply to LNPPs. According to MHI, in *SBTS*, the Department determined that the combination of subject and non-subject merchandise should be treated as further manufacturing activity. MHI contends that the bulk of its LNPP installation and installation supervision expenses do not relate to the combination of subject and non-subject merchandise, but to the reassembly of LNPP components.

MHI claims that in its operations, while auxiliary parts were shipped directly to the site of installation, they could have easily been shipped to Japan and then back to the site of installation. MHI contends that this scenario is substantively different from that in *Forklifts*, where Toyota's U.S. economic activities involved extensive relocation of its Japanese manufacturing activities to the United States. MHI claims that it does not normally ''install'' a LNPP at its Wadaoki assembly facility prior to exportation, nor does it complete final reassembly of the finished components anywhere but at the customer site after shipment and delivery. MHI maintains that it is purely accidental that the Department happened to use the term ''installation'' in discussing the respondent's U.S. economic activity in *Forklifts*.

MHI argues that LNPP installation should be treated as a movement expense, rather than as part of further manufacturing. MHI cites section 772(c)(2)(A) of the Act which states that EP (or CEP) for movement related activity should be reduced by ''the amount, if any, included in such price, attributable to any additional costs, charges, or expenses * * * which are incident to bringing the subject merchandise * * * to the place of delivery in the United States * * *.'' MHI maintains that the Department should follow its practice in the

investigation of *Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990) (''*MTPs*''), where it determined that installation charges should be treated as movement expenses, because LNPP systems present virtually identical shipment reassembly requirements as MTPs.

MHI disagrees with the Department's preliminary determination that the items added to a LNPP during installation are ''integral'' to the function of the press, whereas those items added to MTPs during installation were not. MHI explains that the Department has not cited any support for determining that additions made to MTPs in the United States were not integral to MTPs. MHI maintains that, even assuming *arguendo*, that certain LNPP auxiliary parts were integral to press operation, the Department gave no reason why the addition of ''integral'' parts, as opposed to ''non-integral'' parts, is a legally meaningful distinction. MHI states its conclusion that such a distinction is irrelevant to a determination on the nature of installation costs.

MHI also disagrees with the Department's preliminary conclusion that LNPP installation is far more complex than the reassembly operations examined in the investigation of *MTPs*. MHI claims that its review of the public record of the *MTPs* investigation revealed no basis to determine that the reassembly and installation of LNPPs is more complex than that of MTPs, since there was no public discussion of any of the attributes of MTP installation which would indicate complexity, such as: the time involved in installation, the number of engineers required to complete installation, the length of time for installation, or the amount of expense (absolute or relative) incurred during installation.

MRD argues that the Department should classify the installation costs for the Rochester and Wilkes-Barre sales as movement costs, rather than installation costs, in accordance with its longstanding practice in cases involving large capital equipment. MRD asserts that the factual pattern in this case is similar to that in *MTPs* and *Large Power Transformers from Japan* (48 FR 26498, 26501, June 8, 1993) (''*LPTs*''), rather than in *SBTS* and *Forklifts*, the cases on which the Department incorrectly relied in the preliminary determination. MRD explains that the installation process in the instant case, similar to that in *MTPs*, is required because of the size of the merchandise involved, and the resultant need for disassembly of the merchandise for exportation and subsequent reassembly at the customer's site. According to MRD, the situations in *SBTS* and *Forklifts* involved the modification of the subject merchandise after importation at the option of the customer not the simple reassembly of the merchandise as a result of the shipment process. In addition, MRD asserts that the fact that LNPPs often are not fully assembled before shipment (otherwise known as ''staging''), or that some additional non-German items are incorporated into the press system during installation, does not change the nature of the installation process.

The petitioner states that the Department properly classified installation charges in its preliminary determination as part of U.S. further manufacturing under section 772(d)(2) because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and integral, non-subject merchandise necessary for the operation of LNPPs. The petitioner maintains that the Department has never applied a blanket rule on installation expenses, treating them as assembly, a circumstance of sale adjustment, or shipment expenses, depending on the particular circumstances involved. Where those circumstances include incorporation of integral, non-subject components during installation or complex installation operations that are more than mere reassembly, the precedent clearly supports treatment of installation expenses as further manufacturing. The petitioner contrasts the level of complexity in this investigation to that in *MTPs* to support its contention that, in addition to the integration of non-subject parts, the very complexity of the installation and the extent of entirely new assembly also affects the Department's treatment of the expenses. The petitioner asserts that in *MTPs*, installation costs were treated as shipment expenses because installation primarily involved simple ''reassembly'' of parts originally disassembled at the foreign producer's export facilities. The petitioner maintains that the Department's determination in *MTPs* is not applicable to LNPPs because none of the U.S. LNPP sales involved the mere reassembly of subject merchandise. Also, the petitioner contends that the subject merchandise in this investigation was never fully assembled and tested before shipment, but instead was fully constructed for the first time at the customer's site, involving many hours of engineering, installation and testing, and the integration and installation of the subject merchandise into the physical and electrical plant of each customer's facility. In addition, the petitioner disagrees with MRD's analysis of *Forklifts* and *SBTS*, stating that in both cases the Department treated the addition of integral components, or integration of subject and non-subject subassemblies, during installation as further manufacturing.

DOC Position: We agree with the petitioner. We believe that the Department correctly classified installation charges as part of further manufacturing because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and non-subject merchandise necessary for the operation of LNPPs. As the parties have stated, the Department has not applied a blanket rule on the treatment of installation expenses, sometimes treating them as assembly costs, a circumstance of sale adjustment or shipment expenses, depending on the particular circumstances involved. See *Forklifts*, 53 FR 12552, 12565 (April 15, 1988); *SBTS*, 54 FR 53141, 53151 (December 27, 1989) and *MTPs*, 55 FR 335, 339 (January 4, 1990). Where those circumstances include the incorporation of integral, non-subject components during installation or complex installation operations that are more than mere reassembly, the precedent clearly supports treatment of installation expenses as further manufacturing. See *SBTS*. In this case, the respondents' U.S. subsidiaries' roles in the sale, installation and servicing of LNPPs, and their supervision of the incorporation of integral, non-subject components during installation, constitute a process that is more than mere reassembly.

The integration of integral non-subject merchandise and the technical complexity of LNPP installation distinguishes the instant processes from that of *MTPs*, which was a ''mere reassembly of subject parts.'' Unlike the equipment covered in *MTPs*, the respondents' LNPPs were never fully assembled and fully tested in the country of production, since the integral parts incorporated at the plant sites in the U.S. were required for the press to actually run to print a newspaper. Finally, the installation of these LNPPs involves integration of the merchandise into the physical and electrical plant of the customer's installation site and often requires modification of LNPP components or the site itself for successful completion of the LNPP.

With respect to MHI, for both the Piedmont and Guard sales, the purchase of integral parts for installation was not limited, as suggested by the respondent,

but was significant. The role played by MLP in installation activities is evidenced by its purchasing of auxiliary parts, installation supervision and other oversight responsibilities. The Department's treatment of MLP's oversight, control and payment of third-party installation as further manufacturing is completely consistent with the *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea,* 58 FR 15467, 15476 (March 23, 1993), wherein the Department determined that fees paid for processing by an unaffiliated subcontractor were further manufacturing expenses. Contrary to MHI's characterizations, the Department believes that the extent of such activities performed on these sales was significant, as measured by the value of such services to the total contract price of the sales.

Further, with respect to MHI's arguments, we note also that there is no ''temporal restriction'' to the definition of further manufacturing. The Department stated in *SBTS* (at Comment 9):

> Because non-subject merchandise is added to the subject subassemblies, the portion of installation expenses attributable to the addition of the non-subject merchandise cannot reasonably be treated as a circumstance of sale adjustment. It is, rather, part of the value added in conjunction with the non-subject merchandise. *Whether this value is added before or after the sale is irrelevant because, for this product, EIS's customers expect the installed system to have the characteristics added by the non-subject merchandise.* (Emphasis added.)

This fundamental customer expectation of the characteristics of the final, installed and functional equipment holds true for LNPP as well.

Comment 4 Treatment of Sales With ''Abnormally High Profits'': If the Department continues to undertake a review of individual home market sales in its final calculation, MHI contends that the Department should also exclude sales with abnormally high profits. MHI argues that sales with abnormally high profit also fall within the definition of sales occurring outside the ordinary course of trade. MHI asserts that two of its home market sales have abnormally high profits and therefore should be excluded.

MRD argues that the Department should include profit on ''after-sale'' sales in calculating home market profit. However, since MRD's normal records do not segregate ''after-sale'' profits by market or product line, MRD asserts that the Department should use the overall average profit of its Web Press Division. If the Department calculates profit on a transaction-specific basis, MRD contends that home market sales with abnormally high profits should be excluded from the CV profit calculation.

The petitioner maintains that the Department should use the same CV profit methodology applied in the preliminary determination (*i.e.,* calculate profit on a model-specific basis). With respect to MHI, the petitioner asserts that there was nothing in the record which suggests that profits on any sales were ''abnormally'' high. The petitioner argues that the sales were at arm's length so the profit level should be normal. Moreover, the petitioner asserts that there are too few sales to establish a pattern of normal versus abnormal profit. In addition, the petitioner maintains that the profit rates suggested by MHI as being abnormally high do not distort the average profit.

With respect to MRD, the petitioner asserts that even the highest profit calculated on MRD's home market sales is not abnormal because it falls with the variability range for all home market sales and, thus, should not be excluded. With respect to ''after-sale'' sales, the petitioner argues that the profit on ''after-sale'' services is not part of the foreign like product. Moreover, the petitioner could not segregate these ''after-sale'' profits by product-line.

DOC Position: We disagree with respondents that simply because certain home market sales had profits higher than those of numerous other sales, the profits are automatically abnormally high and outside the ordinary course of trade for purposes of computing CV profit. In order to determine that profits are abnormally high, there must be certain unique or unusual characteristics related to the sales in question. However, the respondents have provided no credible information other than the numerical profit amounts to support their contention that certain home market sales had abnormally high profits. Accordingly, we excluded no home market sales from the CV profit calculation due to abnormally high profits.

We agree with the petitioner that ''after-sale'' sales are not part of the foreign like product. Thus, MRD's argument that the Department should include profits from these ''after sale'' sales is misplaced.

Company-Specific Issues in the German LNPP Investigation

Comment 1 KBA's Final Margin: KBA believes that its final margin should be based on the data relevant to the MRD sale in the petition, adjusted based on the verified information on the record. Alternatively, KBA believes that it should be assigned the ''all others'' rate.

For purposes of the final determination, KBA argues that the Department cannot legally assign KBA the 46.40 percent margin based on the adjusted petition rate in the notice of initiation, as it did in the preliminary determination, because the record evidence shows that the petition data are incorrect and cannot be corroborated. In addition to the pre-initiation modifications made to the data in the petition, KBA asserts that the Department must further corroborate that information based on the accurate, verified information on the record and assign the resultant revised amount to KBA. KBA states that the SAA cautions that secondary information, such as petition information, used as facts otherwise available, may not be reliable because it is based on unverified allegations. Therefore, to the extent practicable, it must be corroborated from independent sources that are reasonably available to the Department. KBA points out that the SAA (and the Department's proposed regulations) also states that independent sources include information obtained from interested parties during the investigation. Because the revised petition rate is based solely on data for one of MRD's sales and MRD has fully participated in the investigation, KBA argues that the verified information on the record with respect to this sale can and should be used to corroborate and, if necessary, to revise petitioner's information further.

Furthermore, KBA maintains that the Department's corroboration procedures for purposes of the preliminary determination were legally insufficient. KBA takes issue with the Department's claim that it re-examined the petition price data and found it continued to have probative value. According to KBA, the test is not to re-examine or determine whether the data have probative value, but to corroborate that data to the extent practicable. KBA does not view the 46.40 percent margin alleged in the notice of initiation, which is based on MRD's data, as evidence of the dumping margin on KBA imports of subject merchandise, because it is significantly higher than the 17.70 percent preliminary margin calculated for MRD. In light of this fact and the evidence on the record, KBA does not believe it is accurate or reasonable to claim that the petition price data has any probative value. In accordance with the statute and the practice set out in the preliminary determination of *Bicycles from the People's Republic of China* (60 FR 56567, November 9, 1995)

(''*Bicycles*''), KBA asserts that wherever data collected from MRD is inconsistent with the data contained in the petition on the MRD sale, the Department should reject the petition data in favor of MRD's actual data for use as facts otherwise available. KBA also asserts that the decision in the preliminary determination of *Certain Pasta from Italy* (61 FR 1344, January 19, 1996) (''*Pasta Preliminary Determination*'') on which the Department relied in making its facts available ruling for KBA in the preliminary determination was inconsistent with the statute to the extent that it did not go beyond its pre-initiation analysis in its efforts to corroborate petition information. In addition, unlike the *Pasta Preliminary Determination*, where the Department used as facts available the median of the range of estimated dumping margins from the notice of initiation, the Department in the instant investigation based KBA's margin on a sole sale of another company and the facts supporting the alleged margin have been proven incorrect during the course of this investigation.

Alternatively, KBA suggests that it be assigned the ''all others'' rate. KBA adds that it withdrew its participation from the investigation because the extensive cost of preparing a response was totally disproportionate to its role in the U.S. market where its past sales of German-made LNPPs were insignificant and no future sales of German-made LNPPs were expected. For this reason, KBA asserts that the Department should consider it a non-shipper in which case it would receive the ''all others'' rate. KBA maintains that the Department should not make adverse inferences against KBA, as KBA's decision not to respond to the Department's questionnaire was driven by financial reasons and not by any other perceived benefit from non-submission of information. At the time KBA made its decision, it had no way of knowing the margin MRD would receive, whether the Department would accept its data, whether the information would be verified and/or whether the Department would use facts available. Additionally, KBA asserts that prior to the 1995 amendment to the antidumping statute, the Department's practice was to issue questionnaires to exporters accounting for the first 60 percent of exports of subject merchandise. Had this rule still been applicable, KBA states that it probably would not have been deemed a mandatory respondent and received a questionnaire in this investigation. Thus, it would have received the ''all others'' rate which, in this case, would have been MRD's rate.

The petitioner maintains that the Department properly assigned KBA the margin contained in the notice of initiation as facts available in the preliminary determination, contending that KBA's refusal to cooperate justifies an adverse inference. According to the petitioner, KBA was properly identified as one of two exporters of subject merchandise to the United States and, therefore, the Department was fully justified in its decision to require it to respond to the antidumping questionnaire. The petitioner also dismisses KBA's claims that its small volume of exports somehow exempts it from responding to the Department's questionnaire. Under the URAA, the Department must establish a separate margin for each exporter, unless the number of transactions or exporters makes such a procedure impractical, which is not the situation in this case. In addition, the petitioner dismisses KBA's reasons for refusing to cooperate as irrelevant since the statute does not condition the use of an adverse inference on the motive of a non-cooperating party. According to the petitioner, applying an adverse inference in KBA's case ensures that a non-cooperating party does not benefit more by its failure to cooperate than to comply with the Department's requirements. Finally, in the petitioner's view, the Department did corroborate the secondary data used as facts otherwise available. According to the petitioner, the statute establishes that the Department satisfies the corroboration requirement if it finds that the information at issue has probative value. In this investigation, the petitioner asserts that the pre-initiation analysis of the petition satisfied this threshold.

DOC Position: We agree with the petitioner. In our preliminary determination, pursuant to section 776 of the Act, we assigned KBA the margin in the notice of initiation as facts otherwise available because it failed to respond to the Department's questionnaire. We stated at that time that, in accordance with section 776(b) of the Act, an adverse inference was warranted with respect to KBA because it failed to cooperate by not acting to the best of its ability to comply with the Department's request for information so that the Department could make a determination with respect to the extent of KBA's dumping or lack thereof. Consistent with our preliminary determination, we believe that an adverse inference is warranted with respect to KBA for purposes of the final determination. See ''Facts Available'' section of this notice.

We disagree with the respondent's claim that the Department should not use facts available or make adverse inferences in its case, but rather should apply the ''all others'' rate . According to section 776(a) of the Act, the Department shall use facts available if an interested party does not provide necessary information or significantly impedes an investigation. The SAA explains that the Department's potential use of facts available provides the ''only incentive to foreign exporters and producers to respond to the Department's questionnaire'' (SAA at 868). Applying an adverse inference to a non-cooperating party ensures that the non-responding party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. The facts available or adverse inference applied need not be proven to be the best alternative information, only that it is reasonable to use under the particular circumstances (SAA at 869). In this case, if KBA were to receive the ''all others'' margin instead of the adverse facts available margin, as KBA suggests, it would receive the exact same treatment as MRD, which responded to the Department's questionnaire. This result would not fulfill the objective of section 776 of the Act. Similarly, we note that it would be inappropriate to assign to KBA, as adverse facts available, the actual margin calculated for the MRD sale in the petition, because this rate is lower than the final overall margin for MRD which cooperated fully in this investigation.

With respect to the respondent's opposition to our corroboration procedures, we note that the SAA (at 870) defines corroboration of secondary information to mean that the Department will satisfy itself that the secondary information to be used as the basis for facts available has ''probative value.'' The determination of ''probative value'' is assessed on a case-by-case basis. We stated in our preliminary notice that, in accordance with section 776(c) of the Act, we corroborated all of the secondary information on which the margin in the petition was based during our pre-initiation analysis of the petition to the extent appropriate information was available for that purpose at that time. For purposes of the preliminary determination, we re-examined the price information provided in the petition in light of information developed during the investigation, and found that it continued to be of probative value. For the final determination, we compared

the petition price information with verified data on the record and again found that it continued to be of probative value. Nothing in the statute or the SAA compel us to go beyond these procedures.

Contrary to the respondent's claims, our corroboration procedures in this case are not inconsistent with the preliminary determinations in *Pasta* or *Bicycles*. In *Bicycles*, the Department compared the data in the petition to secondary data which included, but was not limited to, the same type of data used as the basis for the petition and the audited financial reports of two of the largest Indian bicycle producers. These procedures did not seek to replace the secondary information with respondent-specific information, but rather to compare it against that information in order to determine if it had ''probative value.'' In *Pasta,* unlike the instant investigation where KBA did not attempt at all to respond to the Department's questionnaire, the company to which facts available was applied at least attempted to respond to the Department's questionnaire, but the information it submitted was inadequate and unusable. Also, in the *Pasta Final Determination,* we concluded that the petition was the only appropriate information on the record to be used as facts available on the basis of having compared the sizes of the calculated margins for the other respondents to the estimated margins in the petition. In the *Pasta* case, as in the instant case, the other respondents' estimated margins were lower than the petition margins. In addition, in *Pasta* the Department did not go beyond its pre-initiation analysis in its corroboration procedures. See *Pasta Final Determination*, 61 FR 30326, 30329 (June 14, 1996).

Furthermore, KBA's references to the pre-1995 antidumping law with respect to the Department's determination of the appropriate recipients to the Department's questionnaire are irrelevant. Under the URAA, the Department is now required to investigate all known producers/exporters of subject merchandise unless the number of transactions or exporters is administratively burdensome (SAA at 814). Furthermore, despite the fact that there was no dumping allegation in the petition specifically against KBA, the Department is required to conduct its own research as to the universe of producers/exporters of subject merchandise and the appropriate recipients of its questionnaire. Thus, based on information received from the U.S. Embassy in Bonn, we named KBA as a respondent. See August 28, 1995, Memorandum to the File from Irene Darzenta, *et al.*, Re: Questionnaire Recipients. For whatever reason KBA decided to withdraw from the investigation as an active respondent, the Department must now make adverse inferences consistent with the principles outlined above. Therefore, for purposes of the final determination, we have assigned to KBA the amended petition margin in the notice of initiation of 46.40 percent.

Comment 2 Sales Exclusion Requests: MRD argues that the Department should exclude certain sales from its final calculations—namely, Charlotte, Fargo and Global—because they involve imports of parts and subcomponents that are not subject to the scope of the investigation. With respect to the Charlotte sale, the respondent argues that, in the initial phases of the investigation, both the petitioner and MRD agreed that it should be excluded from the Department's analysis because the substantial U.S. content would distort the Department's calculations. MRD states that, while the Department's preliminary determination did not dispute this reasoning, it questioned whether it had the authority to exclude this sale based solely on this fact. Because the Department had not reached a final decision on scope at that time, it decided to preliminarily include the Charlotte sale in its analysis. MRD continues to believe that this sale does not represent subject merchandise and therefore should be excluded. According to MRD, none of the imported parts and subcomponents (taken singly or together) constitutes a LNPP component whether defined by the Department in terms of essence or value.

Moreover, MRD asserts that the Charlotte sale involved an unusual situation and, if included in the Department's analysis, would distort the calculation of the antidumping margin. Specifically, MRD states that MRU experienced significant problems in the design and manufacturing of the press because of ''mismanagement,'' which resulted in significant cost overruns and profit loss. The Department's preliminary determination deducted all of the costs incurred in the United States, including the unexpected cost overruns, from the total sales price to determine CEP, thereby resulting in a very high dumping margin for this sale. MRD points out that the Department has the authority to exclude unusual sales, such as Charlotte, from its analysis if inclusion of those sales would distort the results. Alternatively, if the Department does not exclude the sale to Charlotte, it should calculate CEP for that sale under the ''Special Rule'' of section 772(e) of the Act which provides that the Department may employ alternative methods to determine CEP when the U.S. value added exceeds the value of the imported merchandise. MRD asserts further that the first two alternative methodologies described in section 772(e) would be difficult to apply to the Charlotte sale because there were no sales of identical or other merchandise that could be compared to the NV for the Charlotte sale. Therefore, MRD maintains the Department should use ''another reasonable method'' permitted under the ''Special Rule'' of section 772(e) of the Act. At a minimum, MRD argues that the Department should assign a substantial portion of the loss on the sale to the U.S. operations that caused it.

Furthermore, MRD argues that the sales to Fargo and Global should also be excluded because they do not consist of subject components and therefore fall outside the scope. Also, as explained in its various responses, both sales involved unusual circumstances. In general, the Fargo sale involved the sale of a discontinued printing unit produced partially in Germany and partially in the United States. The Global sale involved a combination of used equipment from MRU's inventory and a new printing unit which was produced partially in Germany and partially in the United States, and sold to a reseller which was responsible for its installation. Even if the Department were to conclude that the parts and subcomponents imported from Germany for these sales were within the scope, MRD urges the Department to exercise its discretion to exclude these sales from its analysis based on the fact that they are small and atypical.

The petitioner states that the Department should include all three sales at issue in its analysis. With respect to Charlotte, the petitioner argues that the cost overruns as a result of ''mismanagement'' experienced by the respondent on this sale are not a valid reason to exclude the sale or apply special methodology within the context of the antidumping statute or the Department's practice. According to the petitioner, if a cost overrun by itself required exclusion of a sale, the cost calculation would become unfairly skewed in favor of low-cost sales. The petitioner also disputes respondent's claim that Rockwell agreed to exclude this sale from the investigation, stating that only in the context of its proposal for a four-year POI did it think that the Department could forego analysis of this sale given its complexity and the reporting burden. However, in the two-year POI adopted by the Department,

the petitioner believes it is too significant to omit and the respondent has already met the burden of reporting the data for this sale.

The petitioner argues that the Charlotte sale does not meet the criteria for exclusion of a U.S. sale from the dumping calculation because it is not ''atypical'' within the context of the LNPP industry or so small as to have an insignificant effect on the margin. In addition, the petitioner maintains that MRD's ''alternative methods'' approach is unsubstantiated. According to the petitioner, MRD's proposed alternative of attributing all or some of the loss on the Charlotte sale is unreasonable under section 772(e) of the Act which provides for the exclusion of losses in the adjustment for further manufacturing. Finally, the petitioner asserts that the merchandise sold to Charlotte is subject to the scope because it includes certain parts and subcomponents which are explicitly covered by the scope.

With respect to Fargo and Global, the petitioner contends that these sales also constitute subject merchandise and were not ''atypical.'' The petitioner claims that the imported merchandise for both transactions contained all of the relevant mechanical parts of one of the five LNPP components which would have included certain parts explicitly specified in the scope. The petitioner also maintains that the fact that these sales involved discontinued equipment or were small in terms of value does not make them ''atypical,'' given the limited number and uniqueness of each of the U.S. sales under investigation, and the nature of the LNPP industry where technological advances which result in the discontinuation of previous product lines are common.

DOC Position: We agree generally with the respondent with respect to the Charlotte sale, and with the petitioner with respect to the Fargo and Global sales. The Charlotte sale involved the importation from Germany of less than complete components destined to fulfill a contract for a LNPP system in the United States. Both the Fargo and Global sales involved the importation from Germany of less than complete components for the fulfillment of a contract for LNPP additions. As stated in the ''Scope of Investigation'' section of this notice, we have determined that elements (*i.e.*, parts and subcomponents) imported to fulfill a LNPP contract shall be included in the scope of the investigation if the sum of their cost of manufacture is at least 50 percent of the cost of manufacture of the finished LNPP component of which they are a part. In the case of Charlotte, our analysis of the sum of the manufacturing cost of the elements relative to the manufacturing cost of each of the components of which they are a part is less than 50 percent. Because the imported elements do not meet the 50 percent threshold on a component-specific basis and, therefore, do not constitute subject merchandise, we excluded the Charlotte sale from our final analysis.

Applying the above-specified value test to the imported elements relevant to the Fargo and Global sales yields the opposite result. That is, the cost of the imported elements is greater than 50 percent of the cost of the component of which they are a part. The Department may exclude U.S. sales from its analysis if these sales are: (1) Not representative of the seller's behavior, or (2) so small that they would have an insignificant impact in the margin. See *IPSCO, Inc.* v. *United States* (714 F. Supp. 1211, 1217 (CIT 1989). In the past, the Department excluded certain ''atypical'' or unrepresentative U.S. sales, where the total pool of U.S. sales was great. *See SBTS*, 54 FR 53141, 53148 (December 27, 1989). In the case of LNPPs, however, where the sales are few and unique, such exclusion would not be appropriate. Given the limited number of U.S. sales in this investigation and the fact that the sales at issue fall within the scope of the investigation, we have no basis on which to exclude these sales from our final analysis. Therefore, we included the sales to Fargo and Global in our final analysis.

Comment 3 Post-Petition Price Amendments: The petitioner contends that the Department should disregard all post-petition price amendments and use instead the contract price as of the date of the filing of the petition as the starting price. The petitioner asserts that such amendments applied to the Rochester, Wilkes-Barre and Charlotte sales. Citing the *Final Determination of Sales at Less Than Fair Value: Cell Site Transceivers from Japan*, 49 FR 43080, 43084 (October 26, 1984) (''*Cell Site Transceivers*''), among other cases, the petitioner states that the Department's practice calls for the rejection of alterations in the prices of subject merchandise after the filing of a petition in order to prevent manipulation of potential dumping margins. According to the petitioner, that rationale is applicable in this investigation, where MRD had every reason to negotiate a new price that would reduce the dumping margin. With respect to Rochester in particular, the petitioner finds suspect the significant profit gained by MRD in the amended portion of the transaction. Moreover, the number of reported amendments indicates that even the latest reported price adjustments might not be the last. Therefore, the petitioner asserts that the Department should rely on the sales prices in effect on the date of the filing of the petition and disregard the effects of any post-POI amendments on prices and cost.

MRD disagrees. First, it argues that it is common for specifications (and therefore price) for large capital equipment like LNPPs to be modified after the initial contract is signed, and the Department has recognized this in past cases. According to the respondent, such changes are not unusual and do not support the conclusion that the seller has manipulated its prices to avoid dumping. Second, with respect to the Rochester price amendment, the Department reviewed the correspondence which showed the amendment had been contemplated before the petition filing. Third, MRD finds the petitioner's analysis of its interests to be questionable, as it is always in MRD's interests to negotiate the highest possible price for its sales notwithstanding the filing of the antidumping case.

DOC Position: We agree with the petitioner. In past cases, the Department has stated that its standard practice is not to accept price adjustments instituted after the filing of a petition. Despite the nature of the merchandise under investigation, we have held that we are cautious in accepting price increases which occur after receipt of a petition so as to discourage potential manipulation of potential dumping margins, and have determined the original contract price which pre-dated the filing of the petition as the proper basis for U.S. price. The transactions and prices under investigation are those in effect as of the filing of the petition. *See Cell Site Transceivers; Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 37099, 37112 (July 9, 1993); *Final Results of Administrative Review: Stainless Steel Wire Rod from France*, 50 FR 9813, 9814 (March 12, 1995); and *Final Results of Administrative Review: 64K Dynamic Random Access Memory Components from Japan*, 51 FR 15943, 15953 (April 29, 1996). Similarly, at the preliminary determination in this investigation, we stated with respect to the Rochester price amendment that while we did not believe that the contract amendment per se altered the date of sale (given the industry involved

and the nature of the construction process for these large, customized machines under investigation, where minor specification changes are routine), we were ''troubled by the fact that the sale price was modified officially after the filing of the petition in this investigation, and that the potential for the respondent to influence purposely the margin calculation may exist.'' *See* February 23, 1996, Memorandum to Richard W. Moreland from The Team Re: Sales Exclusion Issues at 8.

Therefore, based on the foregoing analysis, we have not considered any of the post-POI price amendments relevant to MRD's U.S. sales in our final analysis. In addition, we note that the petitioner's assertion that post-POI price amendments applied to three of MRD's sales is incorrect. While we verified that post-POI price amendments applied to MRD's Rochester and Wilkes Barre sales, we did not observe any such price amendment to apply to the Charlotte sale, as suggested by the petitioner. Notwithstanding this fact, the issue is moot with respect to the Charlotte sale given that we have excluded it from our final analysis. *See DOC Position* to *Comment 2* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

We also note that our final calculation of CEP for the Rochester and Wilkes Barre sales, exclusive of post-POI price amendments, is consistent with our calculation of CV for these sales which is based on the respondent's submitted cost estimates and does not include the costs associated with the post-POI price amendments. *See DOC Position* to *Comment 9* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

Comment 4 Date of Sale: MRD maintains that the Department should use the letter of intent as the date of sale for its U.S. sales, as this document is the first written evidence that an agreement has been reached on the basic terms of those sales. Citing *LPTs* (48 FR 26498, 26499, June 8, 1993) and *MTPs* (55 FR 335, 341, January 4, 1990), MRD asserts that the Department has consistently used the date of earliest written evidence of agreement as the date of sale in cases involving large made-to-order products and has consistently held that minor changes in technical specifications after the date of initial agreement do not alter the date of sale. MRD states that the basic terms in the final contracts were identical in all material respects to the terms outlined in the letters of intent, as supplemented by the additional terms set forth in the final proposals referenced in the letters of intent. In addition, the fact that MRD begins production after the signing of the letter of intent provides further justification for treating the letter of intent date as the sale date. According to MRD, general contract law (Section 2–201(3)(a) of the Uniform Commercial Code) provides that a valid contract exists when the seller starts production for custom order goods that are not suitable for sale to others in the ordinary course of trade. MRD argues further that the cancellation clauses in the letters of intent for Rochester and Wilkes Barre should not affect the date of sale analysis because the fact remains that at the time of the letter of intent, the parties had reached agreement on all of the basic terms of the sale.

The petitioner argues that in accordance with the Department's long-standing practice, the appropriate date of sale in this investigation is the date of contract. According to the petitioner, the essential terms of sale in the LNPP industry (*i.e.*, specifications, price, payment schedules, warranty terms and installation requirements) are established by the final contract, and not the letter of intent. The petitioner states that the Department verified that MRD's letters of intent for selected U.S. sales did not definitively establish the material terms of sale. Finally, the petitioner asserts that in the cases cited by the respondent to support its argument that the Department's precedent establishes the date of sale earlier in the transaction involving large customized equipment, the date of sale adopted was the contract date or, in the absence of a formal written confirmation of sale, the initial order date. In this case, the petitioner points out that the letters of intent required a formal written confirmation of sale.

DOC Position: We agree with the petitioner. The Department has a longstanding practice, which bases the date of sale on the date when all the essential terms (usually price and quantity) are firmly established and no longer within the control of the parties to alter without penalty. See, *e.g., Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14064, 14067 (March 29, 1996).

In this case, we determined that the appropriate date of sale is the date of contract, and we solicited data from the respondent on this basis. As stated in *MTPs,* the Department's policy regarding the date of sale in the case of large, customized merchandise ''has favored establishing the date of sale at an earlier point in the sale transaction process than at a later point, as it might be the case of fungible-type commodities which are offered for sale in the ordinary course of trade.'' *See MTPs* at 341. The appropriate ''earlier point'' in the sale transaction for date of sale purposes is determined on a case-by-case basis. In this case, we determined that the earliest point in the sale transaction, where the essential terms of sale for the LNPP industry (*i.e.,* specifications, price, payment schedules, warranty terms and installation requirements) would be established definitively, is the sale contract date, given the volume of sales correspondence generated in the sales process and the potential minor specification changes that may be made to the merchandise during the production process and after delivery. Furthermore, at verification, we observed that the terms of sale stipulated in the letters of intent did not definitively establish the material terms of sale, as they were subject to change and to a definitive agreement of sale (*i.e.,* a sale contract). See MRD Sales Verification Report at 11–12.

Therefore, for purposes of the final determination, we have determined the date of contract to be the appropriate date of sale. Our determination of the date of sale in this case is distinguishable from that in the case of MHI's Guard sale in the companion investigation of LNPPs from Japan. In MRD's case, the date of sale issue involves identifying the producer's earliest written documentation establishing the essential terms of sale, whereas in MHI's case the issue involves identifying the appropriate parties to the sale for date of sale purposes. See MHI *Comment 4* in the Federal Register notice of LNPPs from Japan.

Comment 5 U.S. Indirect Selling Expense Cap: The petitioner argues that the Department should not cap U.S. indirect selling expenses allocated to particular sales at the amount incurred during the POI because the allocation cap ignores the expenses incurred on sales of subject merchandise outside of the POI. According to the petitioner, the Department's allocation methodology employed in the preliminary determination rests on the assumption that POI sales could not have incurred selling expenses outside of the POI. But in cases such as the instant one, when sales efforts last for years and yield only a limited number of large sales at irregular intervals, it is logical to find that the amount spent to negotiate a given group of sales was greater than the total selling expenses incurred in the limited period in which the sales were made. Furthermore, the Department's cap is inconsistent with section

772(d)(1) of the Act which requires the deduction from CEP of any expenses generally incurred in selling the subject merchandise. According to the petitioner, whether the respondent incurred indirect selling expenses during the POI is irrelevant to this requirement. In addition, the Department's cap ignores the pattern of MRD's sales, where the POI sales are few but selling expenses are incurred on a regular basis before, during and after the POI to account for activities ranging from the development of bids to amendments to signed contracts. The petitioner argues further that the Department should reject MRD's proposals to cap U.S. indirect selling expenses up to the amount of total expenses incurred during the POI on newspaper sales, as this would amount to allocating POI indirect selling expenses over POI sales orders, which is contrary to the Department's normal calculation methodology.

If the Department is concerned about the magnitude of the verified POI selling expenses and their potential overstatement relative to total POI sales, the petitioner suggests that the Department follow past practice and use verified data relevant to a three-year period. The petitioner asserts that the Department should not use the respondent's four-year data because, among other reasons, they were not reconciled to audited financial statements and included expenses incurred in 1991–1992 by a facility which is no longer in operation and, therefore, are unrepresentative of current experience.

Furthermore, the petitioner argues that the Department should remove the data pertaining to Canadian transactions from the calculation of indirect selling expenses. According to the petitioner, section 772(d)(1) of the Act allows adjustments to CEP only to reflect costs of selling the subject merchandise. Since purchases by Canadian customers are not subject to this investigation, the petitioner maintains that they cannot be used in the allocation of indirect selling expenses. Furthermore, MRD provided no information illustrating that the selling expenses incurred on Canadian sales are representative of those incurred on U.S. sales.

MRD maintains that the Department should allocate U.S. indirect selling expenses incurred during the POI over the value of orders received during that period, which would avoid the need to apply a ''cap'' on such expenses as was done in the preliminary determination. Alternatively, the Department should revise the ''cap'' on U.S. indirect selling expenses to avoid assigning the selling expenses for commercial presses to newspaper presses.

Furthermore, MRD finds the petitioner's proposals unacceptable. The respondent believes the petitioner's arguments are based on the incorrect assumption that indirect selling expenses can be matched to specific sales. To the contrary, MRD explains indirect selling expenses are fixed expenses that do not vary with sales, and thus they should be allocated over the value of orders received during the POI. MRD reasons that in this case, because the Department is applying the indirect selling expense rate to sales made during the POI (*i.e.*, sales for which orders were received during the POI), it must calculate the rate on the basis of the total value of orders received. MRD attempts to refute the petitioner's assertions that a particular period or calculation would capture the expenses that properly relate to the sales under investigation, stating that the expenses can only relate generally to all of MRD's sales efforts. With respect to the three-year analysis advanced by the petitioner, MRD states that in the petition, Rockwell argued for a four-year POI because the three-year period from July 1992 to June 1995 was a period of sales depression that did not adequately capture the LNPP business cycle. If the Department were to accept the proposition that indirect selling expenses must be allocated over sales recognized for accounting purposes, then MRD maintains that it should use a period that encompasses the entire LNPP industry cycle, *i.e.*, a four-year period.

With respect to the petitioner's argument that the Department should remove the Canadian sales data from the calculation, MRD disagrees. It explains that MRU sales personnel who are responsible for sales in the United States are also responsible for sales in Canada and Latin America, and that the expenses for these salesmen cannot be tied to specific sales or markets. Accordingly, the only possible allocation method is to divide the total expenses of MRU's sales personnel by the total value of the sales generated by those personnel.

DOC Position: We agree in part with both the petitioner and MRD. The Department normally calculates indirect selling expenses as a percentage of POI cost of goods sold or POI sales revenue recognized. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Mexico,* 58 FR 37192, 37198 (July 9, 1993). In this case, the respondent has argued since the preliminary determination that the Department should calculate the POI selling expense rate based on sales orders, rather than sales recognized, so as not to overstate selling expenses on POI sales in years where sales revenue recognized is unusually low relative to actual selling expenses incurred. Conversely, the petitioner has maintained that such a calculation would grossly understate expenses for POI sales because it would disregard the substantial expenses incurred before and after the investigation period for POI sales.

In the preliminary determination, because application of the POI indirect selling expense rate reported by MRD to U.S. sales prices resulted in transaction-specific selling expenses which exceeded the total indirect selling expenses incurred by MRU during the POI, we capped the amount of indirect selling expenses deducted from CEP by the total indirect selling expenses actually incurred by MRU during the POI. While this is not our normal practice, we applied a ''cap'' on U.S. indirect selling expenses in the preliminary determination because the figures reported by the respondent appeared inaccurate and we did not have sufficient information to make any other adjustment. The petitioner claims that this ''cap'' ignores the fact that, in cases such as LNPPs when sales efforts last for years and yield only large sales at irregular intervals, the amount spent to negotiate a given group of sales may be greater than the total selling expenses incurred in the limited period in which the sales were made. Likewise, we note that significant sales efforts may be made and significant selling expenses may be incurred in a given period in the pursuit of a given sale without resulting in the consummation of that sale. Contrary to the petitioner's claim, indirect selling expenses are period expenses which cannot be associated directly with specific sales and, therefore, no direct correlation is possible despite the particular period chosen for analysis.

Since our preliminary determination, we verified that the actual POI indirect selling expense rate was significantly lower than that reported by the respondent, as a result of the correction of clerical errors. See MRU Sales Verification Report at 22–24. Our analysis of the verified actual indirect selling expenses incurred relative to the verified sales revenue recognized for the two fiscal years captured by the POI does not indicate that application of the verified POI rate would distort the calculation of CEP. Consequently, we see no need to cap these expenses for

purposes of the final determination. Therefore, we have applied the verified indirect selling expense percentage to U.S. sales contract prices (exclusive of post-POI price amendments) and have deducted the resulting expense amounts from CEP. Given the nature of these expenses, it is not possible to segregate the selling expenses that relate to foreign sales from those that relate to U.S. sales. Therefore, we did not remove the data pertaining to these sales from our calculation of the indirect selling expense rate, as suggested by the petitioner.

Comment 6 General Methodology for Calculating U.S. Warranty Expenses: The petitioner maintains that the two U.S. warranty expense calculations provided by MRD in its questionnaire responses are flawed. The first one (contained in Appendix SC–21–A of the February 1, 1996 submission), which the Department used in its preliminary determination, improperly included foreign sales data; and the second one (contained in Appendix 9 of the March 13, 1996 submission), which was examined by the Department at verification, improperly allocated four years of warranty expenses over more than seven years of sales, thereby understating U.S. warranty costs. The petitioner contends that the Department should recalculate the MRU warranty expense rate to be applied to CEP based on historical data for a four-year period exclusive of data pertaining to foreign sales and inclusive of sales revenues realized only during the period to which the warranty costs pertain. The petitioner explains that past Department decisions recognize that, especially on sales of large capital equipment such as LNPPs, the warranty expense calculation must estimate future expenses based on historical costs, rather than capture current warranty costs, for U.S. sales, because the long time for production and installation may lead to warranty expenses incurred long after the review period.

The petitioner maintains further that the inclusion of sales to foreign customers (*i.e.*, sales to Canadian customers) in the warranty expense rate calculation employed in the preliminary determination is improper. According to the petitioner, section 772(d)(1) of the Act allows adjustments to CEP only to reflect costs of selling the subject merchandise in the United States. Since purchases by Canadian customers are not subject to investigation, the petitioner maintains that they cannot be used in the calculation of warranty expenses. Moreover, MRD provided no evidence that the warranty expenses incurred on Canadian sales are representative of those incurred on U.S. sales.

The petitioner explains further that, at verification, the Department examined a warranty calculation provided by the respondent (in Appendix 9 of the March 13, 1996 submission) that properly segregated U.S. and foreign sales. However, that calculation allocated four years of warranty expenses over contract values that spanned a period of more than seven years, which in the petitioner's opinion results in an understatement of the actual cost. Therefore, the petitioner suggests that the Department subtract from that warranty expense calculation both Canadian sales, and sales revenues realized for the period prior to that for which warranty expenses were reported. The petitioner argues that, unlike MRD's proposed calculations, its proposed calculation is consistent with historical experience.

MRD argues that petitioner's proposition would result in a mismatching of warranty costs and sales, and would massively overstate the actual warranty expenses MRU will incur on sales during the POI. According to MRD, the purpose of the warranty calculation is to determine a reasonable estimate, based on an analysis of historical data, of the warranty costs that will be incurred in the future on the sales under investigation. As such, the petitioner's proposed calculations do not meet that purpose. With respect to the initial warranty expense calculation it reported based on historical experience, MRD contends that the removal of Canadian sales, as requested by the petitioner, would seriously distort the warranty calculations by leaving an unrepresentative sample that would not be sufficient to determine the historical ratio of warranty expenses to sales. MRD points out that in its March 13, 1996 submission, it provided a detailed analysis that shows the actual warranty expenses incurred on sales during the last four years. Based on this review of MRU's actual warranty expense experience on sales for which complete warranty expense information is available, the respondent argues that the U.S. warranty rate resulting from its initial calculation (February 1, 1996 submission) reasonably reflects MRU's actual experience on sales for which the warranty period has been completed. This analysis also demonstrates that petitioner's proposed calculation grossly overestimates MRU's actual warranty experience. MRD notes that throughout this proceeding the petitioner has insisted that, before estimates can be used in this case, they must be supported by ''benchmarks'' based on the actual costs for actual transactions. The respondent asserts that the petitioner's proposed calculation fails that test and accordingly must be rejected.

In addition, MRD argues that the Department should revise its U.S. warranty calculation with respect to the Rochester, Wilkes-Barre and Fargo sales, so as to avoid double counting. MRD asserts that the warranty calculation methodology employed in the preliminary determination for Rochester and Wilkes-Barre was incorrect and unreasonable because it assumed that warranty services would be performed more than once, *i.e.*, full warranty expenses were attributed to both MRD and MRU. According to MRD, whatever warranty services are needed for these presses will be performed only once—either by MRD, by MRU or a combination thereof. Therefore, the Department should either (1) apply only the MRD warranty expense rate to these sales; (2) apply only the MRU warranty expense rate to these sales; or (3) apply an average of the MRD and MRU rates to these sales. With respect to Fargo, MRD argues that the Department's preliminary calculations double-counted warranty expenses by adding the actual warranty expenses already incurred with the total expected warranty expenses. To estimate expected warranty expenses, MRD states that one should use either the actual warranty expenses to date (plus an estimate of the remaining warranty expenses that are expected) or the estimated total warranty expenses based on the value of the product.

DOC Position: We agree with both the petitioner and respondent, in part. The Department's normal practice in computing warranty expenses is to use historical data over a four- or five-year period preceding the filing of the petition to estimate the likely warranty expenses on POI sales. The underlying rationale for this practice is the recognition that, in many industries, warranty costs on sales made during the POI might not occur until long after the POI and, consequently, POI sales cannot be tied to their associated actual warranty expenses for reporting purposes. See *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026, 19041 (April 30, 1996); *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994); and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363, 56379

(November 4, 1991). Historical costs are especially appropriate in the case of LNPPs because the long time for production and installation of the subject merchandise may lead to warranty expenses being incurred long after the POI. See *Final Results of Administrative Review: Mechanical Transfer Presses from Japan*, 57 FR 12798, 12799 (April 13, 1992).

Therefore, for purposes of the final determination, we have used the warranty expense rate reported by the respondent in its February 1, 1996 submission, revised to reflect the correction of certain clerical errors found at verification. We have applied this rate to the contract price of those U.S. POI sales for which MRU is primarily responsible for providing warranty servicing, and then deducted the resulting amount from CEP.

As for the petitioner's requested removal from the calculation of the data pertaining to non-subject sales, we agree in principle. While we have the information to segregate the warranty costs that relate to these sales from those that relate to U.S. sales in the calculation, we do not have sufficient information to segregate the corresponding sales values from the calculation for two out of the four fiscal years included in the calculation. Therefore, given this problem and the fact that the warranty expense rate inclusive of the foreign sales reasonably reflects MRU's actual experience on sales whose warranty period has been completed, we have not made the adjustment proposed by the petitioner.

With respect to the respondent's argument that the Department should revise its warranty expense calculation regarding Rochester, Wilkes-Barre and Fargo, we agree. In this case, both MRD and MRU provide warranty services. However, whether or not they incur warranty costs on a particular sale depends on their role in the production of the merchandise covered by the sale. In the preliminary determination, we incorrectly deducted from the CEP of the Rochester and Wilkes Barre sales warranty expenses reflecting the historical experience of MRU in addition to that of MRD, based on the assumption that both companies would be playing a role in warranty servicing. Since that time, however, we verified that MRD will be primarily responsible for the warranty servicing on these LNPP systems, given that they were almost entirely produced in Germany by MRD. See MRD Sales Verification Report at 28. Therefore, for the Rochester and Wilkes Barre sales, we have applied the verified warranty expense rate relevant to MRD's historical experience in Germany for all LNPP products. With respect to the Fargo and Global sales, MRD reported and the Department verified that MRU is primarily responsible for the servicing of any warranty claims on these sales. Therefore, for these sales it is more appropriate to use a warranty expense rate based on the historical experience of MRU as described above. Because we have excluded the Charlotte sale from our analysis for the reasons stated in the *DOC Position* to *Comment 2* of the ''Company-Specific Issues'' subsection of this notice, the issue is moot with respect to this sale.

Comment 7 Global Sale: MRD asserts that, if the Department includes the sale to Global in its analysis, it should analyze the total sale, including the used merchandise that was an integral part of the sale. The respondent asserts that this sale was unusual in that it involved both new and used equipment that was purchased by a reseller in the United States for ultimate sale to the end user. MRD argues that the new and used equipment was sold as a package and the customer did not have the option of buying only the used equipment or the new equipment at the respective price stipulated in the sales contract. MRD submits that in past cases, the Department has ruled that, where the contract sets a separate price for non-integral, non-subject equipment, it will rely on the contract price to determine the value to be assigned to that equipment. However, with respect to the Global sale, MRD argues that the used equipment in that sale was clearly integral to the sale. As such, the Department should make an adjustment for that used equipment based on its cost, and should allocate to it a portion of the total profit or loss on the sale.

The petitioner contends that MRD's failure to provide adequate information on the cost of the used equipment requires the exclusion of the used equipment from the Department's final calculations on the basis of the contract price. The petitioner asserts that the cost of this equipment reflected the inventory value which was, in turn, based on the acquisition price plus shipping costs less salvage value. This does not yield the market value which, according to the petitioner, is the correct measure of whether MRU received a reasonable profit on the used merchandise. The petitioner also claims that MRD did not present information at verification to allow the Department to confirm the reported cost.

DOC Position: We disagree with the respondent. For the reasons outlined in *DOC Position* to *Comment 2* of the ''Company-Specific Issues'' subsection of this notice, we have not excluded the Global sale from our final analysis. The Global sale involved the sale of both a used press and new equipment. Used presses are expressly excluded from the scope of our investigation. *See* ''Scope of Investigation'' section of this notice. We also note that the value of the used equipment was identified separately in the contractual documentation governing the sale. Given these facts, we have no basis upon which to include the used equipment portion of the sale in our final analysis as an integral part of the sale. As a result, we deducted from the calculation of CEP the contract price relevant to the used equipment. This is consistent with our treatment with respect to spare and replacement parts, which are also expressly excluded from the scope and therefore excluded from our analysis, where their value is separately outlined in the contractual documentation.

Comment 8 Spare Parts: MRD requests that the Department adjust its calculations to avoid double-counting of the cost of spare parts. MRD assert that if the spare parts price is deducted from the U.S. price, then the cost of the spare parts should be excluded from CV. On the other hand, if the spare parts cost is included in the CV then the spare parts price should not be deducted from U.S. price.

DOC Position: We agree. Consistent with our preliminary determination, where the value of the spare parts was separately identified in the contractual documentation governing the U.S. sale, we deducted the spare parts value from the contract price in the calculation of CEP. In this case, we also excluded the cost of the spare parts from the CV.

Comment 9 Costs for Rochester and Wilkes-Barre Sales: MRD argues that the Department should calculate CV for the Rochester and Wilkes-Barre sales based on costs calculated in accordance with the company's project-specific work plan. MRD contends that these costs are accurate and reliable, and that they are based on a system used by the company in its normal course of business. MRD states that it calculated the cost of each project-specific work plan based on a project-specific bill of materials and production instructions prepared before the initiation of this investigation.

MRD further asserts that it did not mislead the Department regarding the availability of actual cost data for completed press components. MRD states that it was able to compare project-specific work plan costs to the actual costs recorded in its cost accounting system for certain home market sales. MRD also notes that for Rochester and a few home market sales,

it was able to compare the project-specific work plan costs for individual parts to the actual costs recorded in its normal accounting system for the same parts.

MRD maintains that if the Department chooses to reject the costs calculated from the project-specific work plan for Rochester and Wilkes-Barre, it should rely on the cost estimates submitted by MRD as facts available rather than on the antidumping rate from the petition. According to MRD, the cost estimating system calculates costs based on an analysis of actual experience for previous projects of the same press model. MRD argues that the petition rate does not contain MRD's actual historical experience regarding materials, labor and production operations which was considered in developing the submitted cost estimates for the Rochester and Wilkes-Barre sales.

The petitioner maintains that the Department should reject the cost figures reported for the Rochester and Wilkes-Barre sales because the basis for these costs deviates from MRD's normal accounting practices and the reported amounts were derived after initiation of the investigation. The petitioner notes that verification revealed that MRD created the project-specific standard work plan costs for these sales solely for the purpose of responding to the Department's antidumping questionnaire. Thus, according to the petitioner, the cost reporting methodology employed by the respondent for the Rochester and Wilkes-Barre sales presents significant potential for manipulation. Even if MRD could not manipulate the actual parts listed in the work plan, the petitioner asserts that it is certainly possible for MRD to have manipulated the cost of those parts.

The petitioner contends that MRD misled the Department about its method of calculating production costs for these unfinished sales. According to the petitioner, in making its decision whether to review the Rochester and Wilkes-Barre sales as part of our investigation, the Department relied on MRD's claims that, as part of verification, project-specific standard costs could be compared to actual costs incurred to date on a component-by-component basis. The petitioner notes, however, that MRD was unable to identify which components had been completed and could not reconcile costs actually incurred to the project-specific work plan costs. In addition, during verification, the Department found that the projects were not completed to the extent claimed by MRD. The petitioner also disagrees with MRD's characterization of its project-specific work plan standard costing system as the type of system routinely accepted by the Department in past cases. The petitioner asserts that the Department only accepts such systems when an adjustment can be made to convert standard costs to actual costs. According to the petitioner, MRD's methodology does not allow any such adjustment.

For these reasons, the petitioner urges the Department to rely on facts available or exclude these sales altogether from its final analysis. As facts available, the petitioner suggests using the CV information in the petition which it argues contains the most probative facts on the record.

DOC Position: We agree with the petitioner that we cannot rely on MRD's projected costs calculated from its project-specific work plans as the basis for CV in our final determination. The Department normally requires respondents to report the actual cost of producing the subject product. Since the Rochester and Wilkes-Barre sales were not completed as of the date we issued the Section D questionnaire, MRD could not provide the actual cost of production. However, for these two sales, the respondent urged the Department to rely on its *projected* cost of production, which we normally do not accept, because there were so few sales and there was concern as to whether we would have any sales to investigate. MRD stated that its projected costs would be derived from the company's ''standard costing performed in the normal course of business,'' that substantial actual costs would be incurred by verification, and that such actual costs could be reconciled to the costs of each project-specific work plan. Because MRD urged the Department to depart from its normal method of accepting only actual costs rather than projected costs, it was MRD's responsibility to provide the data necessary to justify the accuracy and reliability of its projected cost methodology.

As part of its CV submissions to the Department, MRD explained its reporting methodology for the Rochester and Wilkes-Barre sales. Specifically, MRD claimed that: ''For those products for which production is not yet complete but for which detailed work-plans are available (such as Rochester and Wilkes-Barre), the actual costs have been used to determine the cost of manufacture to date, and the standard costs calculated from the project-specific work-plans have been used to determine the cost remaining for the project.'' See MRD's December 13, 1995 Section D response at 41. At verification, however, we learned that instead of including actual costs incurred to date for each project, MRD's submitted costs for the Rochester and Wilkes-Barre sales were based entirely on the total standard costs calculated from the project-specific work plans. Moreover, MRD's project-specific standard costing system, which was the basis for its submitted costs, could not be reconciled to MRD's audited financial statements. Absent the control of the respondent's normal audited accounting system, we are unable to determine whether MRD's projected cost data for the Rochester and Wilkes-Barre sales is reliable and accurate.

In addition to the difficulties noted above in reconciling MRD's project-specific standard work plan costs for the Rochester and Wilkes-Barre sales, we also found that the submitted costs for these projects had been derived after the initiation of this antidumping investigation and calculated specifically for the submission. MRD itself noted in its case brief that the company calculated the *detailed standard costing* of Rochester and Wilkes-Barre project-specific work plans after initiation of this antidumping investigation. *See* June 13, 1996 Revised Case Brief at 62. During verification, MRD officials also indicated that these same cost calculations had been prepared solely for the purpose of providing CV information in this case.

For these reasons, we have rejected MRD's cost projections for the Rochester and Wilkes-Barre sales in our final determination, and have relied on facts available to compute the cost of these sales. As facts available, we used MRD's submitted cost estimates for each of the two sales. We adjusted the estimated cost for a cost variance amount which we calculated as the difference between estimated and actual costs for sales of the same press model produced and completed during the POI.

We determined that the cost estimates could be relied upon for several reasons. First, unlike the project-specific standard work plan costs submitted by MRD for the Rochester and Wilkes-Barre sales, MRD prepares a cost estimate for every press in the normal course of business. Second, MRD completed the cost estimates for Rochester and Wilkes-Barre prior to the initiation of this case. Third, MRD relied on its actual production experience for the same model presses (''Geoman'') to develop cost estimates for similar Geoman presses included in the Rochester and Wilkes-Barre contracts. Lastly, MRD provided estimated and actual cost data for the Geoman sales completed during the POI, thus enabling us to adjust

estimated costs for the Rochester and Wilkes-Barre sales based on MRD's past experience with the same press model.

Comment 10 Variances: MRD argues that the Department incorrectly used fiscal 1995 overhead variance rates to adjust overhead costs for the 1996 fiscal year. MRD contends that the Department should rely on the company's reported variance figures which were based on actual partial-year variance rates for the first six months of fiscal 1996 and full-year budgeted variance rates for the remainder of that year. MRD maintains that its use of a budgeted variance for fiscal year 1996 was actually conservative considering that the actual variance for the first half of that year was more favorable than the budgeted amount. Lastly, MRD argues that the Department cannot possibly apply the prior year's variance to the current period's costs as it did in the preliminary determination because the variance for each period reflects the utilization for that specific period.

The petitioner argues that the Department should continue to adjust MRD's costs to reflect the full year's actual variance for fiscal 1995. The petitioner asserts that MRD's budgeted variances do not accurately predict full-year results and rely on potentially unrealistic capacity utilization statistics. According to the petitioner, MRD's comparison of budgeted and actual variances do not confirm the reasonableness of either the actual or budgeted variances reported. Moreover, the petitioner maintains that the part-year variances may exclude year-end adjustments reflected in the annual budgeted variance calculation. The petitioner concludes that prior year's actual experience provides a more accurate projection of fiscal 1996 actual costs given the uncertainty about the conflicting plant capacity and utilization rates on the record.

DOC Position: We agree with the petitioner that MRD's budgeted variances do not accurately predict full-year operating results and rely on unrealistic capacity utilization levels. In addition, year-end adjustments or one-time annual costs may not be reflected in the part-year actual variance. Therefore, we rejected MRD's reported part-year actual variance and budgeted fiscal year variance calculation for fiscal 1996. As an alternative, we relied on the prior fiscal year actual variance which is consistent with the methodology applied in our the preliminary determination.

Comment 11 Imputed Credit: MRD contends that the Department's normal practice is to include only differences in selling expenses in the circumstance of sale adjustment. Therefore, MRD argues that the imputed cost of financing production should be excluded from the circumstance of sale credit calculation because the differences in the timing of production costs do not affect price comparability. Additionally, MRD asserts that negotiated payment terms are not affected by the lengthy production period for LNPPs. By linking the payment terms to the production cost schedules, as was done in the preliminary determination, the Department contradicts the basic principle that money is fungible. Thus, MRD argues that progress payments and production costs should not be matched on a customer-specific basis. Also, MRD maintains that imputed interest expenses should not be calculated for SG&A expenses. Moreover, the Department should only apply this circumstance of sale adjustment to NV if the normal imputed credit is included in the CV calculation.

The petitioner asserts that the Department correctly made a circumstance of sale adjustment for imputed credit expense by including both production costs and progress payments in the calculation. In addition, the petitioner argues that SG&A should be included in the imputed credit expense calculation because these costs are part of the total production costs compared to the total price of each press (*i.e.*, total production plus profit). Furthermore, the petitioner agrees with MRD that the Department should deduct home market imputed credit expenses as a circumstance of sale adjustment only if they include imputed credit in CV.

DOC Position: We believe that it is appropriate in this instance to recognize the comprehensive financing arrangement for each sale as a circumstance of sale adjustment. LNPPs require substantial capital expenditures over an extended time period because of their size and lengthy production process (*e.g.*, two to three years including the design phase). Moreover, the projects generally call for the purchaser to provide scheduled progress payments before completion of a project. Our normal imputed credit calculation (*i.e.*, cost of financing receivables between shipment dates and payment dates) does not measure the effect of progress payments made relative to production costs incurred. To adjust sales prices for the effect of the respondent incurring significant capital outlays at the beginning of a project (back loaded payments) or receiving large sums of money up front (front loaded payments), we calculated imputed credit for each home market and U.S. sale by recognizing both financing costs incurred and payments received.

We agree with the petitioner that SG&A should be included as production costs for calculating the imputed credit expense because the total contract price for each press (sum of payments) reflects the total production costs plus profit. We disagree with the petitioner, however, with regard to the issue of including imputed credit expense in CV. Section 773(e)(2)(A) of the Act, requires that the Department include in CV the actual amount of SG&A, including net interest expense, incurred by the exporter or producer. We agree with the respondent's position that imputed credit is not an actual expense. Therefore, we did not include imputed credit in the CV calculation for the final determination.

Comment 12 Imputed Capitalized Interest Costs: MRD claims that the statute and German Generally Accepted Accounting Principles (GAAP) do not allow imputed capitalized interest expenses in the cost of manufacture. Therefore, the Department should include only the actual interest costs incurred rather than both actual financing and imputed capitalized interest expenses. MRD further argues that the Department's normal interest expense calculation already includes all the actual costs of financing production. MRD further argues that the interest cost capitalized should not exceed the total interest cost incurred by the company and the Department should make an appropriate offset to the interest costs included in general expenses.

The petitioner contends that if the Department does not include the timing of production costs as a factor in its credit calculation, it should include capitalized interest expenses in CV to reflect MRD's financing of production incurred prior to payments received.

DOC Position: Since we are calculating imputed interest as a circumstance of sale adjustment and not as a capitalized cost in the cost of manufacture, this issue is moot.

Comment 13 Combining MAN Plamag and MRD Production Costs: In calculating cost of manufacturing, MRD argues that the Department should average the labor and overhead rates of both the MAN Plamag and MRD facilities because LNPPs are produced at both locations. Although MAN Plamag is a separate legal entity from MRD, MRD contends that MAN Plamag meets the five criteria for collapsing companies as used in *Iron Construction Castings from Canada*, 59 FR 25603–04 (May 17, 1994). Moreover, MRD maintains that the Department's policy

is to average costs where management has the capability to shift production between multiple facilities. Therefore, the Department should include respondent's ''multiple facilities'' adjustment which modifies the single facility costs to reflect the average of the two facilities.

The petitioner contends that, because the two facilities do not produce the same models, MRD has not met the criteria for cost averaging. Even if MRD had met the criteria for averaging costs, the petitioner argues that MRD's calculation is inconsistent with Department practice. MRD selectively averaged labor and overhead rates, but not SG&A expenses or research and development costs. The petitioner concludes that this selective form of weight averaging distorts costs and should be rejected.

DOC Position: We agree with the petitioner that we should not average costs for MRD and MAD Plamag. MAN Plamag is a separate corporate entity from MRD. Specifically, MAN Plamag is an affiliated party to MRD (not a division or factory within MRD) which supplies MRD with one of the major production inputs (RTPs). In determining the cost of manufacturing, the Department evaluates whether affiliated party transactions for major inputs occur at prices that are arm's length in nature and above the supplier's cost of production. Contrary to MRD's assertion, the Department's normal practice is not to automatically collapse affiliated suppliers and the respondent company. In fact, the five criteria noted by MRD relate to collapsing companies for sales purposes rather than cost.

Comment 14 Further Manufacturing G&A: The petitioner maintains that the Department should calculate an average further manufacturing G&A expense over a multiple-year period based on actual historical data that reasonably represents the costs incurred, and those yet to be incurred, by MRD from its LNPP operations. The petitioner also urges the Department to ensure that the denominator in its further manufacturing G&A expense rate is consistent with the allocation base of each individual transaction to which the rate is applied. Lastly, the petitioner contends that because MRD did not reconcile its submitted fiscal year 1992 and 1993 G&A expenses to its audited financial statements, the Department should reject the G&A expenses reported by MRD for those two years.

MRD argues that the Department should allocate further manufacturing G&A expenses over the cost of sales orders during the POI rather than over the cost of sales actually recognized during that period. If the Department chooses to allocate G&A over sales recognized, then MRD asserts that the amount of G&A expenses should be capped. To calculate this cap, MRD contends that actual G&A expenses should be allocated between commercial and newspaper presses based on cost of goods sold during the POI.

DOC Position: For the final determination, we computed MRD's further manufacturing G&A expense rate based on the ratio of the reported G&A expenses to cost of sales (less the cost of imported German parts recognized during the POI). Consistent with the petitioner's arguments, we applied this G&A expense rate to the U.S. further manufacturing costs of each press. G&A expenses are period costs which relate to activities of the company during the period in which they are incurred. Accordingly, we allocated G&A expenses over costs incurred during the POI rather than the hypothetical cost of orders received during the period. Based on our approach, we concluded capping of G&A was not necessary because the total G&A assigned to all U.S. sales does not exceed the total amount of G&A being allocated.

Comment 15 Loss on Plant Closure and Disposal of Assets: MRD argues that the loss on the closure of the Middlesex and North Stonington facilities should be excluded from the cost calculation because these costs were extraordinary. In support of its position, MRD cites *Certain Welded Stainless Steel Pipe from the Republic of Korea* (57 FR 53693, 53704, November 12, 1992) in which the Department excluded the gain of the sale of a manufacturing plant because the transaction was considered extraordinary rather than a routine disposal of fixed assets.

The petitioner maintains that the costs incurred for the Middlesex plant closure should be included in MRD's further manufacturing G&A expense calculation because this facility was the location of the newspaper press division.

DOC Position: The plant closure costs at issue were incurred prior to the POI. Because we calculated G&A expenses based on POI data, this point is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of LNPPs from Germany, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after March 1, 1996, the date of publication of our preliminary determination in the Federal Register.

Furthermore, we are also directing the U.S. Customs Service to continue to suspend liquidation of all entries of elements (parts or subcomponents) of components imported to fulfill a contract for a LNPP system, addition or component, from Germany, that are entered, or withdrawn from warehouse on or after March 1, 1996, with the exception of those entries of elements imported by MRU to fulfill the contract for the sale of a LNPP system to The Charlotte Observer (''Charlotte contract''). Such suspension of liquidation will remain in effect provided that the sum of such entries represent at least 50 percent of the value, measured in terms of the cost of manufacture, of the subject component of which they are part. This determination will be made by the Department only after all entries of the elements imported pursuant to a LNPP contract are made and the finished product pursuant to the LNPP contract is produced.

For this determination, all foreign producers/exporters and U.S. importers in the LNPP industry be required to provide clearly the following information on the documentation accompanying each entry from Germany of elements pursuant to a LNPP contract: (1) The identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, and (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of the cost of manufacture of the LNPP component of which they are part.

With respect to entries of LNPP spare and replacement parts, and used presses, from Germany, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service to continue not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry

shall continue to be required to provide certification that the imported merchandise would not be used to fulfill a LNPP contract. As indicated above, we will also continue to request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price, as shown below. Any securities posted since March 1, 1996, on entries of elements relevant to MRU's Charlotte contract shall be refunded or canceled.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
MAN Roland Druckmaschinen AG	30.80
Koenig Bauer-Albert AG	[1] 46.40
All Others	30.80

[1] Facts Available Rate.

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: July 15, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18542 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–816]

Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Taiwan, Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the second antidumping duty administrative review of stainless steel butt-weld pipe fittings from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–5253, Antidumping and Countervailing Duty Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until July 29, 1996. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, July 16, 1996, on file in Room B–099 of the Main Commerce Building. We will issue our final results for this review by January 29, 1997.

These extensions are in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: July 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Antidumping and Countervailing Duty Enforcement.

[FR Doc. 96–18675 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071696D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a public meeting.

DATES: The meeting will be held on August 13, 1996, beginning at 10:30 a.m.

ADDRESSES: The meetings will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: A Council-appointed ad hoc committee will discuss how to develop a system that allows landing of groundfish in excess of limits, the collection of the funds by an appropriate organization, and the use of the funds for various fishery management and research purposes.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 17, 1996.

Richard W. Surdi,

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

[FR Doc. 96–18667 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

[CFDA No. 84.133F]

Office of Special Education and Rehabilitative Services; The National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1997

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 1, 1996 a notice inviting applications for new awards under certain programs for fiscal year 1997 was published in the Federal Register at 61 FR 34326. This notice corrects the maximum award amount for the Merit Research Fellowships in the July 1, 1996 Federal Register notice.

On page 34326 the table with information about Research Fellowships

should indicate that the maximum award amount for Merit Research Fellowships is $35,000.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Authority: 29 U.S.C. 760–76.

Dated: July 17, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–18559 Filed 7–22–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–116 and EA–117]

Application to Export Electricity, Calpine Power Services Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Calpine Power Services Company (Calpine) has submitted applications to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act. Calpine is both a broker and a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests or requests to intervene must be submitted on or before August 22, 1996.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52) , Office of Fuels Programs. Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–586–0678).

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 1, 1996, Calpine filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy, as a power marketer, to Mexico and Canada pursuant to section 202(e) of the FPA for a period of five years. Calpine neither owns nor controls any facilities for the transmission or distribution of electricity, nor does it have a franchised service area. Rather, Calpine is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to engage in wholesale sale of electricity in interstate commerce at negotiated rates pursuant to its filed rate schedules.

The electric energy Calpine proposes to transmit to Canada and Mexico will be purchased from electric utilities and Federal power marketing agencies within the United States. Calpine asserts that such energy will be surplus to the system from which it purchases the electric energy. In its applications, Calpine proposes to comply with procedures similar to those imposed by FE in the electricity export authorization issued to Enron Power Marketing, Inc. in Order No. EA–102 (February 6, 1996). Calpine further agrees to abide by the export limits contained in the relevant export authorizations associated with any transmission system over which Calpine exports electric energy and to provide DOE with written evidence that sufficient transmission access to complete the export transaction has been obtained.

In Docket EA–116, Calpine proposes to export the electric energy to Mexico over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

Location	Voltage	Owner	Permit
Miguel, CA	230 kV	SDG&E	PP–68.
Imperial Valley, CA	230 kV		PP–79.
Diablo, NM	115 kV	El Paso Electric	PP–92.
Ascarate, TX	115 kV		PP–48.
Brownsville, TX	138 kV	CPL	PP–94.
Eagle Pass, TX	138 kV	CFE	PP–50.
Laredo, TX	138 kV	CFE	PP–57.
Falcon Dam, TX	138 kV	CFE	None.

In Docket EA–117, Calpine proposes to export the electric energy to Canada over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

Location	Voltage	Owner	Permit
Tioga, ND	230–kV	Basic Electric	PP–64.
Blaine, WA	2–500–kV	BPA	PP–10.
Nelway, BC	230–kV		PP–36.
Nelway, BC	230–kV		PP–46.
Derby Line, VT	120–kV	Citizens Utilities	PP–66.
St. Clair, MI	345–kV	Detroit Edison	PP–38.
Maryville, MI	230–kV		PP–21.
Detroit, MI	230–kV		PP–21.
St Clair, MI	345–kV		PP–58.
Franklin, VT	120–kV[1]	Joint Owners of the Highgate Project	PP–82.
Houlton, ME	345–kV	Maine Electric Power Co	PP–43.
Arostock Cnty, ME	138–kV	Maine Public Svs.	PP–29.
Intnl Falls, MN	115–kV	Minnesota Power	PP–78.
Roseau Cnty, MN	230–kV	Minnkota Power Corp	PP–61.
Massena, NY	2–230–kV	NYPA	PP–25.
Devils Hole, NY	230–kV		PP–30.

Location	Voltage	Owner	Permit
Massena, NY	765–kV		PP–56.
Niagara Falls, NY	2–345–kV		PP–74.
Devils Hole, NY	230–kV	Niagara Mohawk	PP–30.
Red River, ND	230–kV	Northern States Power Co	PP–45.
Roseau, MN	500–kV		PP–63.
Norton, VT	450–kV DC	Vermont Electric Transmission Co	PP–76.

[1] These facilities were constructed at 345–kV but operated at 120–kV.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on Calpine's request to export to Mexico should be clearly marked with Docket No. EA–116. Comments on Calpine's request to export to Canada should be clearly marked with Docket No. EA–117. Additional copies are to be filed directly with: Joseph E. Ronan, General Counsel, Calpine Power Services Company, 50 West San Franando Street, San Jose, California 95113 and Jerry L. Pfeffer, Energy Industry Advisor, Skadden, Arps, Slate, Meadner & Flom, 1440 New York Avenue, NW., Washington, DC 20005–2107.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on July 18, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–18592 Filed 7–22–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–583]

Proposed Information collection and Request for Comments

July 18, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before September 23, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract

The information collected under the requirements of FERC–583 ''Annual Kilowatt Generating Report (Annual Charges)'' (OMB No. 1902–0136) is used by the Commission to implement the statutory provisions of Section 10(e) of the Federal Power Act (FPA), Part I, 16 U.S.C. 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering Part I of the FPA and for the use of United States dams. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amount of annual charges to be assessed licensees for reimbursable government administrative costs and for use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Sections Part 11.

Action

The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement

Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
640	1	2 hours	1,280 hours.

Estimated cost burden to respondents: 1,280 hours/2,087 hours per year × $102,000 per year = $62,558.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating,

verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18621 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[FERC–582]

Proposed Information Collection and Request for Comments

July 18, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before September 23, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202)273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract

The information collected under the requirements of FERC–582 ''Oil, Gas and Electric Fees and Annual Charges'' (OMB No. 1902–0132) is used by the Commission to implement the statutory provisions of the Omnibus Budget Reconciliation Act of 1986, (Pub. L. 99–509) Title III, Subtitle E, Section 3401. Congress directed the Commission ''to assess and collect fees and annual charges in any fiscal year in amount equal to all of the costs incurred by the Commission in that fiscal year.'' The Commission implements a program of annual charges to be assessed against interstate natural gas and oil pipelines, power marketing agencies, electric utilities and electric cooperatives. The Commission computes annual charges based on information of adjusted sales for resale and adjusted coordination of sales data. In addition the Commission uses company financial information filed under the waiver provisions to evaluate a company's request for a waiver, or exemption, of the obligation to pay a fee for an annual charge. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 381 Sections 381.108 and 381.302 and Part 382 Section 382.201(b).

Action

The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
179	1	4 hours	716 hours.

Estimated cost burden to respondents: 716 hours/2,087 hours per year × $102,000 per year = $34,993.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the

methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18622 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–638–000]

Columbia Gas Transmission Corporation; Notice of Application

July 17, 1996.

Take notice that on July 12, 1996, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Sections 7 (b) and (c) of the Natural Gas Act, for the construction and operation of approximately 5.2 miles of 24-inch pipeline and appurtenances replacing by abandonment 5.1 miles of 20-inch transmission pipeline and appurtenances. The facilities being replaced and abandoned are designated as a segment of Columbia's Line KA, located in Wyoming County, West Virginia.

The proposed construction is estimated to cost $7,049,000 and the cost of retirement is estimated to be $660,000. The associated estimated net debit to accumulated provision for depreciation for the abandoned facilities is $900,229.

Columbia states that section of Line KA to be replaced was originally constructed in 1931 as bare 20-inch coupled pipeline and is part of Columbia's larger KA pipeline system. Due to its age and condition, this section of pipeline has become physically deteriorated to the extent that replacement is required in order to maintain service to Columbia's existing customers at current levels. Inspection of the facilities has confirmed evidence of extensive corrosion and deterioration to the extent that replacement is necessary to ensure safe and reliable operation.

The KA system was originally authorized in Docket No. G–284 (3 FPC 941) as part of United Fuel Gas Company's existing transmission system. United Fuel Gas Company was a predecessor company of Columbia.

Columbia states that the proposed replacement will result in additional capacity of approximately 9 Mdth/d which is included in Columbia's Base Case Flow Diagrams for its Market Expansion Project pending with the Commission in Docket No. CP96–213–000, et al.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 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 proceedings. 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 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18571 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–253–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 17, 1996.

Take notice that on July 11, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Fifth Revised Sheet No. 20 to become effective July 1, 1996.

Natural states that the purpose of this filing is to comply with the Commission's order issued July 5, 1996 in Docket Nos. RP96–253–000 and RP96–253–001.

Natural requests whatever waivers may be necessary to permit the tariff sheet submitted to become effective on July 1, 1996.

Natural states that copies of the filing are being mailed Natural's jurisdictional customers, interested state regulatory agencies and all parties on the official service list in Docket Nos. RP96–253–000 and RP96–253–001.

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 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. 96–18576 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–260–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

July 17, 1996.

Take notice that on July 12, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing, to become effective July 1, 1996. Panhandle asserts that the purpose of this filing is to comply with the Commission's order dated June 27, 1996 in Docket No. RP96–260–000.

Panhandle states that this filing removes interest calculated prior to May

31, 1996, the filing date, from the total amount of the Miscellaneous Stranded Costs to be recovered and recalculates the levelized interest component pursuant to Section 18.14 of Panhandle's General Terms and Conditions. The revised Second Miscellaneous Stranded Cost results in no change in the surcharge applicable to Rate Schedules FT, EFT, SCT and LFT, and a decrease in the volumetric surcharge applicable to Rates Schedules IT and EIT from 0.11¢ to 0.10¢.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make 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. 96–18577 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–311–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 17, 1996.

Take notice that on July 12, 1996 Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 12, 1996:

Third Revised Sheet No. 250A
Second Revised Sheet No. 250B

WNG states that this filing is being made pursuant to Subpart C of part 154 of the Commission's regulations.

WNG states that this filing is being made to specify another path in Article 13.3 on which WNG will assess a zero charge for the fuel component of its fuel and loss reimbursement percentage. Transportation from the specified receipt point to the specified delivery point on this second path constitutes a backhaul.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a 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 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18578 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11374–001 Iowa]

Butler County Conservation Board; Notice of Availability of Draft Environmental Assessment

July 17, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Greene Milldam Hydroelectric Project, located on the Shell Rock River, Butler County, Iowa, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 11374 to all comments. For further information please contact Mary Golato, Environmental Coordinator, at (202) 219–2804.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18575 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–W

[Docket Nos. CP96–52–000; CP96–134–000]

Pine Needle LNG Company, LLC and Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Pine Needle LNG Project

July 17, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the liquefied natural gas (LNG) production and storage project proposed in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental affects of the construction and operation of Pine Needle LNG Company, LLC's (Pine Needle) proposed LNG plant and related facilities in Stokesdale, North Carolina, including:

- Two double-wall, suspended-deck LNG storage tanks, each with a gas-equivalent capacity of 2 billion cubic feet;
- A pretreatment and liquefaction system with the capacity of 20 million cubic feet per day (MMcfd);
- A boiloff recompression system;
- A vaporization and sendout system with the capacity of 400 MMcfd;
- About 1.0 mile of 10-inch-diameter inlet pipeline;
- About 1.0 mile of 24-inch-diameter outlet pipeline; and
- An earthen dam and firewater pond.

Transcontinental Gas Pipe Line Corporation proposes to construct and operate five taps on its mainline natural gas transmission system to connect with Pine Needle's inlet and outlet pipelines.

The purpose of the project is to provide winter peak heating service to Pine Needle's subscribers in the rapidly developing North Carolina region by the 1999–2000 winter heating season.

The EA has been placed in the public files of the FERC. A limited number of

copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 1C–1, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies; public interest groups; interested individuals; affected landowners; local libraries, newspapers, and radio stations; and other parties to this proceeding.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP96–52–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than August 19, 1996 to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Michael Boyle, Environmental Project Manager, Room 72–59, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing 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 comments considered.

Additional information about this project is available from Mr. Michael Boyle, Environmental Project Manager at (202) 208–-0839.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18569 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–339–000]

Total Peaking Services, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Total Peaking Services Milford LNG Project and Request for Comments on Environmental Issues

July 17, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the operation of facilities proposed in the Total Peaking Services Milford LNG Project. This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.[1]

Summary of the Proposed Project

Total Peaking Services, L.L.C. (TPS) is seeking approval to acquire and operate in interstate commerce an existing liquefied natural gas (LNG) peak-shaving facility located in Milford, Connecticut that is presently used by The Southern Connecticut Gas Company (Southern Connecticut). The purpose of the project is to enable TPS to make interstate gas sales to satisfy the Northeast's growing demand for peaking gas. Southern Connecticut would sublease the Milford LNG Plant to CNE Energy Services Group, Inc. which in turn would sublease the plant to TPS.

Exisiting Facilities

The Milford LNG Plant was constructed in 1972 and consists of natural gas liquefaction, LNG storage, and LNG revaporization facilities. The plant was designed to supply Southern Connecticut's gas utility needs by liquefying and storing natural gas in the summer for revaporization during peak periods in the winter heating season. The Milford LNG Plant has a design liquefaction rate of 6 million cubic feet per day (MMCFD) and a sendout capacity of 72 MMCFD. The LNG is stored in a 348,000-barrel LNG storage tank.

The Milford LNG Plant receives gas for liquefaction and storage through facilities of Southern Connecticut that are connected to the interstate pipeline system of Iroquois Gas Transmission System, L.P. The plant has also received significant amounts of LNG by transport trailer.

Proposed Facilities

TPS does not propose any new facilities or any modifications to existing facilities. The Milford LNG Plant would continue to be operated by Southern Connecticut on behalf of TPS.

The location of the Milford LNG Plant is shown in appendix 1.[2]

Land Requirements for Construction

No additional land is required since TPS does not propose any additions or modifications to the existing facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a certificate of public convenience and necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Because the LNG plant is an existing facility and no new additions or modifications are proposed, the EA will focus on the operation of the proposed project, the cryogenic design aspects of the plant, and the public safety including LNG trucking.

Prior to finalizing the EA, the FERC staff will meet with representatives of TPS (time and location to be noticed at a later date) to conduct a cryogenic design and engineering review of the LNG facility at Milford, Connecticut.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is

[1] Total Peaking Services', L.L.C. application was filed under Section 7 of the National Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Public Participation

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, 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 receive and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426;
- Reference Docket No. CP96–339–000;
- Send a copy of your letter to: Mr. James Dashukewich, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., NE., Room 72–56, Washington, DC 20426; and
- Mail your comments so that they are received in Washington, DC on or before August 14, 1996.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or 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 a 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 2).

Filing of timely motions to intervene in this proceeding should be made on or before July 24, 1996. Once this date has passed, parties 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.

Additional information about the proposed project is available from Mr. James Dashukewich, EA Project Manager, at (202) 208–0117.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18570 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Amendment of License To Relocate a Powerhouse

July 17, 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 of License to Relocate a Powerhouse.

b. Project No.: 1933–011.

c. Dated filed: July 1, 1996.

d. Applicant: Southern California Edison Company.

e. Name of Project: Santa Ana River No. 1 & No. 2 Project.

f. Location: Near the mouth of the Santa Ana River Canyon, in San Bernadino County, California.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Bryant C. Danner, Vice President and General Counsel, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–4459.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: August 26, 1996.

k. Description of Amendment: In a June 12, 1995 amendment application, the licensee proposed to relocate a water conveyance flume, and relocate the Santa Ana No. 2 powerhouse (SAR2). The amendment is necessary because the facilities will be inundated by construction of the Corps of Engineers' Seven Oaks Dam. The licensee has revised its application to reflect refinements in its engineering analysis as follows:

—The original proposal consisted of replacing the flume with a buried pipeline beneath an access road along the mountainside leading to the top of the Seven Oaks Dam. Now, the licensee wishes to relocate the pipeline to the canyon floor through the dam construction area. Because of the new location, the pipeline must be constructed before October 1997 which is when the Corps' dam construction will potentially subject the existing flume to inundation

—The original proposal included moving SAR2 powerhouse about 2 miles downstream from its existing location. Now, the licensee proposes to combine SAR2 with the powerhouse of the Santa Ana No. 3 Project (FERC No. 2198) and include its features. The new powerhouse will contain one generating unit with an installed generating capacity of 4 MW. The hydraulic capacity of the powerhouse will not change

1. This notice also consists of the following standard paragraphs; B, C1, and D2.

b. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18572 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Amendment of License

July 17, 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 of license.

b. *Project No:* 8296–043.

c. *Date Filed:* May 30, 1996.

d. *Applicant:* Malacha Hydro Limited Partnership.

e. *Name of Project:* Muck Valley Hydroelectric Project.

f. *Location:* Lassen County, Nubieber, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. E. Robert Mooney, Malacha Hydro Limited Partnership, P.O. Box 6437, Boise, ID 83707, (208) 338–2603.

i. *FERC Contact:* Susan Tseng, (202) 219–2798.

j. *Comment Date:* August 23, 1996.

k. *Description of Project:* The licensee proposes to install either a pneumatic crest gate or similar type inflatable rubber dam apparatus on the crest of the existing diversion weir and replace the steel trashracks with high-density polyethylene (HDPE) racks. The gate or rubber dam will extend 3.0 feet above the existing weir crest and increase the existing reservoir pool by 2.5 feet and allow for 0.5 feet of freeboard. The increase in the pool depth will also increase the total cross sectional area of flow through the trashrack into the intake by 36%. The HDPE racks would have a bar spacing of ½ inch instead of the existing ⅜ inch spacing.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18573 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Proceeding Pursuant to Article 408 Regarding Amendment of License for Whitewater Boating

July 17, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Proceeding Pursuant to Article 408 Regarding Amendment of License For Whitewater Boating.

a. *Project No:* 9690–025.

c. *License Issued:* April 14, 1992.

d. *Applicant:* Orange and Rockland Utilities, Inc.

e. *Name of Project:* Rio Project.

f. *Location:* Mongaup River in Orange and Sullivan Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825 (r) and Article 408 of project license.

h. *Applicant Contact:* Mr. Hans Hasnay, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965 (914) 577–2648.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* August 23, 1996.

k. *Description of Proposal:* The Commission staff is considering revising the approved whitewater boating release schedule to provide for scheduled two-turbine releases. These two-turbine releases are currently taking place at the discretion of the licensee when ample water is present.

Preliminary comments on the possible revision from the Upper Delaware Council, National Park Service, and various kayaking and canoeing groups have identified complex issues involving recreational use and public safety. This proceeding is to determine if an amendment to the approved whitewater boating schedule is appropriate for the enhancement of recreational opportunities in the area. Comments on the need for scheduled two-turbine releases for whitewater boating and how such releases could affect public safety are requested by this notice.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385. 210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18574 Filed 7–22–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearing and Appeals

Notice of Cases Filed During the Week of April 8 Through April 12, 1996

During the Week of April 8 through April 12, 1996, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: July 12, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 8 Through April 12, 1996]

Date	Name and location of applicant	Case No.	Type of submission
4/9/96	Garvie Marks Gulf, Carrollton, Georgia	RR300–282	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The January 30, 1996 Dismissal in Case No. RF300–21406 issued to Garvie Marks Gulf would be modified regarding the firm's application for refund submitted in the Gulf Oil refund proceeding.
4/9/96	Mercury Fuel Service, Inc., Waterbury, Connecticut.	VEE–0020	Exception to the Reporting Requirements. If granted: Mercury Fuel Service, Inc. would not be required to file Form EIA–782B Reseller's/Retailer's Monthly Petroleum Products Sales Report.
4/9/96	Oakland Operations Office, Oakland, California.	VSO–0088	Request for Hearing under 10 CFR Part 710. If granted: An individual employed at Oakland Operations Office would receive a hearing under 10 CFR Part 710.
4/9/96	Oakland Operations Office, Oakland, California.	VSO–0089	Request for Hearing under 10 CFR Part 710. If granted: An individual employed at Oakland Operations Office would receive a hearing under 10 CFR Part 710.
4/9/96	Schenectady Naval Reactors, Schnenectady, New York.	VSO–0090	Request for Hearing under 10 CFR Part 710. If granted: An individual employed at Schenectady Naval Reactors Office would receive a hearing under 10 CFR Part 710.
4/10/96	Tonka Products Div. of Tonka Corp., Pawtucket, Rhode Island.	RR272–236	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The March 20, 1996 Dismissal in Case No. RF272–78126 issued to Tonka Products Div. Of Tonka Corp. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

REFUND APPLICATION RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/8/96 thru 4/12/96	Crude Oil Supplemental Refunds	RK272–3487 thru RK272–3492.

[FR Doc. 96–18593 Filed 7–22–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Cases Filed; Week of April 1 Through April 5, 1996

During the Week of April 1 through April 5, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: July 12, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 1 Through April 5, 1996]

Date	Name and location of applicant	Case No.	Type of submission
April 2, 1996	Chuck Dahlem Texaco Service, Wichita, Kansas	RR321–195	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The July 29, 1993 Decision and Order (Case No. RF321–16802) issued to Chuck Dahlem Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Dianna McNew, Baltimore, Maryland	VFA–0146	Appeal of an information request denial. If granted: The January 23, 1996 Freedom of Information Request Denial issued by the Department of Energy, Oak Ridge Operations Office would be rescinded, and Dianna McNew would receive access to certain Department of Energy information.
Do	Glen M. Jameson, Lakewood, Colorado	VFA–0147	Appeal of an information request denial. If granted: The March 5, 1996 Freedom of Information Request Denial issued by the Department of Energy, Oak Ridge Office would be rescinded and Glen M. Jameson would receive access to certain Department of Energy information.
Do	Industrial Constructors Corp., Missoula, Montana	VFA–0144	Appeal of an information request denial. If granted: The March 15, 1996 Freedom of Information Request Denial issued by the Department of Energy, Albuquerque Operations Office would be rescinded, and Industrial Constructors Corp. would receive access to certain Department of Energy information.
Do	Stoel Rives LLP, Portland, Oregon	VFA–0145	Appeal of an information request denial. If granted: The March 8, 1996 Freedom of Information Request Denial issued by the Department of Energy, Bonneville Power Administration would be rescinded, and Stoel Rives LLP would receive access to certain Department of Energy information.
April 3, 1996	William H. Payne, Albuquerque, New Mexico	VFA–0148	Appeal of an information request denial. If granted: The March 21, 1996 Freedom of Information Request Denial issued by Sandia National Laboratories would be rescinded, and William H. Payne would receive access to certain DOE information.
April 4, 1996	New York Times, Memphis, Tennessee	RR272–235	Request for modification/rescission in the crude oil refund proceeding. If granted: The February 26, 1996 Dismissal (Case No. RF272–78117) issued to New York Times would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Do	Providence Journal Company, Memphis, Tennessee	RR272–234	Request for modification/rescission in the crude oil refund proceeding. If granted: The February 28,1996 Dismissal (Case No. RF272–78127) issued to Providence Journal Company would be modified regarding the firmn's application for refund submitted in the Crude Oil refund proceeding.
April 5, 1996	Honeywell, Inc., Phoenix, Arizona	VFA–0149	Appeal of an information request denial. If granted: The February 23, 1996 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Honeywell, Inc. would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of April 1 to April 5, 1996]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/1/96 thru 4/5/96	Crude Oil Supplemental Refunds	RK272–3474 thru RK272–3486.

[FR Doc. 96–18595 Filed 7–22–96; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 96–43; Notice 2]

International Regulatory Harmonization, Motor Vehicle Safety; Motor Vehicles and Motor Vehicle Engines and the Environment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT; Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On June 17, 1996, NHTSA and EPA published a joint notice in the Federal Register requesting written comments and announcing two public meetings regarding recommendations by the U.S. and European automotive industry for actions by the U.S. and European Union governments. These industry recommendations, made at the Transatlantic Automotive Industry Conference on International Regulatory, concern the international harmonization of motor vehicle safety and environmental regulation, the intergovernmental regulatory process necessary to achieve such harmonization, and the coordination of related motor vehicle safety and environmental research. NHTSA and EPA requested public comments to facilitate their making informed decisions about their responses to the industry recommendations as well as to ensure that all interested parties were made aware of ongoing activity in the area of international harmonization of motor vehicle safety and environmental regulations. In response to two requests for an extension of the period for submitting written comments, NHTSA and EPA have decided to extend the comment deadline from July 25, 1996 to October 1, 1996.

DATES: Written Comments: All written comments on the June 17, 1996 request for comments, Docket 96–43, Notice 1, must be received by NHTSA's docket section no later than October 1, 1996.

ADDRESSES: All written comments should refer to Docket No. 96–43, Notice 1, and be submitted to: Docket Section, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. Docket hours are 9:30 to 4 p.m. Monday through Friday.

To facilitate the reading of comments relating to a particular issue, commenters are requested to divide their comments into two different sections: (1) Safety and regulatory process; and (2) Environment.

FOR FURTHER INFORMATION CONTACT:

NHTSA: Mr. Stanley C. Feldman, Office of Chief Counsel, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 telephone (202–366–5265), fax (202–366–3820)

EPA: Kenneth E. Feith, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone (202–260–4996), fax (202–260–9766).

SUPPLEMENTARY INFORMATION: In the June 17, 1996 (61 FR 30657) Federal Register, NHTSA and EPA published a joint notice requesting written comments and announcing two public meetings, held on July 10 and 11, 1996, to seek comments on recommendations by the U.S. and European automotive industry for actions by the U.S. European Union (EU) governments concerning international harmonization of motor vehicle safety and environmental regulation, the intergovernmental regulatory process necessary to achieve such harmonization, and coordination of vehicle safety and environmental research. The industry recommendations were made at the Transatlantic Automotive Industry Conference on International Regulatory Harmonization, held in Washington, D.C., on April 10–11, 1996. NHTSA and EPA requested public comments to facilitate their making informed decisions about their responses to the industry recommendations as well as to ensure that all interested parties were made aware of ongoing activity in the area of international harmonization of motor vehicle safety and environmental regulations.

The notice discussed the background that led to the Washington Conference, the industry principles and recommendations for current and future harmonization actions needed by the U.S. and EU in three specific areas (i.e., regulatory process, safety, and the environment), and U.S. government statements concerning the goal of harmonization of existing and future motor vehicle safety and environmental standards and regulations. To provide a focus for public comments, the notice also discussed the broad subject areas and set forth a series of questions and issues that NHTSA and EPA would like the public to address. The agencies specified that written comments had to be submitted before the close of business on the comment closing date of July 25, 1996 to be assured of consideration.

Subsequent to the July 10 and 11, 1996 public meetings, NHTSA received requests for extension of the period for submitting written comments on the notice from Consumers Union and Advocates for Highway and Auto Safety. A copy of each request has been placed in NHTSA's docket at Docket No. 96–43, Notice 1. Both Consumers Union and Advocates for Highway and Auto Safety indicted that they wish to file substantive written comments on these issues but can only do so if the comment deadline of July 25, 1996, is extended substantially, or until October 1, 1996. After reviewing these requests, NHTSA agrees that commenters need more time to formulate their responses given the complexity of the issues involved.

Accordingly, the period for submitting written comments, originally scheduled to end July 25, is extended to October 1, 1996.

Issued on: July 17, 1996.

Frank Turpin,

Director, NHTSA Office of International Harmonization.

[FR Doc. 96–18693 Filed 7–22–96; 8:45 am]
BILLING CODE 4915–00–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 17, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0730.

Expiration Date: 10/31/96.

Title: Toll Free Service Access Codes—800/888 Number Release Procedures.

Form No.: N/A.

Estimated Annual Burden: 2010 total annual hours; 1 hour per respondent (avg.); 2010 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: The Commission has instructed Database Service Management, Inc. (DSMI) to collect authorizations from the current 800 number subscriber and its Responsible Organization or the Toll Free Service Provider declining their previously asserted commercial interest in the 888 number. DSMI will not release the 888 number from the pool of unavailable numbers into the general pool of toll free numbers until it receives these authorizations.

OMB Control No.: 3060–0712.

Expiration Date: 07/31/99.

Title: Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force—RM–8181.

Form No.: N/A.

Estimated Annual Burden: 60 total annual hours; 1 hour per respondent (avg.); 60 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: In the Declaratory Ruling issued in RM–8181, the Commission requires that local exchange carriers, among other things, notify their customers of the change in status of inmate-only customer premises equipment (CPE). This is necessary to ensure that correctional facility customers are aware of change in regulatory status of inmate-only payphones.

OMB Control No.: 3060–0233.

Expiration Date: 07/31/99.

Title: Separations—Part 36.

Form No.: N/A.

Estimated Annual Burden: 61,800 total annual hours; 20 hours per respondent (avg.); 3090 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: Local exchange carriers (LECs) are required to submit data annually to the National Exchange Carrier Association for the filing of access tariffs. State or local telephone companies who want to participate in the federal assistance program must make certain informational showings to demonstrate eligibility.

OMB Control No.: 3060–0704.

Expiration Date: 06/30/99.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended—CC Docket No. 96–61.

Form No.: N/A.

Estimated Annual Burden: 2595 total annual hours; hours per respondent (avg.); 519 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: In the Notice of Proposed of Rulemaking issued in CC Docket No. 96–61, the Commission proposes to eliminate the requirement that nondominant interexchange carriers file tariffs. In order to facilitate enforcement of such carriers' statutory obligation to charge just and reasonable, and not unjustly discriminatory rates, in the absence of tariff filings, the NPRM proposes to require carriers to maintain at their premises business records to establish the lawfulness of their rates. The NPRM proposes, among other things, a certification requirement to implement the geographic rate averaging and rate integration requirements of the 1996 Telecommunications Act.

OMB Control No.: 3060–0729.

Expiration Date: 10/31/96.

Title: Bell Operating Company Provision of Out-of-Region, Interstate, Interexchange Services, Report and Order, CC Docket No. 96–21, (Affiliated Company Recordkeeping Requirement).

Form No.: N/A.

Estimated Annual Burden: 42,394 total annual hours; 6056 hours per respondent (avg.); 7 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: In the Report and Order issued in CC docket No. 96–21, the Commission removed dominant regulation for BOCs that provide out-of-region, interstate, interexchange services through an affiliate that complies with certain safeguards, in order to facilitate the efficient and rapid provisions of out-of-region, domestic, interstate, interexchange services by the BOCs, as contemplated by the 1996 Act, while still protecting ratepayers and competition in the interexchange market. These safeguards require that the affiliate: (1) Maintain separate books of account from the LEC; (2) not jointly own transmission or switching facilities with the LEC; and (3) take any tariffed services from the affiliated LEC pursuant to the terms and conditions of the LEC's generally applicable tariff. The recordkeeping requirement will not impose any significant burden on BOC interexchange affiliates because we do not require that the interexchange affiliate maintain separate books of account that comply with our Part 32 rules.

Instead, these affiliates must maintain separate books as would any separate corporation, as a matter of course.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–18604 Filed 7–22–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:55 a.m. on Tuesday, July 16, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Reports of the Office of Inspector General

Matters relating to the Corporation's liquidation and corporate activities

An administrative enforcement proceeding

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), Director Joseph H. Neely (Appointive), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 17, 1996.

Federal Deposit Insurance Corporation.

By: Valerie J. Best,

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–18770 Filed 7–19–96 11:11 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: FEMA gives notice that the extension period for the Oklahoma

regular crisis counseling program for disaster survivors of the Oklahoma City bombing is extended from 90 days to 180 days. The severity of the emotional trauma resulting from the bombing warrants an extension of an additional 90 days.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Nordboe, Human Services Division, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4026.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is charged with coordinating Federal disaster assistance under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act) when the President has declared a major disaster. FEMA provided funding for a regular crisis counseling program to help those suffering the trauma resulting from the April 19, 1995, bombing of the Alfred P. Murrah Federal Building.

FEMA received a request from the State of Oklahoma to extend the otherwise applicable time limitations authorized by section 416 of the Act, so that the State can provide additional mental health services that are critically needed for citizens during the recovery operation. The extent of the emotional impact on all citizens of Oklahoma is of such magnitude that continuation of disaster mental health counseling beyond the normal crisis counseling time period is necessary.

The Director, Center for Mental Health Services (CMHS), as the delegate to FEMA for the Secretary, Department of Health and Human Services, helps FEMA implement crisis counseling training and assistance. FEMA believes there was a well-established need for continuation of the regular crisis counseling program beyond a 90-day extension. Based upon the sound CMHS recommendation, FEMA has approved a 180-day extension to the time period for the Oklahoma regular crisis counseling program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director.

[FR Doc. 96–18661 Filed 7–22–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1995, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

(a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

(b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 23, 1996.

ADDRESSES: Comments, which should refer to the OMB control number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension, with revision, of the following report:

1. Report title: Survey of Terms of Bank Lending
Agency form number: FR 2028A, FR 2028B, and FR 2028S
OMB control number: 7100-0061
Frequency: quarterly
Reporters: commercial banks (all three reports) and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S)
Annual reporting hours: 8,095
Estimated average hours per response: FR 2028A: 4.0. FR 2028B: 1.5. FR 2028S: 0.1.
Number of respondents: FR 2028A: 398. FR 2028B: 250. FR 2028S: 567.
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. § 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid-month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, ''Survey of Terms of Bank Lending,'' while estimates for farm loans are published in the quarterly E.15 release, ''Agricultural Finance Databook.''

Revisions proposed to the business loan survey include the elimination of two items that either have proven difficult for respondents to report or are insufficiently useful to justify the burden their reporting imposes, the addition of two new items covering loan risk and termination options, and redefinitions of several existing items. The coverage of the reporting panel for the business loan survey, currently limited to U.S. commercial banks, would be expanded to include a sample of U.S. branches and agencies of foreign banks, which now account for a significant fraction of business lending. The same item additions and redefinitions proposed for the business loan survey also would be made to the farm loan survey. The prime rate supplement, now collected only from respondents to the business loan survey, would be collected from respondents to the farm loan survey as well. The revised instructions have been reworded substantially to reflect the proposed changes, clarifications requested by Reserve Bank staff and the respondent banks since the last review of this survey, and revisions necessitated by changes in lending practices. The revised reporting forms and instructions would be implemented as of the February 1997 reporting week.

Board of Governors of the Federal Reserve System, July 17, 1996.

William W. Wiles

Secretary of the Board.

[FR Doc. 96–18587 Filed 7–22–95; 8:45AM]

Billing Code 6210–01–F

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 August 12, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Don Arthur Barnette, Riverdale, Georgia; to acquire 40.07 percent, for a total of 40.19 percent, of the voting shares of Tara Bankshares Corporation, Riverdale, Georgia, and thereby indirectly acquire Tara State Bank, Riverdale, Georgia.

2. Ferman Motor Car Company, Inc., Tampa, Florida; to retain 11.16 percent of the voting shares of The Tampa Banking Company, Tampa, Florida, and thereby indirectly acquire Bank of Tampa, Tampa, Florida.

Board of Governors of the Federal Reserve System, July 17, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–18586 Filed 7–22–96; 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 August 16, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Maddox Corporation, Blakely, Georgia; to become a bank holding company by acquiring an additional 37.5 percent, for a total of 56.18 percent, of the voting shares of First State Bancshares of Blakely, Inc., Blakely, Georgia, and thereby indirectly acquire First State Bank of Blakely, Blakely, Georgia. First State Bancshares of Blakely, Inc., Blakely, Georgia, has applied to acquire First Southwest Bancorp, Inc., Donalsonville, Georgia, a thrift holding company, and its thrift subsidiary, First Federal Savings Bank

of Southwest Georgia, Donalsonville, Georgia. Comments for this application must be received by August 8, 1996.

2. Regions Financial Corporation, Birmingham, Alabama; to merge with American Bancshares of Houma, Inc., Houma, Louisiana, and thereby indirectly acquire American Bank & Trust Company of Houma, Houma, Louisiana.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of Macomb Community Bank, Clinton Township, Michigan.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Texas Bancorporation, Inc., Odessa, Texas, and thereby indirectly acquire Texas Bank, Odessa, Texas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Henderson Citizens Bancshares, Inc., Henderson, Texas; and Henderson Citizens Bancshares of Delaware, Inc., Dover, Delaware, to acquire 100 percent of the voting shares of Waskom Bancshares, Inc., Waskom, Texas, and thereby indirectly acquire First State Bank, Waskom, Texas.

Board of Governors of the Federal Reserve System, July 17, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–18584 Filed 7–22–96; 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 August 6. 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Commerbank Aktiengesellschaft, Frankfurt am Main, Federal Republic of Germany; to engage *de novo* through its subsidiary, Commerz Futures Corporation, Chicago, Illinois, in securities brokerage activities pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. North Shore Community Bancorp, Inc., Wilmette, Illinois; to acquire Crabtree Capital Corporation, Schaumburg, Illinois, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Kansas Bancshares, Inc., Hutchinson, Kansas; to engage *de novo* through its subsidiary, Personal Finance Corp., Hutchinson, Kansas, in a joint venture in the sale of credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 17, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–18585 Filed 7–22–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires the notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070196 AND 071296

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Chase Manhattan Banking Corporation, Wireless One, Inc., Wireless One, Inc	96–2187	07/01/96
Southcorp Holdings Limited, Park-Ohio Industries, Inc., Bennett Industries, Inc	96–2077	07/02/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070196 AND 071296—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Aurora Equity Partners L.P., Golder, Thoma, Cressey Fund III Limited Partnership, Dickson Media, Inc	96–2243	07/02/96
Big Flower Press Holdings, Inc., Scanforms, Inc., Scanforms, Inc	96–2244	07/02/96
Takasago International Corporation, Monsanto Company, The nutraSweet Kelco Company	96–2249	07/02/96
TRW Inc., TRW Inc., TRW REDI Property Data	96–2252	07/02/96
Cabletron Systems, Inc., Network Express, Inc., Network Express, Inc	96–2048	07/03/96
CCA Financial, Inc., Un-Ltd Holdings, Inc., Nelco Ltd	96–2213	07/03/96
CalEnergy Company, Inc., David H. Dewhurst III, Falcon Seaboard Resources, Inc.	96–2234	07/03/96
Jordan Industries, Inc., Abram Ackerman, Viewsonics, Inc	96–2109	07/08/96
Central Garden & Pet Company, Kenlin Pet Supply, Inc., Kenlin Pet Supply, Inc	96–2162	07/08/96
Morton M. Lapides, Sr., The Seagram Company Ltd., Winterland Concessions Company	96–2253	07/08/96
Edward K. Mullen, Nelson-Ball Paper Products, Inc., Nelson-Ball Paper Products, Inc	96–2257	07/08/96
Trinity Industries, Inc., Transcisco Industries, Inc., Transcisco Industries, Inc	96–2258	07/08/96
U.S. Office Products Company, Vassilios Sirpolaidis and Lynne Sirpolaidis, Mile high Office Supply and Office Extra, L.L.C	96–2259	07/08/96
General Electric Company, James Elliott, Universal Data Consultants, Inc	96–2261	07/08/96
General Electric Company, Ken Callaham, Universal Data Consultants, Inc	96–2263	07/08/96
Integrated health Services, Inc., Capstone Pharmacy Services, Inc., Capstone Pharmacy Services, Inc	96–2265	07/08/96
Capstone Pharmacy Services, Inc., Integrated Health Services, Inc., Symphony Pharmacy Services, Inc	96–2266	07/08/96
JP Foodservice, Inc., ''Z'' Leasing Co. (General Partnership), ''Z'' Leasing Co. (General Partnership)	96–2269	07/08/96
JP Foodservice, Inc., Valley Industries, Inc., Valley Industries, Inc	96–2270	07/08/96
Harron Communications Corp., Pegasus Communications Corporation, Pegasus Communications Corporation	96–2271	07/08/96
Marshall W. Pagon, Pegasus Communications Corp., Pegasus Communications Corp	96–2272	07/08/96
Ford Motor Company, Shirley W. Gibson, Monarch Leasing Company	96–2274	07/08/96
AnnTaylor Stores Corporation, Cygne Designs, Inc., Cygne Designs, Inc	96–2275	07/08/96
Bandai Co. Ltd., The Upper Deck Company, The Upper Deck Company LLC	96–2279	07/08/96
ARAMARK Corporation, Crest Uniform Company, Inc., Crest Uniform Company, Inc	96–2282	07/08/96
U.S. Office Products Company, McWhorter's Stationery Company, Inc., McWhorter's Stationery Company, Inc	96–2290	07/08/96
Schnuck Markets, Inc.,Seessels Holdings, Inc.,seessels Holdings, Inc	96–2189	07/10/96
U.S. Diagnostic Labs Inc., HEICO Corporation, MediTek Health Corporation	96–2297	07/10/96
Mr. Donald Gales, J. Duncan McDuff, Regent Investments Inc., Mid-Atlantic Investments Inc	96–1862	07/11/96
Mr. Donald Gales, Mr. Vincent J. Mastracco, Jr., Regent Investments, Inc., Mid-Atlantic Investments, Inc	96–1863	07/11/96
The Hitchcock Alliance, Gifford Medical Center, Gifford Medical Center	96–2157	07/11/96
American Radio Systems Corporation, Triad Capital Management, Inc., Triad Capital Management Inc	96–2190	07/11/96
WPG Corporate Development Associates IV, L.P., GHB Charitable Trust #1, Any-Kind Check Cashing Centers, Inc. and U.S. Check	96–2233	07/11/96
TPG Partners, L.P., AT&T Corporation, AT&T Paradyne Corporation & Lucient Technologies, Inc	96–2248	07/11/96
Kokusai Denshin Denwa Co. Ltd., Pacific Gateway Exchange, Inc., Pacific Gateway Exchange, Inc	96–2285	07/11/96
Olympus Private Placement Fund, L.P., Dr. Manfred George Krukemeyer (a resident of Germany), Paracelsus Healthcare Corporation	96–2291	07/11/96
Alco Standard Corporation, The Computer Group, Inc., The Computer Group, Inc	96–2293	07/11/96
Blackstone Capital Partners II Merchant Banking Fund LP, Golder, Thoma, Cressey Fund III Limited Partnership, Prime Succession, Inc	96–2307	07/11/96
Sanwa Shutter Corporation, Bessemer Securities Corporation, Overhead Door Incorporated	96–2325	07/11/96
Bankers Trust New York Corporation, BT Capital Funding Corporation, BT Capital Funding Corporation	96–2245	07/12/96

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202)326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–18619 Filed 7–22–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: State corrective Action Plans for the Aid to Families with Dependent Children (AFDC) Program.

OMB No.: 0970–0027.

Description: States with excessive overpayment error rates or excessive negative case error rates submit information about: (1) Their most common types of errors, (2) the causes for those errors, and (3) their intended actions to reduce those errors. The Administration for Children and Families then uses this information to help States direct their resources toward the most efficient and effective corrective action techniques.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Plan	27	1	160	4,320
Estimated Total Annual Burden Hours	.....	.....	.....	4,320

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 the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 17, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–18558 Filed 7–22–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96M–0216]

Biomira Diagnostics, Inc.; Premarket Approval of TRUQUANT® BR™ RIA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Thomas Tsakeris, Devices and Diagnostics Consulting Group, Rockville, MD, U.S. Representative for Biomira Diagnostics Inc., 30 Meridian Rd., Rexdale, ON, Canada, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of TRUQUANT® BR™ RIA. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 29, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 22, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On February 24, 1995, Thomas M. Tsakeris, Devices and Diagnostics Consulting Group, Rockville, MD, U.S. Representative for Biomira Diagnostics, Inc., Rexdale, ON, Canada, submitted to CDRH an application for premarket approval of TRUQUANT® BR™ RIA. The device is an in vitro diagnostic device indicated for quantitative determination of CA 27.29 antigen in serum or EDTA plasma of patients previously treated for Stage II or Stage III breast cancer. Serial testing for CA 27.29 antigen with TRUQUANT® BR™ RIA in patients who are clinically free of disease should be used in conjunction with other clinical methods used for the early detection of recurrence.

On September 21, 1995, the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On March 29, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 22, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–18556 Filed 7–22–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–849–PN]

Medicare Program; Recognition of the Ambulatory Surgical Center Standards of the Joint Commission on the Accreditation of Healthcare Organizations and the Accreditation Association for Ambulatory Health Care

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes to grant deeming authority to two organizations, the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and the Accreditation Association for Ambulatory Health Care (AAAHC), for their member ambulatory surgical centers (ASCs) that request Medicare certification. We believe that accreditation of ASCs by both organizations would demonstrate that all Medicare ASC conditions are met or exceeded, and, thus, we would grant deeming authority to each organization.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 22, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–849–PN, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–849–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone (202) 690–7890).

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

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

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

I. Background

A. Determining Compliance of Ambulatory Surgical Centers—Surveys and Deeming

In order to participate in the Medicare program, ambulatory surgical centers (ASCs) must meet conditions for coverage specified in regulations that implement title XVIII of the Social Security Act (the Act). ASCs enter into a Medicare participation agreement but generally only after they are certified by a State survey agency as complying with the ASC conditions for coverage set forth in the Act and regulations. ASCs are subject to regular surveys by State agencies to determine whether they continue to meet these requirements; an ASC that does not meet these requirements is considered out of compliance and risks having its participation in the Medicare program terminated.

Section 1865 of the Act includes a provision that permits ASCs to be exempt from routine surveys by the State survey agencies to determine compliance with the Medicare conditions for coverage. (Under our regulations at 42 CFR 416.40 (''Condition for coverage—Compliance with State licensure law''), an ASC must still meet the State's licensure requirements, however.) Specifically, section 1865(b) of the Act provides that if we find that accreditation of a provider entity by a national accreditation body demonstrates that all Medicare conditions or requirements are met or exceeded, we would (for certain providers, including ASCs) ''deem'' these entities as meeting the applicable Medicare conditions.

In making our finding as to whether the accreditation body makes this demonstration, we consider factors such as the accrediting body's accreditation requirements, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for provider entities found to be out of compliance with the conditions or requirements, and its ability to provide us with necessary data for validation. If we find that the accreditation of an ASC by the national accreditation body demonstrates that the Medicare conditions imposed on ASCs are met, we would treat the accredited ASCs as meeting those conditions. ASCs as suppliers are included by definition of provider entity in section 1865(b)(4) of the Act. Thus, if we were to recognize an ASC

accrediting organization's program as demonstrating that all the Medicare ASC conditions are met, the ASCs it accredits would be considered, or ''deemed,'' to meet the same conditions for which the accreditation standards have been recognized. The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and the Accreditation Association for Ambulatory Health Care (AAAHC) are the first two organizations to which we have considered granting deemed status.

B. Deeming Authority Process

On November 23, 1993, we published a final rule (58 FR 61816) that set forth the procedure that we would use to review and approve national accrediting organizations that wish to be recognized as providing reasonable assurance that Medicare conditions are met (§ 488.4, ''Application and reapplication procedures for accreditation organizations''). A national accreditation organization applying for approval of deeming authority must furnish to us information and materials listed in our regulations at § 488.4. Our regulations at § 488.8 (''Federal review of accreditation organizations'') detail the Federal review and approval process of applications for deeming authority. On April 26, 1996, however, new legislation entitled Making Appropriations for Fiscal Year 1996 To Make a Further Downpayment Toward a Balanced Budget and for Other Purposes (Public Law 104–134) was enacted. Section 516 of Public Law 104–134 amended section 1865 of the Act in a number of ways. The legislation removed the requirement that accrediting organizations provide reasonable assurance that entities accredited by them would meet Medicare conditions or requirements. It now, in revised section 1865(b)(1) of the Act, requires organizations to demonstrate that their accredited entities would meet or exceed all of the applicable Medicare conditions. The legislation now also defines, in section 1865(b)(4) of the Act, the provider entities that we may consider for deemed status to include ASCs as suppliers. We are now required to publish an initial notice in the Federal Register 60 days after the receipt of a written request for a finding that accreditation by a national accreditation body demonstrates that the Medicare conditions or requirements are met.

This particular notice, however, is unique in that an expanded proposed draft had been developed along the lines of our requirements in the statute and regulations that were in effect before the enactment of section 516 of Public Law 104–134. We had received and accepted applications from JCAHO and AAAHC, two national accrediting bodies, long before the enactment of section 516 of Public Law 104–134. Therefore, this initial notice, unlike future deeming notices, contains material beyond the scope of the new legislative deeming requirements.

In this notice, we identify the national accreditation bodies making the deeming request, describe the nature of the request, and allow at least a 30-day public comment period. We received applications from JCAHO and AAAHC before the April 26, 1996 enactment of Public Law 104–134. Therefore, the timeframes imposed by the new legislation are not applicable to the processing of these two organizations' applications. However, AAAHC wrote to us on May 23, 1996 requesting that we process its application under the new timeframes. In order to comply with the requirement in revised section 1865(b)(3)(A) of the Act that we publish an initial notice identifying the national accreditation body making the request not later than 60 days after the date of receipt of that request, we must publish the notice by July 22, 1996. Likewise, in order to comply with the requirement that we publish an approval notice of our findings within 210 days after we receive an organization's deeming application, we must publish the approval notice by December 19, 1996. Since both applications had been submitted and considered before the enactment of Public Law 104–134, despite these timeframes, we will make every effort to publish the approval notice by November 22, 1996, which is 210 days after the date of the enactment of the new legislation.

Under revised section 1865(b)(2) of the Act and our regulations at § 488.8 (''Federal review of accreditation organizations''), our review and evaluation of a national accreditation organization is conducted in accordance with, but is not necessarily limited to, the following factors:

- The equivalency of an accreditation organization's requirements for an entity to our comparable requirements for the entity.
- The organization's survey process to determine the following:

+ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

The comparability of its process to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are used only when the organization identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(2).

The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

The ability of the organization to provide us with electronic data in ASCII comparable code and reports necessary for effective validation and assessment of the organization's survey process.

The adequacy of staff and other resources.

The organization's ability to provide adequate funding for performing required surveys.

The organization's policies with respect to whether surveys are announced or unannounced.

- The accreditation organization's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

C. Ambulatory Surgical Center Conditions of Coverage and Requirements

The regulations specifying the Medicare conditions of coverage for ASCs are located in 42 CFR part 416. These conditions implement section 1832(a)(2)(F)(i) of the Act, which provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by us under section 1833(i)(1) of the Act.

II. Proposed Approval of the Ambulatory Surgical Center Accreditation Standards of the Joint Commission of the Accreditation of Healthcare Organizations and the Accreditation Association for Ambulatory Health Care

The purpose of this notice is to propose that we recognize the accreditation programs of JCAHO and AAAHC, two national accrediting organizations, but only to the extent that they accredit ASCs. Based on a thorough examination of the standards, accrediting programs, and survey processes of both organizations, we believe that both JCAHO and AAAHC demonstrate that ASCs accredited by them meet Medicare conditions, and we, therefore, invite comments on our proposal to grant ASC deeming

authority to these two national organizations.

Section 1865(b)(3)(A) of the Act, as amended by section 516 of Public Law 104–134, states that a Federal Register approval notice granting deeming to accreditation organizations will follow no later than 210 days after the date of receipt of a written request or documentation necessary to make a determination on the request for deeming authority. We received applications from JCAHO and AAAHC before the April 26, 1996 enactment of Public Law 104–134. Therefore, the timeframes imposed by the new legislation are not applicable to the processing of these two organizations' applications. However, AAAHC wrote to us on May 23, 1996 requesting that we process its application under the new timeframes. In order to comply with the requirement in revised section 1865(b)(3)(A) of the Act that we publish an initial notice identifying the national accreditation body making the request not later than 60 days after the date of receipt of that request, we must publish the notice by July 22, 1996. Likewise, in order to comply with the requirement that we publish an approval notice of our findings within 210 days after we receive an organization's deeming application, we must publish the approval notice by December 19, 1996. Since both applications had been submitted and considered before the enactment of Public Law 104–134, despite these timeframes, we will make every effort to publish the approval notice by November 22, 1996, which is 210 days after the date of the enactment of the new legislation. The approval notice will specify the effective date of the deeming authority and the term of approval, which will not exceed 6 years.

Based on our initial review of each organization's standards and survey procedures contained in their individual applications and after our comparison of both organizations' standards to the Medicare ASC conditions and survey procedures, we contacted both JCAHO and AAAHC to discuss the differences between Medicare conditions and their standards.

We met separately with representatives from both organizations. The representatives responded to our concerns by proposing to change their standards for their member ASCs seeking Medicare certification. We subsequently received, from each organization, revised scoring guidelines with amended standards for their member ASCs requesting Medicare certification.

In evaluating the accreditation standards and survey processes of JCAHO and AAAHC to determine if they demonstrated that their accredited facilities meet Medicare conditions, we did a standard by standard comparison of the applicable conditions or requirements to determine which of them met or exceeded Medicare requirements. We outline below the differences between the Medicare requirements and the standards of the JCAHO and AAAHC and why we have concluded that they demonstrated that our requirements are met by their respective accreditation processes.

Before doing so, however, it is important to address the methods accreditation organizations and Medicare use to determine compliance. Information gathered during on-site surveys is the basis of an organization's accreditation decision. A surveyor or team of surveyors evaluates the ASC's level of compliance with applicable standards. Surveyors assess compliance in a variety of ways, including interviews, observations, and documentation reviews.

We refer frequently to the scoring guidelines that accompany each organization's standards. The scoring guidelines express parameters or common situations that the organizations' surveyors use to make judgments and assign scores to key requirements. Although scoring guidelines are not standards, they set forth the intent of the standard and describe the organizations' expectations as to how a particular standard must be met. These guidelines are consistently used by both organizations' surveyors in determining the score that will be applied to assess compliance with each standard.

When a surveyor evaluates a standard as having partial, minimal, or noncompliance, that is, when the scoring guideline has not been met or has been only partially met, a written recommendation results.

For example, an organization may use a 5-point scale to indicate an ASC's level of compliance with a standard. An ASC score of 1 or 2 for a particular accreditation standard corresponds to our determination of substantial compliance. A score of 3, 4, or 5 corresponds to our determination of noncompliance, which requires the ASC to submit an acceptable plan of correction. The facility's improvement will be monitored through a focused survey and/or written progress report. A written progress report assigned to address these deficiencies is normally due within either 1, 4, or 6 months from the date the accreditation is final. The plan of correction is monitored by the State Agency.

A. Differences Between the Joint Commission of the Accreditation of Healthcare Organizations and Medicare Conditions and Survey Requirements

We compared the standards contained in the JCAHO 1994 (and subsequent 1996) Accreditation Manual for Ambulatory Health Care and its survey procedures to the Medicare ASC conditions and survey procedures. We note that JCAHO standards exceed our conditions for coverage in some areas such as patient rights, education of patients and family, and continuity of care. In the following seven areas, however, Medicare conditions exceeded JCAHO standards as they existed before our discussions with JCAHO. As explained below, however, JCAHO now demonstrates that it meets our conditions in these areas.

Standards

Medicare ASC exclusivity requirement—Under our regulations at § 416.2 (''Definitions''), a Medicare ASC operates exclusively for the purpose of furnishing surgical services to patients not requiring hospitalization. JCAHO has no comparable surgical exclusivity requirement; however, for its member ASCs seeking Medicare certification, JCAHO has included a statement on ASC surgical exclusivity as an integral part of its application package. This statement by the ASC attests that the facility meets our requirements as to exclusivity and JCAHO would verify this attestation. Thus, JCAHO has taken adequate steps to match our exclusivity requirement.

Medicare requirement of ASC use of Medicare approved laboratory and radiological facilities—Section 416.49 (''Condition for coverage—Laboratory and radiologic services'') requires the use of Medicare-approved laboratory and radiologic facilities for ASCs while JCAHO requires only that laboratory and radiologic services be ''appropriate.'' JCAHO, however, has stated in its April 8, 1994 correspondence that an ASC seeking to use its accreditation for Medicare certification will be required, as an integral part of its application, to attest that, if it is not certified to perform its own laboratory services, it will obtain the services from a laboratory with certification under part 493 (''Laboratory Requirements''). The applicant ASC must also attest that it has procedures for obtaining radiologic services from a Medicare-approved facility to meet the needs of its patients. The ASC agrees to undergo JCAHO verification of these attestations before a

Joint Commission determination that the ASC qualifies for deemed status recognition. With this standard also, JCAHO has raised its requirements to an equivalency with our conditions.

Medicare requirement of separate recovery and waiting areas—Our regulations at paragraph (a)(2) of § 416.44 (''Condition for coverage—Environment'') require that Medicare ASCs have separate recovery and waiting areas. JCAHO has no requirement comparable to this Medicare condition for coverage. JCAHO in its revised 1996 Accreditation Manual for Ambulatory Health Care under the environmental care standard scoring guideline (EC.4.2) has included the Medicare requirement of separate recovery and waiting areas and will require compliance from its member ASCs seeking Medicare certification.

Medicare requirement relating to emergency equipment—Paragraph (c) of § 416.44 (''Condition for coverage—Environment'') requires that Medicare ASCs have specific equipment available to operating rooms. This equipment must include at least the following: emergency call systems, oxygen, mechanical ventilatory assistance equipment, cardiac defibrillator, cardiac monitoring equipment, tracheostomy set, laryngoscopes, endotracheal tubes, suction equipment, and emergency medical equipment and supplies specified by the medical staff. In its 1996 manual revision, JCAHO has amended its environmental care standard scoring guideline (EC.4.2) and enumerated the emergency equipment required by § 416.44(c). JCAHO's member ASCs requesting Medicare certification will comply with this requirement.

Patient care responsibilities for all nursing services personnel—Our regulations at § 416.46 (''Condition for coverage—Nursing services'') require that ASC nursing services be directed and staffed to assure that the nursing needs of all patients are met. Patient care responsibilities must be delineated for all nursing service personnel. Nursing services must be furnished in accordance with recognized standards of practice. Further, a registered nurse must be available for emergency treatment whenever there is a patient in the ASC. There was no comparable JCAHO requirement that patient care responsibilities be delineated for all nursing personnel. However, JCAHO has included, among its 1996 leadership standard scoring guidelines (LD.2.1 through LD.2.6), patient care responsibilities for nursing service personnel and requires compliance with this Medicare requirement for ASCs requesting Medicare certification.

Administration of drugs, drug prescriptions, and the administration of blood products—Our regulations at § 416.48 (''Condition for coverage—Pharmaceutical services'') are specific in their requirements regarding the administration of drugs, written drug administration, and follow-ups on oral prescriptions. JCAHO had no explicit standards comparable to these Medicare requirements.

JCAHO has included in its ''Management of Information'' standard scoring guidelines (IM.7 through IM.7.2) and ''Care of Patients'' standard scoring guideline (TX.5.3) revised procedures for obtaining blood and blood components to satisfy Medicare requirements. For example, in IM.7 through IM.7.2, orders given orally for drugs and biologicals must be followed by a written order signed by the prescribing physician and in TX.5.3, only physicians or registered nurses may administer blood and blood products.

Procedural Issue

Medicare requirement of unannounced surveys and frequency of surveys—JCAHO surveys of ASCs are announced, in contrast to the Medicare practice of conducting unannounced surveys. We believe that the findings on an announced survey are not comparable to those an unannounced survey may find when the facility is in its normal routine. JCAHO has agreed that it will conduct unannounced surveys of ASCs requesting to use their JCAHO accreditation for Medicare certification purposes.

JCAHO resurveys its ASCs every 3 years. Our original requirement was to survey ASCs every year. In practice, our resurveys have been averaging almost 3 years. Therefore, we accept JCAHO's 3-year resurvey cycle as comparable to ours.

We propose to make approval of JCAHO's accreditation program contingent on its continued agreement to implement the above seven changes in its standards and survey requirements. We believe that these changes bring JCAHO's accreditation program to a level at least equivalent to ours. JCAHO has thus demonstrated to our satisfaction that all of our applicable conditions or requirements are met or exceeded.

B. Differences Between the Accreditation Association for Ambulatory Health Care and Medicare Conditions and Survey Requirements

We compared the standards contained in the 1994 through 1995 (and subsequent 1996 through 1997) AAAHC Accreditation Handbook for Ambulatory Health Care and its survey procedures to the Medicare ASC conditions and survey procedures. We note that AAAHC standards exceed our conditions for coverage in some areas such as patient rights, radiation oncology treatment services, and occupational health services. In the following nine areas, however, Medicare conditions exceeded AAAHC standards, as they existed before our discussions with AAAHC. As explained below, however, AAAHC now demonstrates that it meets our conditions in these areas.

Standards

Medicare exclusivity requirement—Our regulations at § 416.2 (''Definitions'') define an ASC as a distinct entity operating exclusively for the purpose of furnishing surgical services to patients not requiring hospitalization. AAAHC had no comparable requirement.

AAAHC has supplemented its surgical services standard to include the Medicare exclusivity requirement for its ASCs that want to apply their AAAHC accreditation for Medicare certification purposes.

Medicare separate recordkeeping and staffing requirement—An ASC must be a separately identifiable entity, physically, administratively, and financially independent and distinct from other operations. Thus, an ASC maintains separate staff and keeps exclusive records. AAAHC had no comparable requirement but has supplemented its Chapter 10, ''Surgical Services'' section, to include requirements on exclusivity (that is, separate space, the nonmixing of functions, and separate recordkeeping and staffing).

Medicare requirement of separate recovery and waiting areas—Paragraph (a)(2) of § 416.44 (''Condition for coverage—Environment'') requires that Medicare ASCs have separate recovery and waiting areas. AAAHC does not require accredited facilities to have separate recovery room and waiting areas. AAAHC has included this requirement in its supplement to Chapter 8, ''Facilities and Environment,'' for ASCs interested in Medicare certification.

Adherence to the Life Safety Code of the National Fire Protection

Association—Under our regulations at paragraph (b) of § 416.44 (''Condition for coverage—Environment''), ASCs are generally required to comply with the provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association. While AAAHC standards contain a number of provisions related to ensuring patient and facility safety in the event of fire, AAAHC had not previously mandated compliance with the provisions of the National Fire Protection Association Life Safety Code but required compliance with applicable local or State safety codes.

Nevertheless, in its supplementary standard to Chapter 8, ''Facilities and Environment,'' AAAHC requires an ASC requesting Medicare certification to comply with the provisions of the National Fire Protection Association Life Safety Code. More specifically, the Life Safety Code is incorporated by reference into the AAAHC standard.

Specific Medicare requirements relating to pharmaceutical services—Medicare has specific requirements regarding adverse patient reaction to drugs, the administration of blood products and written/oral orders for drugs and biologicals (§ 416.48, ''Condition for coverage—Pharmaceutical services''). AAAHC requirements did not address these concerns.

AAAHC has stated in its supplement to Chapter 15, ''Pharmaceutical Services,'' that adverse drug reactions will be reported to the responsible physician and will be documented in the written record. Blood and blood products will only be administered by physicians and registered nurses. Further, orders given orally for drugs and biologicals will be followed by a written order, signed by the prescribing physician. We believe AAAHC's adoption of these practices ensures compliance with our requirement.

Medicare requirement relating to laboratory services—Medicare requires that physicians and other suppliers performing laboratory services meet the requirements of part 493 of our regulations (''Laboratory Requirements'').

AAAHC did not have this requirement but has included it in the supplement to Chapter 16, ''Pathology and Medical Laboratory Services.'' Specifically, an ASC that performs laboratory services must meet the requirements of part 493 of our regulations; if an ASC does not provide its own laboratory services, it must have procedures for obtaining routine and emergency laboratory services from a certified laboratory in accordance with part 493 of our regulations. AAAHC further adds that this revised standard will be applicable to all organizations surveyed by AAAHC regardless of Medicare ASC status.

Medicare requirement on radiologic services—Medicare ASCs are required to obtain radiologic services from Medicare-approved facilities as outlined in our regulations at § 416.49 (''Condition for coverage—Laboratory and radiologic services''). The ASC must have procedures for obtaining radiologic services from a Medicare-approved facility to meet the needs of patients. AAAHC states in its supplement to Chapter 17, ''Diagnostic Imaging Services,'' that ASCs desiring Medicare certification must have arrangements with providers/suppliers of radiology services meeting Medicare conditions. This action, we believe, ensures that AAAHC's member ASCs seeking Medicare certification will comply with this requirement.

Hospitalization—Medicare requires ASCs to have procedures for transfer to a hospital of patients requiring emergency medical care beyond the ASC's capabilities. Medicare requires the hospital to be a local, Medicare-participating hospital, or a local, nonparticipating hospital that meets the requirements for payment for emergency services under Federal regulations. AAAHC required procedures for transfer to a nearby hospital but did not specify that it must be a Medicare participating hospital or a nonparticipating hospital meeting Federal emergency payment requirements. AAAHC has included this Medicare requirement in its supplement to Chapter 10, ''Surgical Services,'' for ASCs seeking Medicare certification.

Procedural Issue

Medicare requirement of unannounced surveys and resurvey frequency—AAAHC surveys of ASCs are announced in contrast to the Medicare practice of conducting unannounced surveys. In its handbook section, ''Accreditation Policies and Procedures,'' AAAHC has altered its original position and has stated that it will conduct unannounced surveys for ASCs seeking Medicare certification. AAAHC resurveys ASCS every 3 years. Our original requirement was to survey ASCs every year. In practice, our resurveys have been averaging almost 3 years. We therefore believe AAAHC's 3-year resurvey cycle meets Medicare requirements.

We propose to make our approval of AAAHC's accreditation program contingent on its continued agreement to implement the above nine changes to its standards and requirements. We believe that these changes bring AAAHC's accreditation program to a level at least equivalent to ours. AAAHC has thus demonstrated to our satisfaction that it meets or exceeds all Medicare applicable conditions or requirements.

After we evaluate public comments on this initial notice, we will issue an approval notice in accordance with section 516 of Public Law 104–134 and our regulations at § 488.12 (''Effect of survey agency certification''). Once this approval notice is approved and published in the Federal Register, ASCs would inform their respective State Agencies of their accreditation status with either the JCAHO or AAAHC. The State Agencies in turn, would inform their respective HCFA Regional Offices. The Regional Offices collect this information and put the information into the HCFA Online Survey and Certification Automated system.

C. Proposed Stipulations Relating to Accreditation by the Joint Commission on the Accreditation of Healthcare Organizations and the Accreditation Association for Ambulatory Health Care

According to our regulations at § 488.8 (''Federal review of accreditation organizations''), to ensure continuing comparability, an accreditation organization granted deeming authority is subject to continuing Federal oversight, which includes comparability reviews and validation reviews. Section 488.8 lists reapplication procedures, which may be no later than every 6 years. We propose to recognize as meeting Medicare's ASC conditions those ASCs accredited under JCAHO's and AAAHC's accreditation programs with the following restrictions included in § 488.8(e):

- We would reserve the right to withdraw deemed status from all JCAHO-accredited or AAAHC-accredited ASCs should either organization revise its standards or accreditation policies and procedures in a manner in which it fails to demonstrate that its ASCs continue to meet Medicare conditions.
- We also would reserve the right to withdraw deemed status from all JCAHO-accredited or AAAHC-accredited ASCs if we should change ASC conditions in a manner in which, after a time allowance specified in § 488.8(e), JCAHO or AAAHC standards or accreditation policies would not demonstrate that the revised Medicare ASC conditions are met.
- We would reserve the right to withdraw deemed status from all JCAHO or AAAHC accredited ASCs if a validation review or a public complaint

review reveals widespread, systematic, and unresolvable problems with the JCAHO or AAAHC accreditation process with respect to these ASC programs. These problems would provide evidence that JCAHO or AAAHC ASCs cease to demonstrate that they meet Medicare conditions.

D. Conclusion

For the reasons stated above, we believe that the JCAHO and AAAHC accreditation standards and survey processes, subject to the stipulations described, demonstrate that Medicare conditions or requirements have been met or exceeded. We therefore propose to deem ASCs accredited by JCAHO and AAAHC to be in compliance with the Medicare conditions for ASCs in accordance with the authority provided in section 1865 of the Act.

III. Paperwork Reduction Act

The burden reflected in this notice is referenced in the currently approved regulation entitled ''Granting and Withdrawal of Deeming Authority to National Accreditation Organizations (HSQ–159–F).'' The paperwork burden referenced in this regulation has been submitted to the Office of Management and Budget for review and approval under HCFA form number ''HCFA-R–191.'' Persons can reference the supporting statement for this paperwork collection (HCFA-R–191) on the INTERNET at http://www.hcfa.gov until the Office of Management and Budget's approval has been obtained.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Impact Regulatory Statement

In fiscal year 1993, there were 1,657 certified ASCs participating in the Medicare/Medicaid programs. We conducted 141 initial, 549 recertification (both at a cost of $537,312), and 18 complaint surveys. In fiscal year 1994, there were 1,855 certified ASCs. This was an increase of 198 facilities. We conducted 213 initial, 492 recertification (both at a cost of $555,068), and 24 complaint surveys. In fiscal year 1995, there were 2,105 ASCs. This was an increase of 250 Medicare/Medicaid certified ASCs. We conducted 211 initial, 288 recertification (both at a cost of $714,069), and 24 complaint surveys. As the data above indicate, the number of ASCs and the cost for conducting ASC surveys are increasing; however, the number of surveys conducted is decreasing. We contacted several Regional Offices to determine the number of pending ASC initial surveys, which number approximately 200 to 300. These pending initial surveys are not uniformly dispersed among the Regional Offices, so there would be a significant impact on some Regional Offices.

For the current fiscal year, the appropriation for survey activities has not increased over the levels granted for fiscal years 1994 and 1995. Yet, the numbers of participating providers and suppliers continue to increase. As indicated above, there was a 22 percent increase in ASCs within 3 years (fiscal years 1993 through 1995). In an effort to guarantee the continued health, safety, and services of beneficiaries in facilities already certified, as well as provide relief in this time of tight fiscal restraints, we are proposing to deem ASCs accredited by the JCAHO and AAAHC as meeting Medicare requirements. Thus we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost effective manner.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 28, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 18, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–18709 Filed 7–22–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction and Operation of Residential Development on the Seven Oaks Ranch Property, in Austin, Travis County, Texas

SUMMARY: Bee Cave Oaks Development, Inc. (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(b) of the Endangered Species Act (Act). The applicant has been assigned permit number PRT–812688. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*), and impacts to the proposed endangered Barton Springs salamander (*Eurycea sosorum*) have been addressed in the associated Habitat Conservation Plan. The proposed take on the 304-acre northern parcel may occur as a result of the development of 160 residential lots on 260 acres. Approximately 44 acres will be preserved as a greenbelt. Twenty-six residential lots are planned on approximately 29 acres of the 43-acre southern parcel, with 14 acres being preserved as a greenbelt. All construction will occur on the 347-acre Seven Oaks Ranch Property located in Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take applications. A determination of whether jeopardy to the species will likely result or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 22, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Mary Orms, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by

appointment only, during normal business hours (8:00 to 4:30) at the Service's Austin, Texas Ecological Services Field Office. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESS** above). Please refer to permit number PRT–812688 when submitting comments.

FOR FURTHER INFORMATION CONTACT:

Mary Orms at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Bee Cave Oaks Development, Inc. plans to construct 186 residential lots and preserve approximately 58 acres of greenbelt areas within the 347-acre tract. The construction will be located at The Seven Oaks Ranch Property, located along Bee Cave Road (Highway 2244) between River Hills and Cuernavaca Roads in Austin, Travis County, Texas. This action will eliminate approximately 240 acres of habitat and six warbler territories. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by purchasing 73 acres of high quality habitat in the Vaughn Tract, located north of F.M. 2769, roughly 1.6 miles west of its intersection with Bullick Hollow Road, within the Cypress Creek macrosite preserve area of the Balcones Canyonlands Conservation Plan area, in Travis County. The land will be donated to the Lower Colorado River Authority and funding will be provided for operation and maintenance of the acquired habitat.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–18590 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–55–M

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Class III Gaming Compact between the Puyallup Tribe of Indians and the State of Washington, which was executed on May 28, 1996.

DATES: This action is effective July 23, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: July 12, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–18620 Filed 7–22–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[WY–921–1990–00; Wyoming 0200621]

Realty Action: Termination of Recreation and Public Purposes Classification; Wyoming

AGENCY: BLM, Interior.

ACTION: Classification termination.

SUMMARY: This order terminates a BLM classification affecting 238.29 acres of public land near Cheyenne, Wyoming.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Realty Specialist, Wyoming State Office, BLM, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869–4; it is ordered as follows: 1. Pursuant to the regulations in 43 CFR 2091–7–1(b)(2) and the authority delegated to me by BLM Manual Section 1203 (48 FR 85), the classification decision of April 26, 1962, which classified the land as suitable for recreation and public purposes under the above Act and under serial number WYW 0200621, is hereby terminated as it affects the following described lands:

Sixth Principal Meridian

T. 14 N., R. 70 W.,
Sec. 28, lot 2, SW¼.

The area described contains 238.29 acres in Laramie County.

2. Pursuant to regulations at 43 CFR 2091.2–2(b), mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act, remain segregated from the mining laws pending the issuance of such regulations as the Secretary of the Interior may prescribe.

Dated: July 16, 1996.

Melvin Schlagel,

Realty Officer.

[FR Doc. 96–18591 Filed 7–22–96; 8:45 am]

BILLING CODE 4310–22–P

[AZ–040–7122–00–5567; AZA 29361]

Notice of Intent To Amend the Safford District Resource Management Plan; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following lands in Cochise County, Arizona have been found to meet the criteria for sale under Section 203 of the Federal Land Policy Management Act. The Safford District Resource Management Plan will be amended by adding these lands to Appendix 5, Lands that Meet Federal Land Policy and Management Act Requirements for Sale.

Gila and Salt River Meridian, Arizona

T. 23 S., R. 24 E.,
Sec. 10, lots 7 to 10, inclusive, W½NE¼, SW¼NE¼;
Sec. 11, lots 4 through 8, inclusive, N½, NE¼SE¼.

SUPPLEMENTARY INFORMATION: These lands are proposed for sale to Phelps Dodge Corporation (published at 61 FR 6257). Interested parties may submit comments to Area Manager, Tucson Resource Area Office, 12661 East Broadway Boulevard, Tucson, Arizona 85748 until August 22, 19960.

FOR INFORMATION CONTACT: Bill Auby, Geologist, BLM, Tucson Resource Area Office, telephone number (520) 722–4289.

Dated: July 11, 1996.

Thomas D. Terry,

Acting District Manager.

[FR Doc. 96–18579 Filed 7–22–96; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

Kriti Exploration & Production Company, Big Thicket National Preserve, Jasper County, Texas; Availability of Plan of Operations and Environmental Assessment Drilling an Exploratory Oil Well

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has received from Kriti Exploration & Production Company a Plan of Operations for the continuing operation of four oil wells and associated production equipment in Big Thicket National Preserve, located within Jasper County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. The documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent Big Thicket National Preserve, 3785 Milam, Beaumont, TX 77701.

Dated: July 16, 1996.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 96–18691 Filed 7–22–96; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 17, 1996. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 7, 1996.

Beth Boland,

Acting, Keeper of the National Register.

GEORGIA

Clarke County

Rocksprings Shotgun Row Historic District (Shotgun Houses of Athens—Clarke County MPS) 433—447 Rocksprings St., Athens, 96000875

Hancock County

Hurt—Rives Plantation, Address Restricted, Sparta vicinity, 96000874

ILLINOIS

Fulton County

Odd Fellows Opera Block, Jct. of Main and Mechanic Sts., SW corner, Ellisville, 96000876

KENTUCKY

Lee County

Cold Oak Shelter (15LE50), Address Restricted, Zachariah vicinity, 96000877
Pine Crest Shelter (15LE70), Address Restricted, Zachariah vicinity, 96000878

MARYLAND

Somerset County

Pritchard, Dr. William B., House, 29994 Polks Rd., Princess Anne vicinity, 96000879

Wicomico County

Honeysuckle Lodge, 1601 Camden Ave., Salisbury, 96000880

MONTANA

Missoula County

Bluebird Building, 220—224 N. Higgins Ave., Missoula, 96000881

OHIO

Hancock County

Marion Township School District No. 3, 8884 Co. Rt. 236, Findlay vicinity, 96000883

Scioto County

Zottman House, 11 Offners St., Portsmouth, 96000882

PENNSYLVANIA

Bucks County

Rhoads Homestead (New Hope MRA) 102—106 W. Bridge St., New Hope, 85003655

UTAH

Salt Lake County

Allsop—Jensen House (Sandy City MPS) 8829 S. 400 East St., Sandy, 96000885
Bateman Agriculture and Development Company (Sandy City MPS) 198 E. 8760 South St., Sandy, 96000888
Cushing, Ernest and Sadie, House (Sandy City MPS) 60 E. Pioneer Ave., Sandy, 96000887
Dobbs, Emma Olive, House (Sandy City MPS) 578 E. 8885 South St., Sandy, 96000889
Mattson, John and Mary, House (Sandy City MPS) 239 E. Main St., Sandy, 96000886

WISCONSIN

Vilas County

Region Nine Training School, 611 Sheridan St., Eagle River, 96000890

In order to assist in the preservation of the following property, the comment period has been waived:

RHODE ISLAND

Bristol County

O'Bannon Mill, 90 Bay Spring Ave., Barrington, 96000891

[FR Doc. 96–18594 Filed 7–22–96; 8:45 am]

BILLING CODE 4310–70–P

Proposed Boundary Adjustment of Olympic National Park; Exchange of Lands in Clallam and Mason Counties, Washington

ACTION: Notice of realty action on proposed boundary adjustment and lands exchange.

SUMMARY: The National Park Service (NPS), the State of Washington (State) and the City of Tacoma (Tacoma) are proposing a lands exchange pursuant to the Act of October 23, 1992, Public Law 102–436 (106 Stat. 2217) and the Act of July 15, 1968 (16 U.S.C. 460 *1*–22(b)), also in accordance with the Act of June 29, 1938 establishing Olympic National Park (16 U.S.C. 251) as amended. Federal lands within Olympic National Park (ONP) are authorized for disposal to Tacoma for operation of the Lake Cushman hydroelectric project. The boundary of ONP would be adjusted to delete these disposed federal lands. In exchange, the United States (U.S.) will acquire State-owned lands within the boundaries of ONP to be provided by Tacoma.

SUPPLEMENTARY INFORMATION: An environmental assessment for this project was completed in July 1994, resulting in a Finding of No Significant Impact on February 16, 1996.

The following described federal lands are being proposed for disposal by the U.S. and proposed for deletion from the boundaries of ONP:

Willamette Meridian

Township 23 North, Range 5 West,
Tract 37 in unsurveyed Sections 3 and 4.
Containing 29.83 acres, more or less.

In exchange, the U.S. will acquire the following described lands:

Willamette Meridian

Township 30 North, Range 10 West,
Section 26: NW¼ NW¼, and
Township 28 North, Range 15 West,
Section 36: N½ NE¼ NE¼ SW¼.

The above lands aggregating 45 acres, more or less.

The lands to be exchanged have been determined to be of equal value.

This lands exchange and boundary adjustment is being proposed to facilitate Tacoma's operation of the Lake Cushman hydroelectric project, which periodically inundates the above federal land within ONP. Management of these lands, although being conveyed to Tacoma and being removed from the boundary of ONP, will continue to include public access and resource protection through a management agreement.

The exchange also provides for the U.S. acquisition of State lands within the boundaries of ONP, which will be administered by NPS. Acquisition of these lands will provide protection to valuable wildlife habitat, wilderness, cultural and recreational resources within ONP.

There are no leases or permits to other third parties affecting the federal lands proposed for disposal. These lands have been surveyed for cultural resources and threatened/endangered species and found suitable for disposal given the mitigation measures provided by agreement.

FURTHER INFORMATION AND COMMENTS: More detailed information on this proposed action may be obtained from the Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, Washington 98362–6789. Public comments will be accepted for a period of 45 calendar days from the publication date of this notice. Comments should be sent to the Superintendent, Olympic National Park at the above address.

In the absence of any subsequent action to modify or vacate the proposed exchange and boundary adjustment, this realty action to proceed with the exchange and boundary adjustment will become the final determination of the Department of the Interior.

Dated: July 12, 1996.

William C. Walters,

Deputy Field Director, Pacific West Field Area.

[FR Doc. 96–18690 Filed 7–22–96; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* versus *Exide Corporation et al.*, Civil Action No. CA 94–4086, as lodged on July 10, 1996 with the United States District Court for the District of South Dakota. The proposed consent decree resolves the United States' claim for past response costs at the Traub Battery and Body Shop Superfund Site pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. 9607(a). Under the terms of the consent decree, the Settling Defendants, Exide Corporation, Graham Tire Company, J.C. Penney Co., Inc., K-Mart Corporation, John Morrell & Co., Inc., and the South Dakota Department Of Transportation, will pay the United States the sum of $313,000 in settlement of the United States' past response cost claim for costs incurred by the United States in connection with the cleanup of lead-contaminated soils at the Traub Battery and Body Shop Superfund Site (the ''Site'') located near Sioux Falls, South Dakota.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Exide Corporation et al.*, DOJ Ref. #90–11–2–1139.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 96–18683 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that a consent decree in *United States* v. *Ron Brown d/b/a Ron Brown Demolition Service and Rain Construction Company*, No. C–3–94–330 (S.D. Ohio), was lodged with the United States District Court for the Southern District of Ohio on July 3, 1996.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill material onto portions of property located in Clark County, Ohio, which are alleged to constitute ''waters of the United States.'' The consent decree (1) requires Ron Brown and Rain Construction Company, Inc., to refrain from further unpermitted discharges at the wetland; (2) requires Ron Brown to remove all illegally-placed fill within a five-year period and to dispose of the fill in an environmentally appropriate manner; and (3) requires Rain Construction Company, Inc., to perform Ron Brown's fill removal obligations if he is unable to do so.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Michael J. Zevenbergen, 10th & Pennsylvania Avenue, N.W., Room 7216—Main Building, Washington, D.C. 20530 and should refer to *United States* v. *Ron Brown d/b/a Ron Brown Demolition Service and Rain Construction Company*, DJ Reference No. 90–5–1–6–600.

The consent decree may be examined at the Clerk's Office, United States District Court, Federal Building, 200 West 2nd Street, Ninth Floor, Dayton, Ohio, 45402.

Anna Wolgast,

Acting Chief, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–18684 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1992—Inter Company Collaboration for Aids Drug Development

Notice is hereby given that, on June 26, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Inter Company Collaboration for Aids Drug Development (The Collaboration) filed

written notifications simultaneously with the Attorney General and the Federal Trade Commission. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies (including their affiliates and subsidiaries) are parties to the Collaboration: AB Astra, Sodertalje, SWEDEN; Agouron Pharmaceuticals, Inc., La Jolla, CA; AJI PHARMA USA, Inc., Teaneck, NJ; Bayer Aktiengesellschaft, Leverkusen, GERMANY; Boehringer Ingelheim Pharmaceuticals, Inc., Ridgefield, CT; Bristol-Myers Squibb Company, New York, NY; Bristol-Myers, Squibb Holdings, Limited, Ickenham, Uxbridge, ENGLAND; Bristol-Myers, Squibb, Brussels, BELGIUM; Bristol-Myers, Brussels, BELGIUM; Bristol-Myers Squibb Canada, Inc., North York, Ontario, CANADA; Bristol-Myers Squibb Pharmaceuticals, Limited, Middlesex, ENGLAND; Bristol-Myers Squibb S.A., Paris, FRANCE; Bristol-Myers Squibb G.m.b.H., Munich, GERMANY; Bristol-Myers Squibb S.p.A., Rome, ITALY; E.R. Squibb & Sons, Inc., Princeton, NJ; E.R. Squibb & Sons Limited, Middlesex, NJ; Mead Johnson & Company, Evansville, IN; Squibb Corporation, Princeton, NJ; Ciba-Geigy Limited, Basel, SWITZERLAND; The DuPont Merck Pharmaceutical Company, Wilmington, DE; Gilead Sciences, Inc., Foster City, CA; Glaxo Wellcome Inc., Research Triangle Park, NC; Glaxo Wellcome plc, London, ENGLAND; The Wellcome Foundation Ltd., London, ENGLAND; Glaxo Wellcome Inc., Mississauga, Ontario, CANADA, Hoechst Ag, Frankfurt am Main, GERMANY; Hoechst Marion Roussel Inc., Kansas City, MO; Hoffman-La Roche Inc., Nutley, NJ; F.Hoffman-LaRoche Ltd., Basel, SWITZERLAND, Merck & Co., Inc., Whitehouse Station, NJ; Pfizer Inc., New York, NY; Pharmacia & Upjohn Company, Kalamazoo, MI; Sigma-Tau S.p.A., Pomezia (Rome), ITALY; SmithKline Beecham plc, Brentford, Middlesex, ENGLAND and Triangle Pharmaceuticals, Inc., Durham, NC.

The parties to the Collaboration will exchange scientific research and development data on HIV antiviral drugs and HIV antiviral compounds for comparative and/or concomitant AIDS research and development and to develop standardized preclinical testing procedures, essays, and other standards and tests for HIV antiviral compounds. The parties will coordinate a number of clinical trials of different combinations of multiple antiviral drugs recommended by the Collaboration's Clinical Trial Subcommittee. The trials will be conducted by clinical research organizations selected by the Collaboration, pursuant to a protocol(s) approved by the Collaboration that will permit the systematic and rapid evaluation of multiple drug combinations. Membership in the Collaboration remains open, and the Collaboration intends to file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18680 Filed 7–22–96; 8:45am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Air Products and Chemicals, Inc.

Notice is hereby given that, on June 13, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Air Products and Chemicals, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Air Products and Chemicals, Inc., Allentown, PA; L'Air Liquide, Societe Anonyme Pour L'Etude et L'Exploitation Des Procedes Georges Claude, Paris, FRANCE; and Zeochem, J.V., Louisville, KY. The objective of the joint venture is to develop, produce and share in production of new adsorbents for the separation of air to recover oxygen and/or nitrogen.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18676 Filed 7–212–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cable Television Laboratories, Inc.

Notice is hereby given that, on April 23, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically the following company has joined CableLabs:

Summit Communications, Inc., Bellevue, WA.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593). The last notification with respect to membership changes was filed with the Department on December 7, 1994. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15307). Corrections to the December 7, 1994 filing were published on July 25, 1995 (60 FR 38058) and on April 30, 1996 (61 FR 19089). The last notification with respect to membership changes was filed with the Department on August 2, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 5, 1996 (61 FR 28596).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18679 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The Frame Relay Forum

Notice is hereby given that, on July 1, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Frame Relay Forum (''Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of the Forum are as follows: Global One, Paris, FRANCE; and ViaDSP, Inc., Concord, MA. OSIconsult

GmbH, Vienna, AUSTRIA has joined as an auditing member. The following companies have ceased to be members of the Forum: Amoco, Chicago, IL; BT Telecommunications, Madrid, SPAIN; CrossComm, Gdansk, POLAND; Computerm Corporation, Pittsburgh, PA; DSC Communications Corp., Plano, TX; France Telecom/Transpac, Paris, FRANCE; Fujitsu, Raleigh, NC; General Instrument, Hatboro, PA; GTE Irving, TX; Home Savings of America, Irwindale, CA; Kasten Chase, Mississauga, Ontario, CANADA; Novell, San Jose, CA; Presticom, St. Hubert, Quebec, CANADA; Siemens Stromberg-Carlson, Boca Raton, FL; Tandem Computers, Cupertino, CA; Tekelec, Calabasas, CA; and US Robotics, Skokie, IL.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this venture remains open. The Forum intends to file additional written notifications disclosing all membership changes.

On April 10, 1992, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on July 2, 1992 (57 FR 29537). The last notification was filed on April 29, 1996. A notice was published in the Federal Register on May 15, 1996.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18678 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Consortium for Intelligent Large Area Processing

Notice is hereby given that, on June 7, 1996, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Consortium for Intelligent Large Area Processing (''CILAP''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: ACSIST Associates, Inc., was acquired by Johnson Matthey, Inc., which is a wholly owned subsidiary of Johnson Matthey PLC. As a result of the acquisition, ACSIST Associates, Inc. was renamed Johnson Matthey Semiconductor Packages, Inc., Minneapolis, MN.

No other changes have been made in either the membership or planned activity of the joint venture. CILAP intends to file additional written notifications disclosing all membership changes.

On May 23, 1995, CILAP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on November 13, 1995 (60 FR 57021).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18682 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Light Helicopter Turbine Engine Company Consortium

Notice is hereby given that, on June 14, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq* (''the Act''), the participants in the Light Helicopter Turbine Engine Company Consortium have filed written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the joint technology and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current participants in the Light Helicopter Turbine Engine Company Consortium are: Allison Engine Company, Inc., Indianapolis, IN; and AlliedSignal Engines, Phoenix, AZ.

The nature and objective of the Consortium is to engage in collaborative research of limited duration to gain further knowledge and understanding within the scope of a Technology Reinvestment Program administered by the Defense Advanced Research Projects Agency (DARPA) under Agreement No. MDA972–96–3–0013 for the Advanced CTP800 Turboprop for Surveillance Aircraft. The purpose of the Consortium is not the production of a product, process, or service.

Information regarding the Light Helicopter Turbine Engine Company Consortium may be obtained from Mr. John K. Peters, Light Helicopter Turbine Engine Company, St. Louis, MO.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18681 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum Project No. 95–06

Notice is hereby given that, on June 12, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 95–06, titled ''Effects of RVP Reduction on Vehicle CO Emissions During Las Vegas and Los Angeles Winter Conditions,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the joint research and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current participants in PERF Project No. 95–06 are: Chevron Research and Technology Company, Richmond, CA; Arco Products Company, Anaheim, CA; Clark County Health District of the State of Nevada, Las Vegas, NV; and Texaco Group Inc., Beacon, NY. Research and development work required in furtherance of the Project is to be carried out by Chevron Research and Technology Company as Contract Coordinator and/or outside consultants and contractors selected by the Contract Coordinator, preferably with the review and recommendation of the Technical Advisory Committee representing the Participants.

The nature and objective of the research program performed in accordance with PERF Project No. 95–06 is to study the effects of RVP reduction on vehicle CO emissions during Las Vegas and Los Angeles winter conditions.

Participation in this Project will remain open to interested persons and organizations until the Project completion date, which is presently anticipated to occur approximately December 15, 1996, but no later than December 31, 1996. The Participants intend to file additional written

notification(s) disclosing all changes in membership in this Project.

Information regarding participation in Petroleum Environmental Research Form (''PERF'') Project No. 95–06 may be obtained from Mr. James A. Rutherford, Chevron Research and Technology Company, Richmond, CA.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–18677 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Bureau of Justice Assistance

[OJP (BJA) No. 1090]

RIN 1121–ZA41

State Criminal Alien Assistance Program

AGENCY: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA).

ACTION: Notice of fund and guidance availability.

SUMMARY: This notice is to announce the availability of $500 million pursuant to the State Criminal Alien Assistance Program (SCAAP), as newly authorized under 8 U.S.C. § 1252(j). Under this authorization states and political subdivisions of states may apply to the Bureau of Justice Assistance for reimbursement for their expenditures for the incarceration of undocumented criminal alien felons. This notice announces the availability of these funds and of the availability of guidance governing the program, including the application forms. The guidance has detailed information regarding program operation in this fiscal year and is being mailed to correctional facilities in potentially eligible jurisdictions. Any jurisdiction that does not receive a copy of the guidance and application kit by July 26, 1996, may obtain a copy by contacting the Bureau of Justice Assistance through the Response Center below.

DATES: Guidance will be sent out to eligible jurisdictions in mid July. The deadline for submitting application materials ranges from late August to mid September depending on the type of applicant (i.e. state or local jurisdiction).

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center or Linda McKay, SCAAP Coordinator, at 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

The State Criminal Alien Assistance Program (SCAAP) provides Federal assistance to states and localities for costs incurred for the imprisonment of undocumented criminal aliens who are convicted of felony offenses. The Fiscal Year 1996 Omnibus Appropriations Act, Pub.L. No. 104–134 (April 25, 1996) provides an allocation of $500 million for payments under Title II, subtitle C, Section 20301, of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322 (September 13, 1994), which amends Section 242 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1252. This is a new legal authorization for the program from that underlying last year's program, which was governed by 8 U.S.C. § 1365. The new legal authorization has resulted in many changes to the program including the expansion of the pool of eligible applicants from states only to a significant number of local jurisdictions. These changes have required several modifications in the process to be used in Fiscal Year 1996 to distribute SCAAP funds. The process is fully explained in the guidance document.

The Bureau of Justice Assistance (BJA), part of the Office of Justice Programs (OJP), will administer SCAAP through a grants mechanism according to the application requirements contained in the guidance and application kit. All applicants that comply with these requirements will share in the appropriation based on the number of incarcerated aliens found to be reimbursable, their average length of incarceration, and the costs of inmate upkeep. Data provided by applicants on their potentially eligible incarcerated populations will again be verified by the Immigration and Naturalization Service (INS) using a computerized matching technique.

The application, verification, and award processes are fully explained in the guidance document which is being mailed to all identified eligible jurisdictions and is available from the Bureau of Justice Assistance.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 96–18671 Filed 7–22–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of July, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 07/08/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,509	Caribou Ltd. (Co.)	Nashville, TN	06/14/96	Ladies' Sportswear.
32,510	McCrackin Industries (Co.)	Conley, GA	06/12/96	Ladies' Handbags.
32,511	Rol Manufacturing (Wkrs)	Brownsville, TX	06/10/96	Engine Gaskets.
32,512	SST Energy Corp. (Wkrs)	Casper, WY	06/06/96	Exploration of Oil and Gas.
32,513	Wood World, Inc. (Wkrs)	Marion, VA	06/24/96	Figurines.
32,514	Weyerhauser (UPI)	Buffalo, NY	06/24/96	Corrugated Shipping Containers.
32,515	Westmoreland Plastics (IUE)	Latrobe, PA	06/20/96	Rings for Coffee Pots.
32,516	Buster Brown Apparel (Co.)	Sylva, NC	06/26/96	Children's Apparel.
32,517	International Paper Co. (CJA)	Veneta, OR	06/17/96	Logs.
32,518	Lloyd-Smith Company (Co.)	Bradford, PA	06/24/96	Oilfield Products.
32,519	Automed, Inc. (Wkrs)	Arden Hills, MN	05/21/96	Laboratory Specimen Handling Equipment.
32,520	BP Oil, Inc (OCAW)	Marcus Hook, PA	06/21/96	Petroleum Products.
32,521	BP Exploration (Co.)	Anchorage, AK	06/21/96	Crude Oil/Natural Gas.
32,522	Bidermann Industries (Wkrs)	Secaucus, NY	05/23/96	Ladies' Dresses, Suits and Sportswear.
32,523	Pioneer Cut Stock, Inc (Wkrs)	Prineville, OR	06/19/96	Remanufactured Wood Products.
32,524	Blount, Inc. (Wkrs)	Owatonna, MN	06/12/96	Tractors.
32,525	Jatco (Wkrs)	Shellman, GA	06/28/96	Ladies' Sportswear.
32,526	The Kendall Company (Co.)	Albertville, AL	06/20/96	Cotton Yarn.
32,527	Superior Milling Ltd (Wkrs)	Watersmeet, MI	05/20/96	Green Hardwood Lumber.
32,528	Hickory Hills Industries (Wkrs)	Clifton, TN	06/18/96	Children's Wear Hdqrs.
32,529	Magnetic Engineering (Co.)	Manitou Springs, CO	06/20/96	Linear Motors, Bonded Magnetic Assemb.
32,530	Fields Apparel, Inc (Wkrs)	Monticello, KY	06/20/96	Men's Dress, Casual and Work Shirts.
32,531	Trust Joist International ()	Hawkins, WI	06/19/96	Wood Window Units.
32,532	Orbit Industries (Co.)	Helen, GA	06/24/96	Ladies' Knit and Woven Garments.
32,533	Pendleton Woolen Mills (UNITE)	Council Bluffs, IA	06/18/96	Women's Blazers and Vests.
32,534	Pendleton Woolen Mills (UNITE)	Nebraska City, NE	06/18/96	Ladies' Skirts and Pants, Dresses.
32,535	North American Rayon Corp (UFCW)	Elizabethton, TN	06/19/96	Rayon Fabic.
32,536	North American Polyester (OCAW)	Elizabethton, TN	06/19/96	Polyester Fabric.
32,537	Cape Cod Cricket Lane (Wkrs)	Pleasant Shade, TN	06/24/96	Sportswear.
32,538	Ithaca Industries, Inc (Co.)	Sylvania, GA	06/17/96	Men's and Boys' Tee Shirts.
32,539	Digital Equipment Corp. (Co.)	Colorado Springs, CO	06/27/96	Computer Storage Devices, Module Assem.
32,540	I.C.I. Explosives (OCAW)	Tamaqua, PA	03/25/96	Blasting Caps.
32,541	Prentiss Manufacturing (Wkrs)	Iuka, MS	06/26/96	Men's Shirts.
32,542	W and J Rives (Co.)	High Point, NC	06/28/96	Men's Ladies' and Childrens' Clothing.
32,543	United Technologies (Co.)	Cheshire, CT	06/24/96	Jet Engine Parts.
32,544	Suburban Apparel (UNITE)	Orange, NY	06/26/96	Wool Coats.
32,545	Remington Firearms Co. (Co.)	Ilion, Ny	06/21/96	Firearms.
32,546	DM IV, Inc. (Co.)	Centerville, TN	06/26/96	Children's Clothing.

[FR Doc. 96–18635 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 738]

Easton Composites, Inc., Easton Composites Manufacturing, Inc., Easton Aluminum Inc., San Diego, CA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 27, 1996, applicable to all workers at Easton Composites, Inc., and Easton Composites Manufacturing, Inc., located in San Diego, California. The notice was published in the Federal Register on April 9, 1996 (61 FR 15832).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. Workers of the subject firm are engaged in the production of composite sports equipment. New findings show that some of the workers of Easton Composites, Inc., and Easton Composites, Mfg., Inc., had their unemployment insurance (UI) taxes paid to Easton Aluminum Inc. The Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–31, 738 is hereby issued as follows:

All workers of Easton Composites, Inc. and Easton Composites Manufacturing, Inc., and those workers of Easton Aluminum, Inc. engaged in employment related to the production of composite sports equipment, who became totally or partially separated from employment on or after December 4, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18628 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,347]

Fasco Consumer Products; Fayetteville, North Carolina; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Fasco Consumer Products, Fayetteville,

North Carolina. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–32,347; Fasco Consumer Products
Fayetteville, North Carolina (July 12, 1996)

Signed at Washington, D.C. this 15th day of July, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18636 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,006]

Kendal Healthcare Products Company Including Leased Workers of Kelly Temporary Services and Interim Temporary Services, Cumberland, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 15, 1996, applicable to all workers of Kendall Healthcare Products Company located in Cumberland, Rhode Island. The notice was published in the Federal Register on April 29, 1996 (61 FR 18758).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Based on new findings, the Department is amending the certification to include leased workers from Kelly Temporary Services and Interim Temporary Services, both located in Cumberland, Rhode Island, engaged in the production of disposable medical products for the subject firm.

The intent of the Department's certification is to include all workers of Kendall Healthcare Products Company adversely affected by imports.

The amended notice applicable to TA–W–32,006 is hereby issued as follows:

All workers of Kendall Healthcare Products Company, Cumberland, Rhode Island, and leased workers of Kelly Temporary Services and Interim Temporary Services, Cumberland, Rhode Island, engaged in the production of disposable medical products for the Kendall Healthcare Products Company, who became totally or partially separated from employment on or after February 15, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18630 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,178; TA–W–32,178B]

Kentucky Apparel LLP, Burkesville, KY and Tompkinsville, KY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 1996, applicable to all workers of Kentucky Apparel LLP, located in Burkesville, Kentucky. The notice was published in the Federal Register on May 17, 1996 (61 FR 24960).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the corporate offices of Kentucky Apparel in Tompkinsville, Kentucky. The workers provide administrative and support services for the subject firm's denim jean production at various locations.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of jeans. Accordingly, the Department is amending the certification to cover the workers of Kentucky Apparel LLP in Tompkinsville, Kentucky.

The amended notice applicable to TA–W–32,178 is hereby issued as follows:

All workers of Kentucky Apparel LLP, located in Burkesville (TA–W–32,178) and Tompkinsville (TA–W–32,178B) Kentucky who became totally or partially separated from employment on or after March 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18632 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 096]

Beaver Shoe Company, Kinney Shoe Corporation, Beaver Springs, Pennsylvania; Notice of Revised Determination on Reopening

On May 9, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Kinney Shoe Corporation, located in Beaver Springs, Pennsylvania. The notice was published in the Federal Register on May 24, 1996 (FR 61 26219).

On its own motion, the Department reviewed the findings of the investigation. The workers produce men's, women's and children's footwear. Findings show that Beaver Shoe Company is a manufacturing division of Kinney Shoe Corporation. The subject firm had declining sales, production and employment during the time period relevant to the investigation.

New findings on reopening show that the footwear production by Kinney Shoe Corporation is mass marketed. Therefore, the articles manufactured by the subject firm have been impacted importantly by the high penetration of nonrubber footwear imports in this market. In 1994 and 1995, the ratio of U.S. imports to domestic production of men's shoes was more than 300%, and for women's shoes more than 1,000%.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with shoes contributed importantly to the declines in sales or production and to the total or partial separation of workers of all affected workers of the Beaver Shoe Company in Beaver Springs, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Beaver Shoe Company, Kinney Shoe Corporation, Beaver Springs, Pennsylvania, who became totally or partially separated from employment on or after March 14, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18638 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of July, 1996.

Curtis K. Kooser,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 07/01/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,486	Ambrose Uniform Div (Wkrs)	Ambrose, GA	05/15/96	Men's, Ladies' Lab Coats and Shirts.
32,487	Savannah Manufacturing (Comp)	Savannah, TN	06/07/96	Sportswear.
32,488	Big J Apparel (Wkrs)	Waco, TX	06/10/96	Men's, Ladies' and Boy's Jeans.
32,489	Aquila, Inc (Wkrs)	Superior, WI	06/08/96	Knitwear.
32,490	Tempered Spring, Inc (Wkrs)	Jackson, MI	06/11/96	Engine Valve Springs.
32,491	DeLong Sportswear (Wkrs)	Lynchburg, TN	06/13/96	Wool Jackets.
32,492	American Tourister (Comp)	Warren, RI	06/11/96	Hard Side Luggage.
32,493	American Tourister (Comp)	Jacksonville, FL	06/11/96	Hard Side Luggage.
32,494	General Belt (Wkrs)	New York, NY	06/11/96	Leather Belts.
32,495	Eaton Corp, Golf Grip Div (Comp)	Laurinburg, NC	06/13/96	Golf Grips.
32,496	Custom Wood Products (Wkrs)	St. Joseph, MO	06/10/96	Wood Sash Windows.
32,497	Lakedale Manufacturing (Comp)	Fayetteville, NC	06/18/96	Children's Swimwear and Outerwear.
32,498	Lucent Technologies (CWA)	Lee's Summit, MO	06/19/96	Electronic Connectors.
32,499	Alden Electronics (Comp)	Westboro, MA	06/07/96	Radio Beacons.
32,500	Monsanto Chemical Co (ICWU)	St. Louis, MO	06/13/96	Chemicals.
32,501	C.F. Hathaway Co (UNITE)	Waterville, ME	06/18/96	Men's Shirts.
32,502	V.R. Fashions, Inc (Wkrs)	Waco, TX	06/12/96	Men's Athletic Wear.
32,503	Mobil Admin. Services Co (Wkrs)	Dallas, TX	06/05/96	Oil, Gasoline, Lubricants.
32,504	H.S. Novelty (Comp)	Fultonville, NY	06/17/96	Exotic Leathers.
32,505	St. Marys Carbon Co. (IUE)	St. Marys, PA	06/19/96	Electrical and Mechanical Components.
32,506	Jenn Air-Magic Chef (Wkrs)	Indianapolis, IN	06/13/96	Cooking Ranges and Ovens.
32,507	Drive N Surf, Inc (Comp)	Torrance, CA	06/19/96	Neoprene Wetsuits.
32,508	Truck-Lite Co., Inc (Wkrs)	Falconer, NY	05/31/96	Automotive Safety Lights.

[FR Doc. 96–18639 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,156 and TA–W–32,156A]

Lucia, Incorporated, Winston-Salem and Elkin, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 1996, applicable to all workers of Lucia, Incorporated, Winston-Salem, North Carolina. The notice was published in the Federal Register on May 17, 1996 (61 FR 24960).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Elkin, North Carolina location. The workers are engaged in the production of ladies' coordinated sportswear.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of ladies' coordinated sportswear. Accordingly, the Department is amending the certification to cover the workers of Lucia, Incorporated, Elkin, North Carolina.

The amended notice applicable to TA–W–32,156 is hereby issued as follows:

All workers of Lucia, Incorporated, Winston-Salem, North Carolina (TA–W–32,156), and Lucia, Incorporated, Elkin, North Carolina (TA–W–32,156A) who became totally or partially separated from employment on or after March 21, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18631 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

Maxus Energy Corp. et.al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 8, 1995, applicable to workers of Maxus Energy Corporation located in Dallas, Texas. The notice was published in the Federal Register on August 24, 1995 (60 FR 44079). The certification was amended October 24, 1995, and again on February 13, 1996, to include workers of the subject firm whose wages were being reported to the Maxus Corporate and the Maxus International unemployment insurance (UI) tax accounts. The notices were published in the Federal Register on November 7, 1995 (60 FR 56172), and February 28, 1996 (61 FR 7540), respectively.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some of the workers of the subject firm had there UI taxes reported to a separate UI tax account, Midgard Energy Company. The Company reports that Maxus Energy Corporation has changed its name to Midgard Energy Company. Additionally, the State reports that Riverside Farms, Hamilton, Texas, TA–W–31, 280, is the dba name for Leon Properties, Diamond S. Ranch. Accordingly, the Department is again amending the certification to reflect these matters.

The intent of the Department's certification is to include all workers of Maxus who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA–W–31, 268 through TA–W–31, 282, is hereby issued as follows:

All workers of Maxus Energy Corporation, a/k/a/ Maxus Corporate, a/k/a/ Maxus International, a/k/a/ Midgard Energy Company, Dallas, Texas (TA–W–31, 268), Kearny, New Jersey (TA–W–31, 269), and all related locations of the Maxus Exploration Company, Amarillo, Texas (TA–W–31, 270), Canadian, Texas (TA–W–31, 271), Dumas, Texas (TA–W–31, 272), Jeanerette, Louisiana (TA–W–31, 273), Pampa, Texas (TA–W–31, 274), Perryton, Texas (TA–W–31, 275), Leedey, Oklahoma (TA–W–31, 276), Spearman, Texas (TA–W–31, 277), Stinnett, Texas (TA–W–31, 278); Maxus Aviation Company, Dallas, Texas (TA–W–31, 279); Riverside Farms, dba Leon Properties, Diamond S. Ranch, Dallas, Texas (TA–W–31, 280); Riverside Lodge, Hamilton, Texas (TA–W–31, 281); and Sunray Gas Plant, Dumas, Texas (TA–W–31, 282) who become totally or partially separated from employment on or after June 30, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of July 1986.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18634 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,896 and TA–W–30,896D]

Phillips Petroleum Company, Exploration and Production Group, d.b.a. Exploration Division and North American Production Division (Including General Counsel), Bartlesville, Oklahoma and GPM Gas Services Company, Houston, Texas, and All Other Locations in Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 3, 1995, applicable to all workers of Phillips Petroleum Company, Exploration and Production Group, dba Exploration Division and North American Production Division, Bartlesville, Oklahoma, all other Oklahoma locations, and other locations in various States. The notice was published in the Federal Register on May 17, 1995 (60 FR 26459). The worker certification was amended May 23, 1996 to include the General Counsel worker group. The notice was published in the Federal Register on June 6, 1996 (61 FR 28901).

At the request of petitioners and a company official, the Department reviewed the certification for workers of the subject firm. The GPM Gas Services Company located in Houston, Texas was not explicitly cited in the certification. However, new findings show that GPM is a separate division of Phillips Petroleum Company. Employees of GPM process natural gas and extract natural gas liquids.

The intent of the Department's certification is to include all workers of Phillips Petroleum adversely affected by imports of crude oil and natural gas. Accordingly, the Department is amending the worker certification to specifically provide coverage to GPM Gas Service Company located in Houston and other locations within the State of Texas.

The amended notice applicable to TA–W–30,896 is hereby issued as follows:

All workers of Phillips Petroleum Company, Exploration and Production Group, dba Exploration Division and North American Production Division, Including General Counsel, Bartlesville, Oklahoma (TA–W–30,896), and GPM Gas Services Company, Houston, Texas and all other locations in Texas (TA–W–30,896D), who became totally or partially separated from employment on or after March 23, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18633 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,253]

Pioneer Manufacturing, Incorporated, Salisbury, NC; Notice of Revised Determination of Reconsideration

On May 14, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Pioneer Manufacturing, Incorporated located in Salisbury, North Carolina. The notice was published in the Federal Register on June 6, 1996 (FR 61 28899).

By letter of May 30, 1996, the company official requested administrative reconsideration of the Department's findings.

The company presented new evidence that was not considered in the original determination. The company official showed that one of their major customers, beginning June 1996, is transferring production of boy's suits to Mexico, which will be imported back to the United States.

Other findings on reconsideration reveal that the quantity of aggregate U.S. imports of men's and boys' suits increased dramatically from 1994 to 1995.

Conclusion

After careful review of the additional facts obtained on reconsideration, I concluded that increased imports of articles like or directly competitive with boys' suits contributed importantly to the declines in sales or production and to the total or partial separation of workers of Pioneer Manufacturing, Incorporated, in Salisbury, North Carolina. In accordance with the provisions of the Act, I make the following certification:

All workers of Pioneer Manufacturing, Incorporated, Salisbury, North Carolina who became totally or partially separated from employment on or after April 9, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1994.

Signed at Washington, D.C. this 3rd day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 96–18629 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement–Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Program Manager of OTAA not later than August 2, 1996.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than August 2, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 2nd day of July, 1996.

Curtis K. Kooser,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Airshield Corporation (Wkrs)	Brownsville, TX	06/10/96	NAFTA–01064	Fiberglass components.
Oxford of Burgaw (Co.)	Burgan, NC	06/10/96	NAFTA–01065	Ladies sportswear and dresses.
Oneita Industries, Inc.; Fingerville Textile Plant (Wkrs).	Fingerville, SC	06/06/96	NAFTA–01066	Fabric for T-shirts.
Wallace and Tiernan, Inc. (Co.)	Belleville, NJ	06/10/96	NAFTA–01067	Hydraulic diaphragm pumps.
Hickory Hill Industries (Co.)	Clifton, TN	06/14/96	NAFTA–01068	Childrens sportswear.
Columbia Gas System (Wkrs)	Charleston, WV	06/10/96	NAFTA–01069	Gas.
Blue Mountain Forest Products (Wkrs)	Long Creek, OR	06/11/96	NAFTA–01070	Rough Lumber.
Sara Lee Knit Product (Co.)	Eatonton, GA	06/10/96	NAFTA–01071	Ladies Panties.
General Electric	Erie, PA	06/12/96	NAFTA–01072	Dynometer and Dragline.
Therm-O-Disc, Inc.; Subsidiary of Emerson Electric (Wkrs).	Newaygo, MI	06/11/96	NAFTA–01073	Electronic components.
Alden Electronics (Wkrs)	Westboro, MA	06/12/96	NAFTA–01074	SATFIND–406 emergency position indicator radio beacon.
Varsity Manufacturing (Co.)	Susqnehanna, PA	06/12/96	NAFTA–01075	Ladies sleepwear.
United Sports Apparel (Co.)	Pelham, TN	06/12/96	NAFTA–01076	Warm-up suits, Jackets.
Beaufab Mills, Inc. (UTWA)	Stoudsbury, PA	06/12/96	NAFTA–01077	Lining fabrics and costume fabrics.
Truck-Lite; 310 E. Elmwood Ave. (Wkrs).	Falconer, NY	06/14/96	NAFTA–01078	Automotive car safety lights.
Yakima Products, Inc. (Co.)	Arcata, CA	06/13/96	NAFTA–01079	Components for car roof racks (assembly and fabrication).
Mabex Universal Corp. (Co.)	San Diego, CA	06/13/96	NAFTA–01080	Plastic packaging for the electronics industry.
Nestaway Canal Wire Facility (Co.)	Canal Winchester, OH	06/13/96	NAFTA–01081	Dishwasher racks and components.
Magnetex (Co.)	Blytheville, AR	06/13/96	NAFTA–01082	High Intensity Discharge ballast.
Philips Lighting (Wkrs)	Little Rock, AR	06/12/96	NAFTA–01083	Lamps and bulbs.
Forsyth Public School District (Wkrs)	Forsyth, MT	06/14/96	NAFTA–01084	Public school teachers.
Lee Thomas (Co.)	Los Angeles, CA	06/13/96	NAFTA–01085	Sewing factory.
Simpson Paper Company	Pomona, CA	06/20/96	NAFTA–01086	Paper.
Chase Ergonomic (Co.)	Albuquerque, NM	06/24/96	NAFTA–01087	Industrial safety products.
Boise Cascade (Wkrs)	Medford, OR	06/17/96	NAFTA–01088	Lumber.
Superior Milling Ltd. (Wkrs)	Adrian, MI	06/19/96	NAFTA–01089	Green lumber.
Eaton Corporation; Golf Grip Division (Co.).	Laurinburg, NC	06/20/96	NAFTA–01090	Golf grips.
Lakedale Mag, Inc. (Co.)	Fayetteville, NC	06/20/96	NAFTA–01091	Girls swimwear, boys and girls outerwear.
Lucent Technologies—Microekc-tronics (CWA).	Lee's Summit, MO	06/20/96	NAFTA–01092	Electronic connectors.
Trust Joist International (OCAW)	Hawkins, WI	06/20/96	NAFTA–01093	Wood window units.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
BP Exploration and Oil, Inc.; Paulsboro Terminal Division (Wkrs).	Paulsboro, NJ	06/17/96	NAFTA–01094	Receiving and distributing refined petroleum products.
Hexfet America (Wkrs)	Temecula, CA	06/28/96	NAFTA–01095	Assembly part of semi-conductor.
Clevemont Mills (Wkrs)	Kings Mountain, NC	06/10/96	NAFTA–01096	Sweat pants and shirts.
ROL Manufacturing of America, Inc. (Wkrs).	Brownsville, TN	06/17/96	NAFTA–01097	Motor gaskets for cars and light line.
Daniels McCray Lumber Company; Custom Wood Products Division (Wkrs).	St. Joseph, MO	06/19/96	NAFTA–01098	Window sashes.
Stream International (Wkrs)	Lindon, UT	06/17/96	NAFTA–01099	Software.
Automed, Inc. (Wkrs)	Arden Hills, MN	06/24/96	NAFTA–01100	Labor specimen.
Jatco (Wkrs)	Shellman, GA	06/24/96	NAFTA–01101	
Lakeview Lumber (Wkrs)	Lakeview, OR	06/24/96	NAFTA–01102	Timber receipts.
International Paper Company (LSW)	Veneta, OR	06/24/96	NAFTA–01103	Paper.
Munro and Company, Inc.; Clear Lake Footwear (Wkrs).	Hot Springs, AR	06/28/96	NAFTA–01104	Footwear.
BP America, Inc.; BP Oil and Exploration, Inc. (OCWA).	Cleveland, OH	06/25/96	NAFTA–01105	Petroleum products.
Pioneer Cut Stock, Inc. (Wkrs)	Prineville, OR	06/26/96	NAFTA–01106	Wood products.
Jenn Air; Maytag	Indianapolis, IN	06/25/96	NAFTA–01107	Home cooking appliances.
Orbit Industries, Inc. (Co.)	Helen, GA	06/26/96	NAFTA–01108	Ladies sportswear.
Fender Musical Instruments, Inc. (Wkrs).	Lake Oswego, OR	06/27/96	NAFTA–01109	Solid-state amplifiers.
Jolie Handbag (Wkrs)	Hialegh, FL	06/27/96	NAFTA–01110	Handbags.
Lloyd-Smith Company; Oil Field Too Ship (Co.).	Bradford, PA	06/28/96	NAFTA–01111	Fishing tools.
McDonnell Douglas; Douglas Aircraft Division (IAM).	Torrance, CA	06/27/96	NAFTA–01112	Assembly and sub-assembly.

[FR Doc. 96–18637 Filed 7–22–96; 8:45 am]
BILLING CODE 4510–30–M

Investigaitons Regarding Certifications of Eligibility To Apply For NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of P. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Program Manager of OTAA not later than August 2, 1996.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than August 2, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of July, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
DM IV, Inc. (Co.)	Centerville, TN	06/28/96	NAFTA–01113	Children's clothing.
Beck Arnley World Parts Corp. ()	Pittsburgh, PA	07/01/96	NAFTA–01114	Auto parts.
Delong Sportswear (Wkrs).	Lynchburg, TN	06/24/96	NAFTA–01115	Award jackets.
Nu-Tech Precision Metals, Inc. (Wkrs)	Waterbury, CT	07/01/96	NAFTA–01116	Metals.
Lodestar Industrial Contractors (Co.).	Colville, WA	07/08/96	NAFTA–01117	
KL Manufacturing Co., Inc. (Wkrs)	Post Falls, ID	07/08/96	NAFTA–01118	

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Dean Foods Vegetable Company; Norcal Crosetti Foods (NC Company) ().	Watsonville, CA	07/08/96	NAFTA–01119	Vegetable manufacturing.
Northern Engraving ()	LaCrosse, WI	07/10/96	NAFTA–01120	Engraved products.
Maclin Company (Co.)	Industry, CA	07/09/96	NAFTA–01121	Garden hose.
Texberry Container Corp. (Wkrs)	Houston, TX	07/10/96	NAFTA–01122	
Flexel ()	Tecumseh, KS	07/11/96	NAFTA–01123	Cellophane.
Uniroyal Technology ()	Mishawaka, IN	07/10/96	NAFTA–01124	Adhesives and sealants.
Oak Grigsby (Wkrs)	Sugar Grove, IL	07/09/96	NAFTA–01125	Electrical components and switches.
Perry Manufacturing Company; Pellamy Manufacturing Company (Co.).	Richlands, NC	07/05/96	NAFTA–01126	Clothing.
Private Western Brands (Co.)	El Paso, TX	07/11/96	NAFTA–01127	Western boots.
J and M Apparel (Wkrs)	Finger, TN	06/28/96	NAFTA–01128	Clothing.
El Paso Apparel Group	El Paso, TX	07/12/96	NAFTA–01129	Women's apparel.
ACT Marine (Wkrs)	Everson, WA	07/15/96	NAFTA–01130	Netting, extruder, braiding.

[FR Doc. 96–18640 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00927]

Ogden Atlantic Design, Poughkeepsie, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 30, 1996, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility for Workers of Ogden Atlantic Design to Apply for NAFTA-Transitional Adjustment Assistance. The denial notice was signed on May 8, 1996, and published in the Federal Register on May 24, 1996 (61 FR 26219).

The petitioners present new information on customers of the subject firm that have increased reliance on imports of printed circuit boards from Mexico.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 3rd day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–18627 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [U.S.C. 3506(c)(2)(A]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Temporary Labor Camps standard 29 CFR 1910.142. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 23, 1996. The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 96–9, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT:

Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the Temporary Labor Camps Information Collection Request, contact the Labor News Bulletin Board, (202) 219–4784; or ISHA's WebPage on the Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Temporary Labor Camps standard and its information collection is designed to eliminate the incidence of communicable disease among Temporary Labor Camp residents. The standard requires camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease, suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Temporary Labor Camps Standard. Extension is necessary to provide continued protection to employees from the health hazards associated with the outbreak of communicable diseases.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Temporary Labor Camps.
OMB Number: 1218–0096.
Agency Number: Docket Number ICR 96–9.
Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.
Total Respondents: 7,161.
Frequency: On Occasion.
Total Responses: 1,379.
Average Time per Response: 5 minutes to report the incident to the local health officer.
Estimated Total Burden Hours: 75.
Estimated Capital, Operation/ Maintenance Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 16, 1996.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 96–18625 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–26–M

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the OSHA Data Collection Initiative. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 23, 1996. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–96–6, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW., Washington DC 20210. Telephone: (202) 219–8148. Copies of the reference information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the OSHA Data Collection Initiative Request, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

Description: To meet many of OSHA's program needs, OSHA is proposing to continue their data initiative to collect occupational injury and illness data and information on number of workers employed and number of hours worked from establishments in portions of the private sector. OSHA will collect data from 80,000 employers with 50 or more employees in selected high hazard industries, selected employers who have had OSHA interventions in 1994, 1995 or 1996, and employers who are to be involved in the agency Cooperative Compliance Program (CCP). These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of the data collection initiative is critical to OSHA's reinvention efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements for the OSHA Data Collection Initiative. Extension is necessary to endure that the Agency continues to obtain establishment data necessary to carry on with the development and expansion of the New OSHA. This will allow the Agency to deal with a larger number of employers without massive increases in resources, will reduce intrusive interventions in workplaces that are relatively safe, and will lead to improved workplace safety and health for America's workers. In addition, OSHA will be able to proceed with its GPRA requirements to monitor the results of agency activities, quantify and evaluate the successes and failure of its various programs based on program results, identify the most efficient and effective program mix, and promote the

development of programs and policies based on outcome data.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection Initiative.

OMB Number: 1218–0209.

Agency Number: Docket Number ICR–96–6.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: OSHA Form 196A and OSHA Form 196B.

Total Respondents: 80,000.

Frequency: Annually.

Total Responses: 80,000.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 35,000 hours.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden (hours)
OSHA Form 196A	10,000	Annually	10,000	30	(*)
OSHA Form 196B	70,000	Annually	70,000	30	35,000

Total Burden Cost (capital/startup/operating/maintenance): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 10, 1996.

Stephen A. Newell,

Director, Office of Statistics.

[FR Doc. 96–18626 Filed 7–22–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–086)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, AL 35812. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, AL 35812; telephone (205) 544–0021, fax (205) 544–0258:

NASA Case No. MFS–28–973–1: Apparatus for Assisting Childbirth;

NASA Case No. MFS–28–839–1: Crystals of Serum Albumin for Use in Genetic Engineering and Rational Drug Design;

NASA Case No. MFS–28–958–1: Dynamically Timed Electric Motor;

NASA Case No. MFS–28–852–1: Ampoule Failure Sensor;

NASA Case No. MFS–28–986–1: Apparatus for Diffusion Controlled Dialysis Under Microgravity Conditions;

NASA Case No. MFS–28–989–1: Protein Crystal Growth Apparatus for Microgravity;

NASA Case No. MFS–28–997–1: Automatic Locking Knee Brace Joint;

NASA Case No. MFS–28–994–1: Means for Positioning & Repositioning Scanning Instruments;

NASA Case No. MFS–28–985–1: Device and Method for Screening Crystallization Conditions in Solution Crystal Growth;

NASA Case No. MFS–28–402–2: Biologically Active Protein Fragments Containing Specific Binding Regions of Serum Albumin or Related Proteins;

NASA Case No. SSC–00006–2: Electronic Clinical Thermometer;

NASA Case No. MFS–28–829–2: Quick-Connect Bolt;

NASA Case No. MFS–28–793–1: Dual Brushless Resolver Rate Sensor.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18602 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice (96–082)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Consulting Associates, Inc., of Chesapeake, VA 23320–2637, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15367–1, entitled ''Visually Integrating Multiple Data Acquisition Technologies for Real-Time and Retrospective Analysis,'' for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18598 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice (96–085)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Consulting Associates, Inc., of Chesapeake, VA 23320–2637, has applied for a partially exclusive license to practice the invention described in U.S. Patent No. 5,377,100, entitled ''Method of Encouraging Attention by Correlating Video Game Difficulty with Attention Level,'' which was issued on December 27, 1994, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18601 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

[Docket No. 96–080]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license

SUMMARY: NASA hereby gives notice that HITCO Technologies, Inc., of Gardena, California 90249, Materials and Electrochemical Research Corporation (MER), of Tucson, Arizona 85706, P & P Machine Tool, Inc., of Cleveland, Ohio 44146, and Zollner Piston, of Fort Wayne, Indiana 46803, have each applied for partially exclusive licenses to practice the following patented inventions: U.S. Patent No. 4,683,809, ''LIGHTWEIGHT PISTON''; U.S. Patent No. 4,736,676, ''COMPOSITE PISTON''; U.S. Patent No. 4,909,133, ''LIGHTWEIGHT PISTON ARCHITECTURE''; and for the following inventions: NASA Case LAR–15,094–1, entitled ''CONCEPT FOR A RINGLESS CARBON-CARBON PISTON IN INTERNAL COMBUSTION ENGINES''; NASA Case No. LAR–15,462–1, entitled ''INTEGRAL RING CARBON-CARBON PISTON''; NASA Case No. LAR–15,492–1, entitled ''CARBON-CARBON PISTON ARCHITECTURES''; and NASA Case No. LAR–15,493–1, entitled ''PISTON AND CYLINDERS MADE OF CARBON-CARBON COMPOSITE.'' Written objections to the prospective grant of a license should be sent to George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT:

George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (804) 864–9260.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18596 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–084]

Notice of Prospective Patent License

AGENCY: NationalAeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that J & J Engineering, Inc., of Bain Bridge Island, WA 98110, has applied for a partially exclusive license to practice the invention described in U.S. Patent No. 5,377,100, entitled ''Method of Encouraging Attention by Correlating Video Game Difficulty with Attention Level,'' which was issued on December 27, 1994, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Response to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18600 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–083]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Trex Medical Corporation, of Danbury, CT 06810, has applied for an exclusive license to practice the invention disclosed in NASA Case No. LAR–15059–1, entitled ''Digital Mammography With A Mosaic of CCD–Arrays,'' for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18599 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice (96–081)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Wheelock, Inc., of Long Branch, NJ 07740–6899, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15138–1, entitled ''Piezoelectric Loudspeaker,'' for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18597 Filed 7–22–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Social, Behavioral, and Economic Sciences Proposed Data Collection: Comment Request Comments Requested by September 17, 1996

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Graduate students in science, engineering, and health fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics—A mail survey, the Survey of Graduate Students and Postdoctorates in Science and Engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government'' as mandated in the National Science Foundation Act of 1950. The proposed project will continue the current survey cycle for three to five years. The annual Fall surveys for 1996 through 2000 will survey the universe of approximately 725 institutions offering accredited graduate programs in science, engineering, or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate date requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series Academic Science and Engineering Graduates, in NSF publications *Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering*, and are available electronically on the World Wide Web.

The survey will be mailed primarily to the administrators at the Institutional Research Offices. To minimize burden, the NSF is exploring possibilities for using an automatic survey questionnaire (ASQ) diskette, on which institutions would receive their previous year's data and a complete program for editing and trend checking. Respondents will be encouraged to participate in these initiatives should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing.

In Fall 1994, the survey achieved a total response rate of 98.9% for institutions and 96.0% for departments.

Burden estimates are as follows:

	Total No. of institutions	Departments	Burden hours
FY 1992	727	10,981	1.76
FY 1993	725	11,134	1.80
FY 1994	724	11,411	1.97

Send comments to Herman Fleming, Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by September 17, 1996.

Dated: June 17, 1996.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 96–18560 Filed 7–22–96; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, July 30, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6579A Aviation Accident Report: Uncontained Engine Failure/Fire, ValuJet Airlines Flight 597, Douglas DC–9–32, Atlanta, Georgia, June 8, 1995.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: July 19, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–18812 Filed 7–19–96; 1:52 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company Salem Nuclear Generating Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would revise Technical Specification (TS) 3.3.2.1, ''Engineered Safety Feature Actuation System Instrumentation'' to reflect a revised setpoint for the interlock designated P–12.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not involve any physical changes to the plant or any procedures changes.

There is no safety consequence to the [safety injection] SI function being enabled at 543 °F. The T_{avg} no-load temperature is at 547 °F with increasing T_{avg} for higher power operation. The allowable value of 545 °F as the upper limit assures the availability of the SI function, therefore, the protective function will perform within its analyzed range. On increasing temperature, P–12 automatically

enables SI in both High Streamline Flow coincident with Low-Low T_{avg} and High Steamline Flow coincident with Low Steamline Pressure. It also provides an arming signal to the Steam Dump System.

On decreasing temperature, P–12 permits manual block of SI in both High Steamline Flow coincident with Low-Low T_{avg} and High Steamline Flow coincident with Low Steamline Pressure. This permits blocking of the SI below the minimum temperature for criticality during a controlled shutdown. With a 2 °F allowable deviation from the nominal setpoint, the setpoint of 543 °F is adequate to enable the operator to block SI.

Hardware design of the [engineered safety feature actuation system] ESFAS provides that actuation of the SI block, enable, and ESFAS protection system operations are all provided by the same bistables. The analyses were performed supporting the design of the ESFAS system.

Revision of the P–12 setpoint to enable manual block of SI from 541 °F to 543 °F does not impact the safety analyses. SI is available at or above the T_{avg} no-load value of 547 °F, which is consistent with the setpoint for Low-Low T_{avg} in TS Table 3.3–4. Retaining the allowable value of 541 °F is also consistent with Table 3.3–4. The proposed revisions do not affect the integrity of the fuel assembly or reactor internals such that their function in the control of radiological consequences is affected. In addition, the proposed revisions do not affect any fission product barrier. The proposed revision does not change, degrade, or prevent the response of safety related mitigation systems to accident scenarios, as described in the [Final Safety Analysis Report] FSAR.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS setpoints for P–12 do not create failure modes that could adversely impact safety-related equipment or cause the initiation of any accident. The P–12 interlock circuit pertains to accident mitigation systems and not accident initiation. Functions of safety related systems and components, which are related to accident mitigation, have not been altered.

The proposed TS setpoint change does not cause the initiation of any accident or create any new credible failure in the system. The proposed revisions do not result in any malfunction of equipment previously evaluated. The proposed revisions do not result in increased probability of equipment failure scenarios previously deemed improbable.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated, the revisions will not create the possibility of a malfunction of equipment important to safety different than previously evaluated in the FSAR.

3. The proposed change does not involve a significant reduction in a margin of safety.

Several different steamline break analyses are performed to support operation of the Salem units. Analyses are performed to determine the core response to postulated steamline breaks and to calculate mass and energy releases both inside and outside containment.

In the current licensing basis core response steamline break analysis, the High Steamline Flow coincident with Low-Low T_{avg} or Low Steamline Pressure protective functions are not modeled. As such, a change to the SI permissive has no impact on the analysis. Other SI signals generated from a postulated steamline break are credited in the analysis. Interlock P–12 is independent of these credited SI signals. Therefore, this change has no impact on the safety analysis.

The licensing basis steamline break mass and energy release safety analyses, inside and outside containment, for Salem Units 1 and 2 assumes the availability of the High Steamline Flow coincident with Low-Low T_{avg} or Low Steamline Pressure for actuation of SI and steamline isolation. However, no credit is taken for these trip functions. The noted Technical Specification change is resolving a discrepancy between the permissive P–12 setpoint and the Low-Low T_{avg} setpoint. Even though this Low-Low T_{avg} function is available in the steamline break mass and energy release analyses, operation is not credited in the analyses.

There are no new safety analyses or revision[s] to any existing safety analyses as a result of these changes. In addition, the proposed change does not impact any input assumptions or results of any current licensing basis analyses for the design basis events. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 22, 1996 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 12, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 17th day of July 1996.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–18665 Filed 7–22–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 22, 29, August 5, and 12, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 22

There are no meetings scheduled for the Week of July 22.

Week of July 29—Tentative

Monday, July 29

10:00 a.m.—Briefing on Uranium Recovery Program (Public Meeting) (Contact: Joe Holonich, 301–415–6643)

Tuesday, July 30

10:00 a.m.—Briefing by Nuclear Waste Technical Review Board (Public Meeting)

11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

2:00 p.m.—Briefing on Status of Staff Actions on Industry Restructuring and Deregulation (Public Meeting) (Contact: Dave Mathews, 301–415–1282)

Wednesday, July 31

2:00 p.m.—Briefing on EEO Program (Public Meeting) (Contact: Ed Tucker, 301–415–7382)

Thursday, August 1

3:00 p.m.—Briefing on Spent Fuel Pool Cooling Issues (Public Meeting) (Contact: George Hubbard, 301–415–2870)

Week of August 5—Tentative

There are no meetings scheduled for the Week of August 5.

Week of August 12—Tentative

There are no meetings scheduled for the Week of August 12.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it,

please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: July 17, 1996.

William M. Hill, Jr.,

Secretary Tracking Officer, Office of the Secretary.

[FR Doc. 96–18781 Filed 7–19–96; 11:10 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE

Board of Governors; Sunshine Act Notice of Vote to Close Meeting

By telephone vote on July 18, 1996, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 28–30, 1996, in Chicago, Illinois. The members will consider strategic planning.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code; section 410(c) (2)–(5) of title 39, United States Code; and section 7.3 (c) and (d) of title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) of title 5, United States Code; section 410(c) (2)–(5) of title 39, United States Code; and section 7.3 (c) and (d) of title 39, Code of Federal Regulations.

Request for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–18805 Filed 7–19–96; 1:42 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22078; 812–10220]

MFS® Special Value Trust; Notice of Application

July 17, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: MFS® Special Value Trust.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act that would grant an exemption from section 19(b) of the Act and rule 19b–1 thereunder.

SUMMARY OF APPLICATION: Applicant requests an order to make up to twelve monthly distributions of long-term capital gains in any one taxable year, so long as applicant maintains in effect a distribution policy calling for monthly distributions of a fixed percentage of its net asset value.

FILING DATES: The application was filed on June 24, 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 August 12, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicant, 500 Boylston Street, Boston, MA 02116.

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.

Applicant's Representations

1. Applicant is closed-end management investment company organized as a Massachusetts business trust. Applicant's investment objective is to maintain an annual distribution rate of 11%, based on the original offering price of $15 per share, while seeking capital appreciation.

2. Applicant has a distribution policy calling for twelve monthly distributions to shareholders of an amount equal to 0.916% of its initial public offering price of $15 per share (11% on an annualized basis) (''Monthly Distribution Policy''). If, for any monthly distribution, net investment income and net realized short-term capital gains are less than the amount of the distribution, the difference is distributed from other assets. Applicant's final distribution for each calendar year includes any remaining net investment income and net realized short-term capital gains deemed, for federal income tax purposes, undistributed during the year, as well as any net long-term capital gains realized during the year. If, for any fiscal year, the total distributions exceed net investment income and net realized capital gains, the excess, distributed from other assets, is treated as a return of capital. If applicant's net investment income, net short-term realized gains, net long-term realized gains, and returns of capital for any one year exceed the amount to be distributed under the Monthly Distribution Policy, applicant may in its discretion retain net long-term capital gains to the extent of such excess. Applicant requests relief to permit it to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect the Monthly Distribution Policy.

Applicant's Legal Analysis

1. Section 19(b) provides that registered investment companies may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1 limits the number of capital gains distributions, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended, (the ''Code''), that applicant may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not

exceeding 10% of the total amount distributed for year, plus one additional long-term capital gains distribution made to avoid the excise tax under section 4982 of the Code.

2. Rule 19b–1, by limiting the number of net long-term capital gain distributions that applicant may make with respect to any one year, prevents the normal operation of the Monthly Distribution Policy whenever applicants realized net long-term capital gains in any year exceed the total of the fixed monthly distributions that under rule 19b–1 may include such capital gains. In that situation, the rule effectively forces the fixed monthly distributions, that under the rule may not include such capital gains, to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient), even though net realized long-term capital gains would otherwise be available therefor. The long-term capital gains in excess of the fixed monthly distributions permitted by the rule then must either be added as an ''extra'' on one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Monthly Distribution Policy, or be retained by applicant (with applicant paying taxes thereon). d

3. Applicant believes that granting the requested relief would limit applicant's return of capital distributions to that amount necessary to make up any shortfall between applicant's guaranteed distribution and the total of its investment income and capital gains. The likelihood that applicant's shareholders would be subject to additional tax return complexities involved when applicant retains and pays taxes on long-term capital gains would therefore be avoided.

4. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish frequent distributions of capital gains from investment income. In accordance with rule 19a–1, a separate statement showing the source of the distribution (net investment income, net realized capital gains, or returns of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of distributions received during the year will be included with applicant's IRS Form 1099–DIV reports sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). This information will also be included in applicant's annual report to shareholders. Through these disclosures and other communications with shareholders, applicant states that its shareholders will understand that applicant's fixed distributions are not tied to its investment income and realized capital gains and will not represent yield or investment return.

5. Another concern that led to the adoption of section 19(b) and rule 19b–1 was that frequent capital gains distributions could facilitate improper fund distribution practices, including the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend (''selling the dividend''), where the dividend results in an immediate corresponding reduction in net asset value and is in effect a return of the investor's capital. Applicant believes that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

6. Applicant states that another concern leading to the adoption of section 19(b) and rule 19b–1, the increased administrative costs associated with more frequent distributions, is not present because applicant will continue to make monthly distributions regardless of what portion thereof is composed of capital gains.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class of classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent 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. For the reasons stated above, applicant believes that the requested exemption meets the standards set forth in section 6(c).

Applicant's Condition

Applicant agrees that the order granting the exemption shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of shares of applicant other than: (i) a non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18561 Filed 7–22–96; 8:45 am]

BILLING CODE 8010–01M

Sunshine Act Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 22, 1996.

Open meetings will be held on Tuesday, July 23, 1996, at 10:00 a.m., and Wednesday, July 24, 1996, at 10:00 a.m. Closed meetings will be held on Tuesday, July 23, 1996, following the 10:00 a.m. open meeting, and on Thursday, July 25, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the close meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commission Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, July 23, 1996, at 10:00 a.m., will be:

The Commission will hear oral argument on a appeal by Richard J. Puccio from the decision of an administrative law judge. For further information, please contact William S. Stern at (202) 942–0949.

The subject matter of the closed meeting scheduled for Tuesday, July 23, 1996, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, July 24, 1996, at 10:00 a.m., will be:

The Commission will be presented with the Final Report of the Advisory Committee on the Capital Formation and Regulatory Processes, which recommends the implementation of a company registration concept. For further information, please contact David Sirignano at (202) 942–2870; Meridith Mitchell at (202) 942–0890; or Luise Welby at (202) 942–2990.

The subject matter of the closed meeting scheduled for Thursday, July 25, 1996, at 10:00 a.m., will be:

Instruction and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive action.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 19, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–18800 Filed 7–19–96; 1:42 pm]

BILLING CODE 8010–01–M

[Release No. 34–37441; File Nos. SR–Amex–96–24; SR–CBOE–96–41; SR–NYSE–96–19; SR–PSE–96–18; and SR–Phlx–96–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., New York Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., and Pacific Stock Exchange, Inc., Relating to an Extension of the 2½ Point Strike Price Pilot Program

July 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx''); on June 11, 1996, the Pacific Stock Exchange, Inc. (''PSE''); on June 28, 1996, the Chicago Board Options Exchange, Inc. (''CBOE''); on July 3, 1996, the American Stock Exchange, Inc. (''Amex''); and on July 12, 1996, the New York Stock Exchange, Inc. (''NYSE'') (collectively the ''Exchanges'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by the Exchanges. The PSE submitted to the Commission Amendment No. 1 to its proposal on July 2, 1996.[3] The Phlx submitted to the Commission Amendment No. 1 to its proposal on July 9, 1996.[4] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons, and to grant accelerated approval of the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to extend for one-year (*i.e.*, July 18, 1997) the Exchanges' pilot program whereby the Exchanges may select a certain number of their listed options for inclusion in a pilot program for the listing of strike prices at 2½ point intervals. The text of the proposed rule changes is available at the Office of the Secretary, the Exchanges, and at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Commission has previously approved a pilot program proposed by the Exchanges to list selected options trading at a strike price greater than $25 but less than $50 at 2½ point intervals (*i.e.*, 27½, 32½, 37½, 42½ and 47½).[5] Pursuant to the pilot program, the Exchanges are permitted to use such 2½ point strike price intervals for a joint total of up to 100 option issues. Each exchange may select 10 options plus a percentage of the remaining 50 options equal to that exchange's pro rata share of the total number of equity options listed by the Exchanges.[6]

When more than one exchange selects a multiply-traded option for its allotment, the Options Clearing Corporation (''OCC'') will determine which exchange will be deemed to have selected the option according to the procedures agreed upon by the Exchanges. They have agreed that an exchange (''Selecting Exchange'') intending to list 2½ point strikes on an option will inform OCC of its selection by submitting a notice (''Selection Notice'') to OCC between the hours of 8:30 a.m. and 12:00 Noon (Central Time). In the event that more than one exchange submits a Selection Notice to the OCC for the same multiple-traded option, the exchange which first submits a Section Notice to the OCC will be deemed to be the Selecting Exchange for that option. Such option will count toward the allotment of the Selecting Exchange, but not toward the allotment of any other exchange submitting a Selection Notice under the terms of the pilot program.

Each of the Exchanges has also submitted a report to the Commission that includes data and written analysis regarding the operation of the pilot program during the previous year, as required in the 2½ Strike Price Approval Order.[7] The Exchanges generally believe that the pilot program has provided customers greater opportunities and flexibility to tailor their options positions, while enhancing the depth and liquidity of the markets in the selected options classes.

Each exchange has stated that it believe its respective proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the joint proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes will impose no burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, PSE withdraws its request for permanent approval of the pilot program, and requests a one-year extension of the pilot program, so that it will continue through July 18, 1997. See Letter from Michael Pierson, Senior Attorney, PSE, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, Dated July 1, 1996 (''PSE Amendment No. 1'').

[4] In Amendment No. 1, the Phlx indicated that the pilot period extension will expire on July 18, 1997. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated July 9, 1996 (''Phlx Amendment No. 1'').

[5] See Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (File Nos. SR–Phlx–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, SR–NYSE–95–12) (''2½ Point Strike Price Approval Order'').

[6] The actual allotment of option issues for each exchange is: CBOE (28), Amex (22), Phlx (18), PSE, PSE (18), and NYSE (14).

[7] In the 2½ Point Strike Price Approval Order, the Commission required that each Exchange submit a report before the Commission would review a proposal to extend the pilot program beyond the initial twelve-month period.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Specifically, the Commission believes that the proposed extension of the pilot program providing for the listing of 2½ point strike price intervals in selected equity options will continue to provide investors with more flexibility in the trading of equity options with a strike price greater than $25 but less than $50, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchanges' proposal strikes a reasonable balance between the Exchanges' desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid excessive proliferation of options series. The Commission expects the Exchanges to continue to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur.

In the event the Exchanges propose to (1) extend the pilot program beyond the twelve month period, (2) expand the pilot program beyond the initial 100 option classes, or (3) seek permanent approval of the pilot program, they should submit a report to the Commission with such proposal. The report should cover the period from May 20, 1996 to one expiration month prior to the filing of the proposal, and should include data and written analysis on the open interst and trading volume in affected series, and delisted options series (for all strike price intervals) on the selected pilot program option classes. The report should also discuss any capacity problems that may have arisen during the pilot program and any other data relevant to the analysis of the pilot program, including an assessment of the appropriateness of the 2½ point strike price intervals for the options selected by the reporting exchange.

The Commission finds good cause for approving the proposed rule changes and Phlx Amendment No. 1 and PSE Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As mentioned above, the Exchanges submitted separate reports to the Commission that include data and written analysis regarding the operation of the pilot program as required in the 2½ Strike Price Approval Order. The Commission notes that the Exchanges have not reported any significant problems with the pilot program since its inception and that the Exchanges will continue to monitor the pilot program to ensure that no problems arise. Finally, no adverse comments have been received by the Exchanges or the Commission concerning the pilot program. Based on the above, the Commission believes good cause exists to approve the extension of the pilot program through July 18, 1997, on an accelerated basis. Accordingly, the Commission believes that granting accelerated approval of the proposals is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchanges. All submissions should refer to File Nos. SR–Amex–96–24; SR–CBOE–96–41; SR–NYSE–96–19; SR–PSE–96–18; and SR–Phlx–96–22 and should be submitted by August 13, 1996 the date of this publication.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the pilot program proposed by the Exchange (File Nos. SR–Amex–96–24; SR–CBOE–96–41; SR–NYSE–96–19; SR–PSE–96–18; and SR–Phlx–96–22) is approved through July 18, 1997, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursaunt to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18563 Filed 7–22–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Representative Payment Advisory Committee; Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

DATES: September 25–26, 1996, 8:30 a.m.–4:30 p.m.

ADDRESSES: Social Security Administration Headquarters, Altmeyer Multi-Purpose Auditorium, 6401 Security Blvd., Baltimore, MD 21235.

SUPPLEMENTARY INFORMATION: Type of meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the seventh meeting of the Representative Payment Advisory Committee. The Committee will discuss the following broad categories of representative payment policy: (1) beneficiary (in) capability; (2) payee selection; (3) payee recruitment and retention; (4) standards for payee performance; and (5) payee oversight.

This is a deliberative meeting at which no public testimony will be heard. However, interested parties are invited to attend the meeting or submit written comments to the Office of the Committee at the address below.

Agenda: The Committee will meet commencing at 8:30 a.m. to 4:30 p.m. on Wednesday and Thursday, September 25–26, 1996. Discussion items will include a discussion of beneficiary (in) capability; payee selection; payee recruitment and retention; standards for payee performance; and payee oversight. The Committee will use this time to address the public comments on

these issues which were received in connection with previously announced meetings.

Persons interested in attending this meeting should call the Representative Payment Advisory Committee at (410) 966–4688 so that arrangements for entrance into the meeting can be made. Individuals not making advance arrangements should report to the main lobby. Arrangements for entrance can be made at that time.

Records are being kept of all Committee proceedings, and are available for public inspection by appointment at the office of the Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between the hours of 9:00 a.m. and 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX (410) 966–0980; Internet: adcom@ssa.gov.

Dated: July 15, 1996.

Reba Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 96–18483 Filed 7–22–96; 8:45 am]

BILLING CODE 4190–29–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement and Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

July 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new export visa and certification requirements.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 25, 1996 the Governments of the United States and the Republic of Honduras signed an agreement to establish a new export visa arrangement and certification requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in Honduras and exported from Honduras on and after August 1, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry of certain textile products, produced or manufactured in Honduras and exported from Honduras for which the Government of the Republic of Honduras has not issued an appropriate export visa or certificate.

Facsimiles of export visa and certification stamps are on file at the U.S. Department of Commerce in Room 3100.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995).

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989. Also see 41 FR 30707, published on July 26, 1976.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa and certification requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Export Visa Arrangement dated June 25, 1996 between the Governments of the United States and the Republic of Honduras; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 1, 1996, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 352, 652 and 435, including merged and part categories, produced or manufactured in Honduras and exported from Honduras on and after July 15, 1996 for which the Government of the Republic of Honduras has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories become subject to import quota the entire category(s) or part category(s) shall be included in the coverage of this arrangement. Merchandise exported on or after a mutually agreed date shall require a visa specifying the new designation.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or successor document. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Honduras is ''HN''). These first two codes shall be followed by the number ''1'' and a five-digit serial number identifying the shipment, e.g., 6HN112345.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official of the Government of the Republic of Honduras.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation or successor document and in the Harmonized Tariff Schedule of the United States Annotated (HTSUSA or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 35209510 DZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 352/652 may be visaed as 352/652 or if the shipment consists solely of 352 merchandise, the shipment may be visaed as ''Cat. 352,'' but not as ''Cat. 652'').

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the

shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of the actual manufacturer of the textile product must be included on the visa document. If a textile product has been processed by more than one manufacturer, the complete name and address of the last firm to assemble the article must be listed on the visa document.

If the visa is not acceptable then a new visa must be obtained from the Government of the Republic of Honduras, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy of Honduras in Washington, DC, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Honduras subject to this arrangement has been allowed entry into the commerce of the United States with either an incorrect category classification or misstatement of the quantity, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Each shipment of textile products which has been assembled in Honduras wholly from components cut in the United States from U.S. formed fabric which are subject to the Caribbean Basin Textile Special Access Program as set out in the Arrangement shall be so certified by the Government of the Republic of Honduras. This certification shall be presented to the U.S. Customs Service before entry, or withdrawal from warehouse for consumption, into the customs territory of the United States (the 50 states and Puerto Rico).

Each shipment shall be certified by the stamping of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original copy of the invoice with the original certification will be required in order to enter the shipment into the United States. Duplicate copies of the invoice and/or certification may not be used.

Each certification shall include the following information:

1. The certification number. The certification number shall be nine digits and letters. It shall begin with one digit for the last digit of the year of export followed by the two character country code for Honduras, which is ''HN.'' These first two codes shall be followed by the number ''2'' and a five-digit serial number identifying the shipment, e.g., 6HN212345.

2. The date of issuance. The date of issuance shall be the day, month and year in which the visa was issued.

3. The original signature of the issuing official of the Government of the Republic of Honduras.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States Annotated (HTSUSA or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 352-510 DZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 352/652 may be visaed as 352/652 or if the shipment consists solely of 352 merchandise, the shipment may be visaed as ''Cat. 352,'' but not as ''Cat. 652'').

U.S. Customs shall not permit entry if the shipment does not have a certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the certification is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the certification is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

Entry of textile products subject to the certification system outlined above into the customs territory of the United States will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of the Republic of Honduras.

2. A completed CBI Export Declaration (U.S. Department of Commerce Form ITA09370P or successor document) with a proper declaration by the Honduras assembler that the articles were subject to assembly in Honduras from parts described on that CBI Export Declaration; and

3. A proper importer's declaration.

Any shipment which is not accompanied by a valid and correct certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States. If U.S. Customs determines that the certification is invalid because of an error, and the remaining documentation fulfills requirements for entry under the Caribbean Basin Textile Special Access Program then a new certification from the Government of the Republic of Honduras must be obtained or a visa waiver issued by the U.S. Department of Commerce at the request of the Government of the Republic of Honduras must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

Any shipment found not to be in compliance with the provisions of the Caribbean Basin Textiles Special Access Program relating to trade in textile products wholly assembled of U.S. components cut from U.S. formed fabrics, may be permanently denied entry under this program.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked or mutilated commercial sample shipments valued at U.S.$250 or less, do not require a visa or certification for entry and shall not be charged to existing quota levels.

Visaed merchandise and products eligible for the Caribbean Basin Special Access Textile Program may not appear on the same invoice.

The visa and certification stamps are enclosed.

The actions taken concerning the Government of the Republic of Honduras with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

ANNEX A

Part Categories

35209K	Only HTS numbers	6107.11.0010,
	6107.11.0020,	6108.19.9010,
	6108.21.0010,	6108.21.0020,
	6108.91.0005,	6108.91.0015,
	6108.91.0025,	6109.10.0005,
	6109.10.0007,	6109.10.0009,
	6109.10.0037.	
65209K	Only HTS numbers	6107.12.0010,
	6107.12.0020,	6108.11.0010,
	6108.11.0020,	6108.22.9020,
	6108.22.9030,	6108.92.0005,
	6108.92.0015,	6108.92.0025,
	6109.90.1047 and 6109.90.1075.	

Merged Categories
352/652
35209K/65209K

[FR Doc. 96–18668 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

July 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927095850. For information on embargoes and quota re-openings, call (202) 482093715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

A notice published in the Federal Register on September 20, 1995 (60 FR 48692) announces that the Governments of the United States and Honduras agreed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish limits and Guaranteed Access Levels (GALs) for Categories 352/652 and 435 for the period January 1, 1996 through December 31, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. These limits are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). Also, guaranteed access levels are being established for Categories 352/652 and 435 for 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 67349, published on December 29, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on December 22, 1995, by the Chairman, Committee for the Implementation of Textile Agreements, which directs you to count imports for consumption of cotton, wool and man-made fiber textile products in Categories 352/652, 35209K/65209K and 435, produced or manufactured in Honduras and exported during the period January 1, 1996 through December 31, 1996.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Honduras and exported during the period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month limit1A[1]
352/652	10,070,000 dozen of which not more than 7,420,000 dozen shall be in Categories 35209K/65209K1A[2].
435	14,688 dozen.

[1]1AThe limits have not been adjusted to account for any imports exported after December 31, 1995.

[2]1ACategory 35209K: only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6108.91.0025, 6109.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037; Category 65209K: 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047 and 6109.90.1075.

Imports charged to these category limits for the periods March 27, 1995 through December 31, 1995 (Categories 352/652 and 35209K/65209K) and April 24, 1995 through December 31, 1995 (Category 435) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

You are directed to charge the following amounts to the limit established in this directive for Categories 352/652 and 435 for 1996. These charges are for goods imported during the period January 1, 1996 through June 30, 1996 (Categories 352/652) and January 1, 1996 through April 30, 1996 (Category 435). Additional charges will be supplied at a later date.

Category	Amount to charge
352/652	394,091 dozen.
35209K/65209K	2,233,183 dozen.

Additionally, pursuant to the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on August 1, 1996, guaranteed access levels are being established for properly certified textile products assembled in Honduras from fabric formed and cut in the United States in textile products in the following categories which are re-exported to the United States from Honduras during the period January 1, 1996 through December 31, 1996 in the following amounts:

Category	Guaranteed Access Level
352/652	50,000,000 dozen.
435	35,000 dozen.

You are directed to charge 7,881,821 dozen to the guaranteed access level established for Categories 352/652 and 2,970 dozen to the guaranteed access level established for Category 435 for the 1996 period. These charges are for the goods imported during the period January 1, 1996 through June 30, 1996 (Categories 352/652) and January 1, 1996 through April 30, 1996 (Category 435) subject to the Special Access Program.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of July 18, 1996 shall be denied entry unless the Government of the Republic of Honduras authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc.96–18669 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DR–F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Concerning Certain Canadian Measures Affecting Periodicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that a dispute settlement panel convened under the Agreement Establishing the World Trade Organization (WTO) at the request of the United States will examine Canadian measures affecting periodicals, including an import ban on certain periodicals and discriminatory treatment of certain imported periodicals with respect to excise taxes and postal rates. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 15, 1996 in order to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Room 501, Attn: Periodicals Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William Kane, Associate General Counsel, Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508, (202) 395–6800.

SUPPLEMENTARY INFORMATION: At the United States' request, a WTO dispute settlement panel will examine whether certain Canadian measures concerning periodicals are consistent with Canada's obligations under the General Agreement on Tariffs and Trade (GATT) 1994.

Members of the panel are currently being selected, and the panel is expected to meet as necessary at the WTO headquarters in Geneva, Switzerland to examine the dispute. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations in six to nine months.

Major Issues Raised by the United States and Legal Basis of Complaint

The Government of Canada maintains several measures concerning periodicals, including, but not limited to: (1) Tariff Code 9958, which prohibits the importation into Canada of certain periodicals; (2) Part V.1 of the Excise Tax Act, as enacted by Bill C–103 of December 15,1995, which imposed an excise tax on certain so-called ''split-run'' periodicals; and (3) application of favorable postal rates to certain Canadian periodicals, including through actions of the Canada Post Corporation and the Department of Canadian Heritage (formerly the Department of Communications).

These measures appear to prohibit or restrict imports of periodicals from the United States and other Members of the World Trade Organization in contravention of the Government of Canada's obligations under Article XI of the General Agreement on Tariffs and Trade 1994, and also appear to be inconsistent with the national treatment obligations of the Government of Canada under Article III of the General Agreement on Tariffs and Trade 1994.

These measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the General Agreement on Tariffs and Trade 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155)—

(1) must so designate that information or advice;

(2) must clearly mark the material as ''CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA, USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments made to USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket [WTO/D–7, ''U.S.-Canada: Periodicals''), may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Jennifer Hillman,

General Counsel.

[FR Doc. 96–18618 Filed 7–22–96; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Tallahassee Regional Airport, Tallahassee, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the City of Tallahassee, Florida for Tallahassee Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program update that was submitted for Tallahassee Regional Airport under Part 150 in conjunction with the noise exposure maps, and that this program update will be approved or disapproved on or before December 22, 1996.

EFFECTIVE DATE: The effective date of the FAA's determination on the updated noise exposure maps and of the start of its review of the associated noise compatibility program update is June 25, 1996. The public comment period ends August 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583, Extension 29. Comments on the proposed noise

compatibility program update should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Tallahassee Regional Airport are in compliance with applicable requirements of Part 150, effective June 25, 1996. Further, FAA is reviewing a proposed noise compatibility program update for that airport which will be approved or disapproved on or before December 22, 1996. This notice also announces the availability of this program update for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by 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 City of Tallahassee, Florida, submitted to the FAA on June 4, 1996, updated noise exposure maps, descriptions and other documentation which were produced during the Tallahassee Regional Airport FAR Part 150 Program Update conducted between January 3, 1994 and May 30, 1996. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, 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.

The FAA has completed its review of the updated noise exposure maps and related descriptions submitted by the City of Tallahassee, Florida. The specific maps under consideration are ''*CURRENT* DNL NOISE CONTOURS MAP A'' and ''*FUTURE FIVE-YEAR* DNL NOISE CONTOURS WITH MODIFICATIONS MAP B'' in the submission. The FAA has determined that these maps for Tallahassee Regional Airport are in compliance with applicable requirements. This determination is effective on June 25, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilies of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program update for Tallahassee Regional Airport, also effective on June 25, 1996. 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 update. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 22, 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 update with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the updated noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program update are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397

Airport Director's Office, Tallahassee Regional Airport, 1400 Lee Wagener Boulevard, Tallahassee, FL 32304

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida on June 25, 1996.

Charles E. Blair,

Manager, Orlando Airport District Office.

[FR Doc. 96–18689 Filed 7–22–96; 8:45am]

BILLING CODE 4910–13–M

[Docket No. 28567]

A Call for the Development of Prototype(s) for a Global Analysis and Information Network (GAIN)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of On-line Question and Answer Session About GAIN on CompuServe.

SUMMARY: On May 10, 1996, the FAA published a request for comments about the Global Analysis and Information Network (GAIN) concept and implementation strategy for collecting and analyzing aviation safety data. That request for comments also invited participation in the development of proof-of-concept prototypes. The GAIN concept involves the international sharing and analyzing of data, technologies, and systems that would provide an early warning capability to signal increased risks in aviation safety. The comment period closed on July 19,

1996, and more than 60 comments were submitted from all over the world.

This notice announces an opportunity for commenters and others to discuss issues and ask questions about GAIN with Christopher A. Hart, FAA's Assistant Administrator for System Safety (ASY–1). Mr. Hart will serve as the facilitator of a live on-line question and answer session on the CompuServe Information Service. In preparation for a workshop to be convened by the FAA later this year to bring commenters and others together to discuss GAIN and the development of GAIN prototypes, commenters are encouraged to review each other's comments and to commence discussions with each other about potential joint ventures. By clarifying issues that commenters and others may have, this on-line question and answer session will hopefully make the workshop, as well as the preparatory discussions between commenters, more productive.

DATES: The on-line question and answer session will be held on Tuesday, August 6 from 9:00 p.m., EDT (6:00 PDT) to 10:30 p.m., EDT (7:30 PDT) on the CompuServe Information Service. Persons without on-line access may participate in the session by submitting written questions to the FAA, which must be received on or before July 31, 1996.

ADDRESSES: Interested persons and organizational representatives with CompuServe on-line access may participate in the question and answer session by ''Go''ing to the Convention Center, then selecting ''FAA's Chris Hart discusses global safety network'' from the menu. Questions can also be submitted before the session via electronic mail to ''71650.477@compuserve.com.''

Interested persons without on-line access may participate in the question and answer session by mailing questions to the Federal Aviation Administration, Attn: GAIN Program Division, ASY–200, ''On-Line GAIN Conference,'' 400 7th Street, SW., Room 2227, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Fluet, Manager, GAIN Program Division, ASY–200, Office of System Safety, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 267–GAIN (202–267–4246).

SUPPLEMENTARY INFORMATION:

Background

The aviation industry has made remarkable progress in reducing aviation accident rates. However, this rate has remained stubbornly consistent for about the last 10 years, and at today's accident rate, the forecasted growth in air transportation demand could lead to more than 4,500 fatalities worldwide per year by 2025—clearly an unacceptable result. Yet, all too often, the aviation industry as a whole has not been able to use data about accidents, incidents and other system anomalies to become aware of existing or emerging safety problems in time to take preventive measures. The entire industry must develop a significantly improved operational early warning capability that is sensitive enough to detect and alert the aviation community to existing and emerging problems. A major aspect of this capability is the sharing of safety information, both within categories in the industry, e.g., carriers must share with other carriers and manufacturers with other manufacturers; and across categories, e.g., labor, management, carriers, manufacturers, air traffic controllers, airport operators, and others must share with each other. Creating useful information, however, generally requires the collection of large amounts of data, and it also involves the careful analysis of the data. Rarely would there be any need or desire to share any raw data, but the sharing of the analysis of the data—the information—could be mutually beneficial. A new safety information paradigm, with much greater sensitivity to anomalies in daily aviation system operations, could help the industry reach ''Zero Accidents.'' Gathering and analyzing large amounts of qualitative and quantitative aviation safety data to better understand routine system operations is the foundations of the Global Analysis and Information Network (GAIN) concept.

On May 10, 1996, the FAA published a request for comments on the Global Analysis and Information Network (GAIN) concept and implementation strategy for collecting and analyzing aviation safety data. That request also invited participation in the development of proof-of-concept prototypes. The proposed GAIN system would be more sensitive to conditions that signal increased safety risks because it would contain information about normal aviation system operations. The statistical baseline for normal aviation operations, constructed with digital flight and ATC radar data, among other major and currently untapped sources, would be the plumb line from which deviations are measured. The importance of obtaining information about a far greater percentage of aircraft operations has been illustrated repeatedly by all-too-typical accident investigation findings of earlier flights that experienced problems similar to the accident aircraft. A truly effective early warning capability would involve significant improvements in information feedback and analysis for aviation operations. When fully implemented, it is believed that GAIN would, at a minimum, add the following new elements to the existing monitoring systems: (1) new data sources that would improve risk assessment and provide a baseline for normal flight operations, thus improving the changes of early anomaly detection; (2) new and innovative data management and analytical techniques and methodologies that quickly reveal obscure and/or infrequent data patterns and associations; and (3) new methods to disseminate the findings quickly and globally to all who could use them to improve international aviation safety.

The FAA anticipates that GAIN and its prototypes will be privately owned by a consortium of several entities from all over the world, and the FAA plans to invite potential participants to a workshop later this year to help facilitate the process of developing prototypes. In order to encourage prospective participants to discuss potential joint ventures with each other before the workshop, the process was set up to enable all GAIN commenters to look at each other's comments via the Internet.

The FAA encourages commenters to take maximum advantage of this Internet capability and to commence discussions with each other to determine how, working together, commenters can begin to develop prototypes. The FAA has already received numerous clarifying inquiries about GAIN, and commenters and others undoubtedly have more questions. The purpose of this on-line question and answer session is to provide a forum for these questions to be asked and answered because better understanding of GAIN by prospective participants, and better FAA understanding of the concerns of prospective participants, will make the workshop, as well as the preparatory discussions between commenters, much more fruitful.

On-line Session Procedures

(1) The on-line question and answer session is scheduled to last 90 minutes, and the FAA will try to accommodate all interested persons and organizational representatives. If the available time does not permit this, questions will be answered on a first-come-first-served basis. Further, the FAA reserves the right to exclude some questions if

necessary to obtain a balance of viewpoints and issues. The session may adjourn early if all interested persons complete their statements and have their questions answered in less time than is scheduled.

(2) Christopher A. Hart, FAA's Assistant Administrator for System Safety, will serve as the facilitator of the on-line session. A panel of FAA representatives involved in GAIN will be available to answer questions and clarify issues.

(3) A transcript of the on-line discussions will be prepared and placed in the public docket at FAA headquarters in Washington, DC, by August 12, 1996, for review by interested persons. A copy of the transcript will also be made available via CompuServe from the Aviation Week Group Information Center Forum library by August 12, 1996.

(4) Statements made by FAA representatives are intended to facilitate discussion of, and clarify, the issues and to answer questions. Any statements made during the on-line session by FAA representatives are the individual views of those representatives and do not necessarily represent the views of the FAA.

(5) The on-line session is designed to solicit views and clarify issues about the GAIN concept. Therefore, the session will be conducted in an informal and non-adversarial manner. No individual will be subject to cross-examination by any other participant; however, FAA representatives may ask clarifying questions to ensure a more complete and useful record.

Issued in Washington, DC, on July 18, 1996.

Christopher A. Hart,

Assistant Administrator for System Safety, Federal Aviation Administration.

[FR Doc. 96–18686 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air traffic issues.

DATES: The meeting will be held on August 8, 1996, at 10:00 a.m.

ADDRESSES: The meeting will be held at Helicopters Association International Headquarters 1635 Prince Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews Assistant Executive Director for Air Traffic Issues, Airspace and Rules Division (ATA–400), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8783; FAX: (202) 267–5809.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee. This meeting will be held on August 8, 1996, at 10:00 a.m., at Helicopter Association International Headquarters, 1635 Prince Street, Alexandria VA. The agenda for this meeting will include: Unmanned Airborne Vehicle (UAV) draft advisory circular update; Special Visual flight rules (VFR) issues update; and Mode S working group update.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on July 17, 1996.

Reginald C. Matthews,

Assistant Executive Director for Air Traffic Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–18551 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on August 20, 1996, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Aircraft Owners and Pilots Association, 421 Aviation Way, Frederick, MD 21701.

FOR FURTHER INFORMATION CONTACT: Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–800), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8452; FAX: (202) 267–5094.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on August 20, 1996, at 9:30 a.m., at the Aircraft Owners and Pilots Association, 421 Aviation Way, Frederick, MD 21701.

The agenda for this meeting will include status reports from the part 103 (Ultralight Vehicles) Working Group and the IFR Fuel Requirements/ Destination and Alternate Weather Minimums Working Group. In addition, the FAA will give a status report on the Manipulation of the Controls of Aircraft study.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on July 16, 1996.

Louis C. Cusimano,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–18687 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee (R,E&D); Meeting

Pursuant to section 10(A) (2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development Advisory Committee. The meeting will he held on Sept. 10 & 11, 1996, at the Holiday Inn Fair Oaks, 11787 Lee Jackson Highway, Fairfax, Virginia.

On Tuesday, September 10 the meeting will begin at 9:00 a.m. and end at 5:00 p.m. On Wednesday, September 11 the meeting will begin at 8:00 a.m.

and end at 1:00 p.m. The meeting agenda will review Committee activities including the Report of the Subcommittee on Human Factors, the Report of the Scientific Advisory Panel for the Security R&D Subcommittee, and a status report from the NAS R&D Panel.

Attendance is open to the interested public but limited to space available. With the approval of the Committee Chair, members of the public may present oral statements at the meeting. Persons wishing to attend the meeting, obtain information or present oral statements, should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on June 27, 1996.

Andres G. Zellweger,

Director, Aviation Research.

[FR Doc. 96–18688 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Agency Information Collection, Submission for OMB Review Comment Request

AGENCY: Federal Administration, Department of Transportation.

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 described below has been forwarded to the Office of Management and Budget (OMB) for review.

OMB Control Number: 2130–0517.

Title and Form Number: Supplemental Qualifications Statement for Railroad Safety Inspector Applicants, FRA–F–120.

Type of Review: Extension of a currently approved collection.

Need and Uses: To evaluate the qualifications of applicants for Railroad Safety Inspector positions. The questions cover a wide range of general and specialized skills, abilities, and knowledge of the five types of railroad safety inspector positions.

Affected Public: Individuals or Households.

Estimated Annual Burden: 6,000 hours.

Estimated Average Burden Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

DATES: Submit any comments to OMB by August 19, 1996. Forward comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of Transportation, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC. 20503.

FOR FURTHER INFORMATION CONTACT: Contact Maryann Johnson on (202) 366–0438 or write to: Federal Railroad Administration, Office of Information Technology and Productivity Improvement, 7th & D Streets SW., Washington, DC. 20590.

Issued in Washington, D.C. on July 17, 1996.

Ray Rogers,

Associate Administrator for Administration and Finance.

[FR Doc. 96–18696 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Voluntary Intermodal Sealift Agreement (VISA), 60 FR 54144, October 19, 1995]

Notice of Meeting of Joint Planning Advisory Group

AGENCY: Maritime Administration, DOT.

On July 10–11, 1996, the Maritime Administration and the United States Transportation Command, Co-Chairs of the Joint Planning Advisory Group (Group), hosted a meeting of the Group to discuss contingency movements and to start the process of developing concepts of operations through the application of VISA sealift capacity. The meeting was closed to the public because material presented dealt with information for official use only.

CONTACT PERSON FOR ADDITIONAL INFORMATION: James E. Caponiti, Associate Administrator for National Security (202) 366–5400.

By Order of the Maritime Administrator.

Dated: July 17, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–18695 Filed 7–22–96; 8:45 am]

BILLING CODE 4910–81–P

Surface Transportation Board [1]

[STB Docket No. AB–167 (Sub-No. 1164X)]

Consolidated Rail Corporation—Abandonment Exemption—in Erie County, NY

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 5.10-mile portion of its line of railroad known as the Walden Running Track between milepost 414.00 and milepost 418.50, and portion of the JD Industrial Track between milepost 0.00 and milepost 0.60 in Erie County, NY.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 22, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by August 2, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 12, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John K. Enright, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 26, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 18, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18624 Filed 7–22–96; 8:45 am]

BILLING CODE 4915–00–P

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Submission To OMB for Review; Comment Request

July 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0094.

Form Number: IRS Form 1041–A.

Type of Review: Extension.

Title: U.S. Information Return—Trust Accumulation of Charitable Amounts.

Description: Form 1041–A is used to report the information required 26 USC 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.

Respondents: Business or other for-profit, Individual or households.

Estimated Number of Respondents/ Recordkeepers: 18,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—24 hr., 9 min.
Learning about the law or the form—3 hr., 26 min.
Preparing the form—8 hr., 38 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 675,900 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 96–18566 Filed 7–22–96; 8:45 am]

BILLING CODE 4830–01–P

Submission To OMB for Review; Comment Request

July 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0173

Form Number: IRS Form 4563

Type of Review: Extension

Title: Exclusion of Income for Bona Fide Residents of American Samoa

Description: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.

Respondents: Individuals or households

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—33 min.
Learning about the law or the form—7 min.
Preparing the form—25 min.
Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 137 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 96–18567 Filed 7–22–96; 8:45 am]

BILLING CODE 4830–01–P

Submission To OMB for Review; Comment Request

July 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1031
Form Number: IRS Form 8697
Type of Review: Extension
Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts

Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under IRC section 460(b)(3). The IRS uses Form 8697 to determine if the interest has been figured correctly. Taxpayers may compute interest using the actual method (Part I) or the Simplified Marginal Impact Method (Part II).

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8697 Part I	Form 8697 Part II
Recordkeeping	8 hr., 22 min.	9 hr., 5 min.
Learning about the law or the form	2 hr., 11 min.	1 hr., 35 min.
Preparing, copying, assembling, and sending the form to the IRS	2 hr., 25 min.	1 hr., 49 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 63,840 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 96–18568 Filed 7–22–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Board of Veterans' Appeals (BVA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 23, 1996.

ADDRESSES: Direct all written comments to Sue Hamlin, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the BVA request for Office of Management and Budget (OMB) approval. In this document the BVA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0042.

Title and Form Number: Statement of Accredited Representative in Appealed Case, VA Form 646.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by accredited representative of veterans' service organizations to present argument to the BVA on behalf of appellants whom the service organizations represent. Further, it aids the VA in assuring that rights to representation have been honored by establishing that the record has been made available to the representative for review and presentation of argument.

Current Actions: The form is provided primarily as a courtesy to the representative, although it also assists the VA in carrying out its mission. It is used by accredited veterans' service organization representatives throughout the nation to submit their argument in individual appeals to the BVA. It facilitates appellants' exercise of their representation rights. The legal and factual arguments presented on the form are considered and addressed by the BVA in making decisions on appeals. The form is also designed to solicit enough identifying data to enable the VA to identify the particular case to which the statement pertains so that it may be properly considered and filed when received by the VA.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 40,000 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: July 10, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–18580 Filed 7–22–96; 8:45 am]

BILLING CODE 8320–01–P

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorized the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veteran's benefit claimants and their representatives in the persecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 1–96

Questions Presented: a. Do the provisions of 38 CFR 3.114(b) apply to cases in which benefits are reduced or terminated as the result of a judicial precedent?

b. If so, when, in such cases, benefits are awarded to one individual as the surviving spouse of a veteran and discontinued to another individual previously awarded benefits based on a ''deemed valid'' marriage to the veteran, is the effective date of the discontinuance of the latter individual's benefits governed by 38 CFR 3.114(b) or 38 CFR § 3.657(a)?

Held: a. The provisions of 38 U.S.C. 5112(b)(6) and 38 CFR 3.114(b), which govern the effective date of a reduction or discontinuance of benefits by reason of a change in law or administrative issue or a change in interpretation of a law or administrative issue, are applicable to cases in which benefits are reduced or terminated by reason of a change in the interpretation of law resulting from a judicial precedent.

b. When, as the result of such a change in interpretation, an award of benefits is established for one individual as the legal surviving spouse of a veteran and discontinued for another individual who had previously received benefits based on a marriage to the veteran deemed valid pursuant to 38 U.S.C. 103(a), the effective date of the award to the legal surviving spouse is governed by 38 U.S.C. 5110(a), which provides for establishment of an effective date in accordance with the facts found, but not earlier than the date of receipt of an application for benefits. The effective date of the discontinuance to the prior payee is governed by 38 U.S.C. 5112(b)(6) and 38 CFR 3.114(b). To the extent that application of 38 CFR 3.657(a) would, in a particular case, suggest that the prior payee's award be terminated at a date earlier than that provided by 38 U.S.C. 5112(b)(6), that regulation must be considered superseded by section 5112(b)(6).

EFFECTIVE DATE: February 17, 1996.

VAOPGCPREC 2–96

Question Presented: Whether, under 38 U.S.C. 5313, a veteran who was paroled after being incarcerated for conviction of a felony is entitled to full compensation for a service-connected disability for the period during which he violated the conditions of parole?

Held: The provisions of 38 U.S.C. 5313 do not apply to a veteran who is a parole following incarceration for conviction of a felony and who is in violation of one or more of the conditions of parole, unless the veteran has been reincarcerated.

EFFECTIVE DATE. May 13, 1996.

VAOPGCPREC 3–96

Question Presented: How should reimbursements for the costs of VA furnished medical care received from health insurance policies of insured veterans be applied to their obligation to pay VA a portion of the cost of that care?

Held: 1. Veterans covered by health insurance policy who are obligated to VA for a portion of the cost of their nonservice-connected medical care should be allowed to satisfy their obligation(s) to VA to the extent of coverage available under their policies.

2. Non-Medigap insurance proceeds should be applied to the veteran's VA copayment debt, after subtracting the policy deductible, by applying the same percentage factor of payment as corresponds to the insurer's liability for the remainder of allowable charges.

3. Reimbursements from Medigap carriers should first be applied to the veterans' copayment debt(s), including ''means test'' copayment, per diem copayments, outpatient copayments, and prescription copayments before application of those proceeds to the carrier's debt.

Effective Date: May 23, 1996.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 96–18582 Filed 7–22–96; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held August 1, 1996, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans and to assess the needs of minority veterans and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 530, VA Central Office (VACO) Building, 810 Vermont Avenue, NW., Washington, DC, from 2:00 p.m. to 5:30 p.m. The meeting will be conducted by way of a conference call. Committee members residing in the Washington Metropolitan area will be present in room 530. All other members will be linked via telephone. The Committee will meet to work on recommendations to be included in its annual report to the Secretary. The Committee will continue to discuss subcommittee reports and findings. The Committee will complete drafting of the annual report to the Secretary. All sessions will be open to the public up to the seating capacity of the room. Because seating is limited, it will be necessary for those wishing to attend to contact Mrs. Angelia Sare, Department of Veterans Affairs (phone (202) 273–6708) prior to July 31, 1996. No time will be allocated for the purpose of receiving oral presentations from the public; however, the Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: July 16, 1996.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 96–18581 Filed 7–22–96; 8:45 am]
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Federal Register

Tuesday
July 23, 1996

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration and Nonattainment New Source Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–5455–7]

RIN 2060–AE11

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to revise regulations for both the approval and promulgation of implementation plans and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (Act). These proposed changes are largely drawn from the discussions and recommendations of the Clean Air Act Advisory Committee's (CAAAC) Subcommittee on NSR Reform. The proposed changes are intended to reduce costs and regulatory burdens for permit applicants, while still ensuring that emissions from new or modifying major stationary sources of air pollution will not interfere with efforts to attain and maintain the nation's air quality standards and goals.

DATES: *Comments.* All public comments must be received on or before October 21, 1996.

Public Hearing. A public hearing is scheduled for 8:30 a.m. to 4:30 p.m. in Research Triangle Park, North Carolina September 23, 1996. The hearing may be canceled if no requests to speak have been received 15 days prior to the scheduled hearing date.

ADDRESSES: *Comments.* Comments on this proposal should be mailed (in duplicate if possible) to: U.S. EPA, Air Docket Section, Air Docket A–90–37; 401 M Street SW., Washington, DC 20460.

Docket. Supporting information for this proposal is contained in Docket No. A–90–37. This docket is available for public review and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday at the EPA's Air Docket Section, 401 M Street SW., Washington, DC; Room M–1500. A reasonable fee may be charged for copying.

Public Hearing. A document announcing the specific location of the public hearing will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Dennis Crumpler, Information Transfer and Program Integration Division, MD–12, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–0871. Persons wishing to make oral presentations at the public hearing, or seeking further information, should contact Pam J. Smith at (919) 541–5319.

SUPPLEMENTARY INFORMATION: The following outline reflects the contents of this action:

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I. Overview of This Proposal

A. Introduction

The EPA is proposing substantial changes to the major NSR program, a preconstruction permitting program required by the Clean Air Act (Act) that regulates the construction and modification of major stationary sources of air pollution. This proposal represents the first comprehensive overhaul of the program in 15 years. The proposed revisions are largely drawn from the recommendations and deliberations of the CAAAC's NSR Reform Subcommittee, a panel of industry representatives, State and local air pollution control officials, environmentalists and other experts.

This proposal also contains certain revisions to the NSR regulations for State Implementation Plans (SIP) based on requirements established by the 1990 Amendments. These revisions are proposed here in order to clarify certain requirements of the 1990 Amendments. The adoption of the proposed changes will resolve a number of the underlying issues that have impeded full adoption of the nonattainment NSR programs by some States and caused uncertainties in the permitting process thereby delaying some projects. Other revisions, based on the CAAAC that are deregulatory in nature have also been included.

If adopted, the proposed reforms will significantly reduce the number and types of activities at sources that would otherwise be subject to major NSR under the existing NSR program regulations, including the new and revised requirements imposed by the 1990 Amendments. At the same time, the proposed changes are intended to provide States with greater flexibility to customize their own regulations implementing the NSR program, address concerns raised about the permitting of sources near protected National Parks and other wilderness areas (Federal Class I areas), promote the use of innovative technologies and pollution prevention, and, in general, streamline the overall NSR permitting process.

The key elements of this proposal designed to relieve regulatory burden are:

- Deregulation of changes at ''clean'' emissions units and ''clean'' facilities and of pollution control and pollution prevention projects—Existing sources that have clean emissions units or are undertaking projects to clean up air pollution should not be targeted for major NSR.
- Promotion of voluntary plant-wide limits—Rather than face complicated, piecemeal applicability decisions every time a change at a plant is contemplated, plant managers may prefer to work within an emissions cap or emissions budget, an annual emissions limit that allows managers to make almost any change anytime as long as the plant's emissions do not exceed the cap. Today's action proposes to create this option in EPA's regulations.
- Applicability criteria to reflect real emissions increases—This proposal would extend the range of years sources can use to establish their historical emissions and would allow sources to calculate emissions increases using projected future actual emissions rather than maximum potential to emit (PTE). This will especially benefit cyclical industries which during economic downturns are currently penalized for making modernizing changes that are vital to their recovery, even when the changes lower emissions rates.
- Encouragement of pollution prevention and innovative control technologies—these proposed changes would ensure that pollution prevention qualifies for the pollution control project exclusion and revamp the under-used innovative control technology waiver to simplify the process and eliminate penalties for good faith failures.
- Enhanced Public Awareness—Increased public disclosure of source impacts on Class I areas, establishment of national database of major permit applications, and improvements to EPA's pollution control technology bulletin board to increase opportunities for informed citizen participation in key permitting decisions.
- Revised requirements for control technology determinations—These proposed changes would allow States to adopt their own methodologies for reviewing and determining BACT so long as control technology evaluations include reasoned consideration of the most stringent control technology. Other proposed changes clarify the extent of a source's duty to search out new technology and shorten the technology review process by providing presumptive cut-offs.
- Better coordination of permit reviews for sources potentially affecting air quality in Federal Class I areas—These proposed changes clarify the role of the FLM, the State permitting authority and the applicant with regard to the NSR permitting process. The steps in considering of Class I area issues are clarified and would be initiated earlier in the permit review process than in current regulations. De minimis levels for determining whether Class I increment analyses must be performed would be established. The changes should reduce delays and disputes associated with permitting near Federal Class I areas.
- Increased State flexibility—Instead of one-size-fits-all solutions to applicability and other issues, States will be allowed for the first time to choose applicability and implementation approaches from a menu of alternatives.
- The EPA is taking comment on the range of preliminary construction activities that might be allowed to proceed prior to the issuance of an NSR permit in cases of modifications at existing facilities.
- More offset credits available to nonattainment area sources—Proposed changes will ease restrictions on use of emissions reductions credits resulting from source shutdowns and curtailments.
- New definition to ensure that the definition of ''stationary source'' included stationary internal combustion engines, but excludes newly-defined ''nonroad engines'' and ''nonroad vehicles.''

Proposed deregulatory changes that are authorized by the 1990 Amendments include:

- Exclusion of HAP from PSD requirements.
- Requirements on ozone-depleting substances (ODS)—Relaxes PSD requirements on the substitution of ODS with lower potency.

Revisions in this document that are being proposed based on requirements mandated by the 1990 Amendments are:

- Revised major source thresholds and emissions offset ratios for sources of volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter with diameter of 10 microns or less (PM–10) and CO according to severity of a nonattainment area's ambient air quality problem.
- Special requirements for determining major modifications of VOC and NO_X sources in serious and severe ozone nonattainment areas.
- Requirements for the submittal of control technology information into the EPA's RACT/BACT/LAER Clearinghouse.

This proposal also includes proposed ''housekeeping'' revisions to the NSR regulations at § 51.165(a) (NSR in nonattainment areas) for control

technology review, complete application criteria, and public participation, which are consistent with similar provisions under the PSD regulations at §§ 51.166 and 52.21. Further, consistent with proposed reform-related revisions to public participation provisions, the EPA is also proposing provisions that clarify permit applicants' and the public's opportunities for judicial review in State court regarding PSD or nonattainment permit actions.

Finally, the EPA is proposing clarification of source definition criteria as they relate to military installations during ''national security emergencies''.

B. Background

The NSR program legislated by Congress in parts C and D of title I of the Act is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act.[1]

In areas not meeting health-based NAAQS and in ozone transport regions (OTR), the program is implemented under the requirements of part D of title I of the Act for ''nonattainment'' NSR. In areas meeting NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), the NSR requirements for the prevention of significant deterioration of air quality under part C of title I of the Act apply. These regulations are contained in 40 CFR 51.165, 51.166, 52.21, 52.24 and part 51 appendix S.

The NSR provisions of the Act are a combination of air quality planning and air pollution control technology program requirements for new and modified stationary sources of air pollution. In brief, section 109 of the Act requires the EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once these standards have been set, States must develop, adopt, and submit to the EPA for approval a SIP which contain emission limitations and other control measures to attain and maintain the NAAQS and to meet the other requirements of section 110(a) of the Act.

Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect AQRV (including visibility) in national parks and other natural areas of special concern; to assure appropriate emission controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision. See, *e.g.*, sections 101(b)(1), 110(a)(2)(C), 160, and 173 of the Act.

On November 15, 1990, Congress enacted numerous changes to title I of the Act, including changes involving the NSR provisions under parts C and D for major new sources and major modifications locating in attainment and unclassifiable areas, nonattainment areas, and ozone transport regions. Most of these changes are described in the ''General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble; see 57 FR 13498, April 16, 1992). The EPA has not yet revised its NSR regulations to reflect the statutory changes resulting from the 1990 Amendments.

In August 1992, amidst concerns expressed by regulated industries that the EPA's major NSR regulations were too complex and burdensome, the EPA began an effort to revise those regulations. This effort involved the solicitation of ideas and recommendations from the CAAAC, as well as public input.[2] The goal of the NSR Reform effort is to eliminate as much of the program complexity, administrative burden and resultant project delays as possible without sacrificing the current level of environmental protection and benefits derived from the program.

In today's action, the EPA is proposing changes to various aspects of the current NSR program based primarily on its consideration of recommendations provided through the NSR Reform effort, but also based on independent EPA initiatives to clarify the NSR program. The EPA further proposes to add certain new requirements established by the 1990 Amendments.

The reader should note that the proposed new and revised regulations in this document do not comprehensively address all the statutory revisions to the NSR program in the 1990 Amendments. Consequently, EPA's promulgation of any or all revisions in this proposal should not create the expectation that States and permit applicants may obtain program approvals or be issued permits, respectively, by solely following the NSR rules, as proposed or ultimately promulgated.

II. Applicability of the NSR Program

A. Overview

The issue of NSR applicability proved to be one of the most difficult and divisive issues for the CAAAC's NSR Reform Subcommittee. While the issue was considered by a subgroup of the Subcommittee for several months and debated by the full Subcommittee during several sessions, consensus proved elusive. As a result, no formal recommendations were proffered to the CAAAC or the EPA on this issue. Still the discussions provided the EPA with a better understanding of the concerns of all sides and revealed a few areas of potential agreement. There were common elements in many of the competing proposals circulated by members of the Subcommittee. Thus, while there was no CAAAC resolution of the issues, today's proposed applicability changes build upon the Subcommittee's deliberations.

This preamble discusses the following proposed changes to NSR applicability: (1) A new exclusion from major NSR for existing emissions units and facilities that are subject to BACT or LAER, equivalent minor NSR control requirements, or comparable ''clean'' emissions control technology (see section II.C); (2) a new baseline for determining if a physical or operational change will result in a significant net emissions increase and thereby trigger major NSR, allowing sources to use any 12 consecutive months in the past 10 years to establish the unit's pre-change emissions level (see section II.D); (3) a pollution control project exclusion, patterned after the exclusion recently adopted by EPA for utilities but covering all source categories and pollution prevention projects (see section II.E); (4) a new provision allowing States to base applicability on a PAL (see section II.F); and (5) extension of a version of the ''actual-to-future-actual'' test, currently only available for utilities, to all source categories (see section II.G). Finally, the EPA is proposing for comment an applicability approach which the EPA agreed to consider and take final action

[1] Section 112(g) of the Act provides for preconstruction review of HAP. Section 112(b)(6) of the Act specifies that the ''part C'' PSD program shall not apply to HAP listed under section 112. The EPA has published guidance on NSR implementation issues presented by these provisions. See 57 FR 18074–18075 (April 28, 1992).

[2] The meetings of the CAAAC and its NSR Reform Subcommittee are announced in the Federal Register and open to the public. The last meeting of the NSR Subcommittee was in July 1994. A preliminary draft of this rulemaking was discussed at that meeting and made available for public comments. A copy is in the Docket for this rulemaking. See 59 FR 35119 (July 8, 1994).

on in accordance with the settlement of a lawsuit with the CMA and other industry petitioners (see section II.H).

In the past, EPA has essentially required States to follow a single applicability methodology. States could, of course, have a more stringent approach but most followed closely the EPA prototype. The EPA is proposing to break with this one-size-fits-all approach to applicability by proposing to adopt these changes as a menu of options from which a State may pick and choose in order to customize a specific approach for its individual needs. Thus, in its final action on this rulemaking, EPA will consider placing all or some of the applicability options presented today as permissible alternatives in its part 51 regulations containing minimum requirements for State NSR programs in nonattainment and attainment/unclassified areas. States will then be free to adopt any combination of these menu options into their own regulations and SIP to offer sources these alternatives. For instance, if EPA adopts in its final rulemaking both the ''Clean Unit'' exclusion and the PAL option, a State could retain its current federally-approved applicability approach without making changes, retain its existing approach and add a Clean Unit Test, or retain its existing approach and add both a Clean Unit Test and an option for PAL. The EPA also proposes to include these applicability approaches in the part 52 regulations governing Federal permitting programs. The EPA solicits comment on this approach and specifically solicits comments on what restrictions, if any, EPA should place on States in selecting applicability options.

B. Background

1. Current Provisions

The major NSR provisions of part C (PSD) and part D (nonattainment requirements) of title I of the Act apply to both the construction of new major sources and the modification of existing major sources. For new ''greenfield'' sources, ''applicability''—the determination of whether an activity is subject to the program or, stated differently, whether the program applies to particular circumstances—is a fairly straightforward determination. The Act, as implemented by the EPA's regulations, sets applicability thresholds for nonattainment areas (PTE above 100 tons per year (tpy) of any pollutant subject to regulation under the Act, or smaller amounts, depending on the nonattainment classification) and attainment areas (100 or 250 tpy, depending on the source type). A new source with a ''PTE'' in excess of the applicable threshold amount ''triggers'' or is subject to major NSR.[3]

The determination of what should be classified as a modification subject to major NSR presents more difficult issues. The modification provisions of the NSR programs in parts C and D are based on the broad definition of modification in section 111(a)(4) of the Act: the term ''modification'' means ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' That definition contemplates a two-step test for determining whether activities at an existing major facility constitute a major modification subject to major NSR requirements. In the first step, the permitting authority determines whether a physical or operational change will occur. If so, then the permitting authority proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels.

The reference to ''any physical change * * * or change in the method of operation'' in section 111(a)(4) of the Act could—read literally—encompass the most mundane activities at an industrial facility (even the repair or replacement of a single leaky pipe, or an insignificant change in the way that pipe is utilized). However, the EPA has recognized that Congress did not intend to make every activity at a source subject to major new source requirements under parts C and D. As a result, the EPA has adopted several exclusions from the ''physical or operational change'' component of the definition. For instance, the EPA has specifically recognized that routine maintenance, repair and replacement, and changes in hours of operation or in the production rate are not by themselves considered a physical change or change in the method of operation within the definition of major modification. See, *e.g.*, existing §§ 52.21(b)(2)(iii), 52.24(f)(5)(iii), 51.165(a)(1)(v)(C)(1), and 51.166(b)(2)(iii).

The EPA has likewise limited the reach of the second step of the statutory definition of modification by excluding all changes that do not result in an emissions increase above ''significance'' levels for the pollutant in question. See, *e.g.*, existing § 51.165(a)(1)(x). Taken together, these regulatory limitations restrict the application of the NSR program in parts C and D to only *''major modifications''* at existing major stationary sources. See, *e.g.*, existing § 51.165(a)(1)(v).

One key attribute of the NSR program in general is that sources typically ''net'' modifications out of review by coupling proposed emissions increases at the source with contemporaneous emissions reductions. The judicial decision in *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 400–403 (D.C. Cir. 1979), endorsed use of this ''plantwide bubble'' concept in the PSD program. The court reasoned that since the principal purpose of the PSD program was to prevent *deterioration* in air quality, a PSD permit was unnecessary so long as new construction at an existing plant did not increase overall emissions to the environment. Thus, under the EPA regulations promulgated in 1980 following *Alabama Power* (which are for the most part still in place today), source owners may modify or even completely replace or add emissions units without obtaining a PSD permit so long as ''actual emissions'' do not increase over baseline levels at the plant as a whole. In 1984, the EPA regulations expanding the use of the plantwide bubble to the nonattainment area NSR program under title I, part D of the Act were upheld in *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984).

Applicability of the part C and D NSR provisions must be determined in advance of construction and is pollutant-specific. In cases involving existing sources, this requires a pollutant-by-pollutant determination of the emissions change, if any, that will result from the physical or operational change. The EPA's 1980 regulations implementing the PSD and nonattainment NSR programs thus inquire whether the proposed change constitutes a ''major modification,'' *i.e.*, a *nonexcluded* physical change or change in the method of operation ''that

[3] The ''PTE'' is currently defined as the ''maximum capacity of a stationary source to emit a pollutant under its physical and operational design.'' Any physical or operational limitation on the capacity of the source to emit a pollutant, including a permit limitation, is treated as part of its design provided the limitation or its effect on emissions is federally enforceable (e.g., see existing §§ 51.165(a)(1)(iii) and 51.166(b)(4)).

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 EPA's requirement that a source which wishes to limit its PTE must obtain a federally enforceable limit. 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 EPA has completed its review of the Federal enforceability requirements in all relevant programs including NSR, the Agency will make available in a Federal Register notice its response to the court decisions.

would result in a significant net emissions increase of any pollutant subject to regulation under the Act.'' See existing § 52.21(b)(2)(i). A ''net emissions increase'' is defined as the increase in ''actual emissions'' from the particular physical or operational change (taking into account the use of emissions control technology and restrictions on hours of operation or rates of production where such controls and restrictions are federally enforceable), together with other contemporaneous increases or decreases in actual emissions at the source. See footnote 3 and existing § 52.21(b)(3)(i).[4] In order to trigger major NSR, the net emissions increase must exceed specified ''significance'' levels when compared to a pre-modification ''baseline.''[5] See existing §§ 52.21(b)(2)(i) and 52.21(b)(23).

The EPA's existing regulations generally define baseline actual emissions as ''the average rate, in tpy, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation'' (see, *e.g.*, existing § 52.21(b)(21)(ii)). The Administrator ''shall'' allow use of a different time period ''upon a determination that it is more representative of normal source operation.'' *Id.* The EPA has historically used the 2 years immediately preceding the proposed change to establish the baseline [see 45 FR 52676, 52705, 52718]. However, in some cases it has allowed use of an earlier period.

With respect to modifications at existing sources, a prediction of whether the physical or operational change will result in a significant net increase in the source's actual emissions following the modification is thus necessary. In part this involves a straightforward and readily predictable engineering judgment—how will the change affect the emissions factor or emissions rate of the emissions units that are to be changed. It also necessarily involves a prediction of utilization rates—how much of the source's full production capabilities as modified will be used per hour, and how many hours per year the source will be operated.

[4] In approximate terms, ''contemporaneous'' emissions increases or decreases are those which have occurred between the date 5 years preceding the proposed physical or operational change and the date that the increase from the change occurs [see, *e.g.*, existing section 52.21(b)(3)(ii)].

[5] Once a modification is determined to be major, the PSD requirements apply only to those specific pollutants for which there would be a significant net emissions increase. See, *e.g.*, existing sections 52.21(j)(3) (BACT) and 52.21(m)(1)(b) (air quality analysis).

The current regulations provide that when an emissions unit (other than an electric utility steam generating unit) ''has not begun normal operations,'' actual emissions equal the PTE of the unit. See existing § 52.21(b)(21)(iv). The EPA has interpreted this provision as creating an initial presumption that because the changed unit ''has not begun normal operations'' following the change, it will operate at its full capacity year round, i.e., at its full emissions potential. This is referred to as the ''actual-to-potential'' test. The owner or operator is free to rebut the presumption that actual emissions will increase over pre-modification levels by agreeing to limit its PTE, through the use of federally enforceable restrictions, to pre-modification actual emissions levels (plus an amount that is less than ''significant''). See footnote 3. The effect of this methodology is to require the source to take minor NSR permit limits to ensure that actual emissions will not increase (by more than a prescribed ''significant'' amount, if any) above baseline levels following the physical or operational change.

2. Litigation Over the Actual-to-Potential Test

Industry has long been concerned that most physical or operational changes under EPA's rules will initially register as emissions increases under EPA's actual-to-potential test because most sources are operated at less than full capacity on an annual basis. As a result, a change at the source that does not affect instantaneous emissions rates shows up as a presumed emissions increase because the pre-modification actual utilization is less than the projected post-modification utilization, which is presumed to reflect full capacity at all times. Hence, often sources have accept federally enforceable limits on post-modification emissions or operations to avoid major NSR.[6] As a legal matter, some industry representatives argue that under current regulations the EPA cannot properly presume that every non-routine or otherwise nonexcluded change to an existing emissions unit cannot be the basis for finding that the unit ''has not begun normal operations.'' They contend that the fact that a unit is proposed to be ''changed'' should not necessarily mean that it has not yet ''begun normal operations'' following the change.

Two cases have addressed the EPA's application of the actual-to-potential test, and specifically, the interpretation of the phrase ''begun normal operations.'' In *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989), the court upheld the EPA's application of the actual-to-potential methodology in a case involving conversion of a cement plant from a wet process to a more efficient dry process. The court upheld the EPA's interpretation that the words ''emissions unit that has not begun normal operations'' include modified units as well as new units, citing a passage from the 1980 rulemaking preamble that, in the court's view, made it clear that the EPA intended to apply the actual-to-potential test to a ''new *or modified* unit.'' 889 F.2d at 298 (45 FR 52676, 52677) (emphasis added by court).

The court noted that its endorsement of EPA's use of the ''actual-to-potential'' approach for calculating an emission change in this case was simplified by the facts presented, and that under other circumstances, the decision could have been more difficult.

On a related issue, the court agreed with the EPA's position that the regulatory exclusion for certain increases in a source's production rate or hours of operation applies only when such an increase is unaccompanied by construction or modification activity. See *id.* at 916, n.11. The EPA is today proposing to make the existing exclusion explicitly clear on this point by inserting the phrase ''standing alone'' at the beginning of the exclusion. See proposed amendatory language for §§ 51.165(a)(1)(v)(C)(6), 51.166(b)(2)(iii)(F), 52.21(b)(2)(iii)(F) and 52.24(f).

The actual-to-potential test was also at the heart of a legal challenge brought by WEPCO, see *Wisconsin Electric Power Co.* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990). The WEPCO proposed extensive, life-extension renovations for several older (35- to 50-year old) coal-fired electric utility boilers. The EPA sought to apply the ''actual-to-potential'' test reasoning that the modernizing changes, as confirmed by the WEPCO's own projections, would increase reliability

[6] For example, consider an industrial coal-fired boiler, constructed in the late 1960s and therefore ''grandfathered'' from NSR, which originally had a PTE of 1000 tons per year of SO_2. Since the mid-1980s, this source has actually operated at 50 percent of its capacity and emitted only 500 tons per year due to economic conditions or because the boiler became less efficient as it aged, and hence less economic to operate at full capacity. If the boiler were to be modified through a non-routine physical change which did not affect the unit's hourly emissions rate, the owner or operator would need either to accept a cap on its post-modification emissions at 539 tons per year (i.e., a level less than a significant increase over its past actual emissions, where the significant increase level for SO_2 is 40 tons per year), or to obtain a major NSR permit if it desires to maintain the ability to operate at 100 percent of its rated capacity. The 500 ton ''cushion'' between actual and potential emissions that existed prior to the modification would no longer exist.

and decrease operating costs, thus likely leading to increased utilization and, hence, increased actual emissions. However, the Seventh Circuit disagreed with the EPA's interpretation. The court coined the phrase ''like-kind replacement'' to describe the type of renovations occurring at the WEPCO plant, where steam drums and other major components were replaced by new components of identical design and function. 893 F.2d at 917. The court said that where the renovations were like-kind replacements, the EPA could not reasonably interpret its regulations to say that such a unit was so different that it has not begun normal operations.

Following the remand in the WEPCO case, the EPA employed an ''actual-to-future-actual'' test for the WEPCO facility comparing WEPCO's emissions during the baseline period to estimated future-actual emissions drawn from utilization projections available in the record.

3. The WEPCO Rulemaking

In 1992, the EPA promulgated revisions to its applicability regulations creating special rules for physical and operational changes at electric utility steam generating units [see 57 FR 32314, July 21, 1992].[7] In this rule, prompted by the WEPCO litigation and commonly referred to as the ''WEPCO Rule,'' the EPA adopted an actual-to-future-actual methodology for all changes at electric utility steam generating units except the construction of a new electric generating unit or the replacement or reconstruction of an existing emissions unit. Under this methodology, a utility compares its actual annual emissions before the change with its projected annual emissions after the change to determine if a physical or operational change would result in a significant increase in emissions. To ensure that the projection is valid, the rule requires the source to track its emissions for the next 5 years. The EPA is today proposing to allow use of this methodology for all source categories as described in more detail in section II.G of this preamble.

The EPA also made changes to the baseline portion of the actual-to-future-actual methodology. The EPA retained the existing regulatory language, but adopted a presumption that utilities may use as baseline emissions the annual actual emissions from any 2 consecutive years within the prior 5 years. This presumption would be superseded by the proposed baseline changes for all source categories discussed in section II.D. of this preamble. In the WEPCO rule, the EPA also created a pollution control project exclusion for utilities. As discussed in section II.E. of this preamble, today's proposal would replace this pollution control project exclusion with a new pollution control project exclusion for all source categories.[8]

C. The ''Clean Unit'' and ''Clean Facility'' Exclusion

1. Introduction

The Applicability Subgroup of the CAAAC's NSR Reform Subcommittee considered many applicability options. While none of these proposals garnered the full Subcommittee's support, representatives of State and local regulators as well as environmental groups expressed general support for the idea that ''benign'' changes at existing emissions units should not be subject to the complicated NSR applicability rules related to determining a significant net emissions increase. There was also support for the proposition that the NSR applicability test should provide some deference to sources that have already undergone major NSR.

The EPA, after careful consideration of these discussions, believes that the best approach for a new exclusion is one that focuses on the existing emissions control of a unit, rather than the change being proposed. Almost all stakeholders identified the goal of ensuring that modified units apply state-of-the-art controls as being of paramount importance. Accordingly, where an emissions unit already meets this goal, environmental concerns associated with proposed changes are likely reduced. For example, it is the EPA's experience that in many cases where an existing well-controlled unit triggers major NSR, the permitting process does not necessarily result in improved controls. On the other hand, where the review is focused on units which have not recently been required to meet a control technology requirement, NSR can be expected to result in more effective controls and meaningful reductions in actual emissions.

Similarly, where an entire facility already meets the goal of the application of state-of-the-art controls and has undergone an air quality impact analysis of its emissions, environmental concerns associated with proposed changes are likely reduced if the changes remain consistent with requirements imposed by the original analysis. Thus, EPA is also proposing a ''clean'' facility exclusion that allows a major stationary source to make changes at its facility consistent with PSD or NSR permits that have been recently issued.

2. Description of the Clean Unit Proposal

Based on these factors, the EPA is today proposing a simplified applicability test for changes to existing emissions units that already are well-controlled considering the extent a current BACT/LAER review for a particular unit would result in lower emissions. In general, this new ''clean unit'' exclusion will allow States to exclude from major NSR, proposed changes to existing emissions units that have installed major BACT or LAER within the last 10 years or which otherwise qualify as a ''clean unit.'' Under this exclusion, sources can make any change to a qualifying unit so long as the change will not increase the unit's emissions rate (measured in terms of the unit's maximum hourly emissions, the NSPS test found at 40 CFR 60.14). Specifically, changes which do not increase the unit's hourly potential emissions would not be considered a physical or operational change and thus would not trigger major NSR.[9] See proposed

[7] The regulations define ''electric utility steam generating units'' as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts (MW) of electrical output to any utility power distribution system for sale. See *e.g.*, existing section 51.166(b)(30).

[8] In the WEPCO Rule, the EPA also created special new source performance standard (NSPS) treatment for certain repowering projects and provided limited NSR exemptions for temporary and permanent Clean Coal Technology projects, and for certain ''very clean'' units. See *e.g.*, existing section 51.166(b)(2)(iii) (*i*), (*j*) and (*k*)]. All of these changes implemented special provisions in the 1990 Amendments. In the rule, the EPA also amended its NSPS regulations (40 CFR part 60) to allow a utility to use as its pre-change baseline its highest hourly emissions rate achieved during the 5 years prior to the proposed physical or operational change. The changes implementing the NSPS baseline change are neither discussed nor affected by today's rulemaking proposal.

[9] Under today's proposal, for units that are permitted to change feedstocks frequently, such as pharmaceutical manufacturing and certain chemical batch processes, the maximum hourly emissions rate test would be applied on a per feedstock basis to determine if an emission increase will occur. For example, a unit which has state-of-the-art volatile organic compounds (VOC) control technology and uses toluene and other organic solvents as feedstocks, the hourly maximum emission rate of toluene before and after the proposed physical or operational change would be assessed as if toluene alone was to be fully utilized by the unit before and after the proposed change. The other feedstocks would also be individually assessed. A change in feedstock would not trigger NSR if the control technology designed to control emissions resulting from the feedstock and the unit was previously permitted to use the feedstock. The EPA encourages suggestions in developing rules or guidance on other approaches for determining emissions

Continued

§§ 51.165(a)(1)(v)(C)(*10*), 51.166(b)(2)(iii)(L), 52.21(b)(2)(iii)(L), and 52.24(f).

The proposed ''clean unit'' exclusion would both simplify the applicability test for qualifying units and increase source flexibility. It would also reward sources that in the recent past have applied controls to their emissions units that were equal or comparable to BACT or LAER.

Ideally, the change in hourly potential emissions would be assessed immediately before and after the change to determine if an emissions increase did indeed occur. However, this may not be practical in many instances because information necessary to establish the hourly potential emissions rate may require considerable time to develop or collect. Therefore, under the proposed provision, the pre-change hourly potential emission rate may be established or verified at any time up to 6 months prior to the proposed activity or project. The EPA solicits comment on alternative periods for establishing the pre-change hourly emissions rate, particularly periods which might allow the use of routine compliance emissions tests to determine the emissions rate (e.g., annual). Also, under the proposed provision, where the unit is subject to a federally enforceable limitation (on operations or emissions) which limits the unit's hourly potential emissions to less than the maximum physically-achievable hourly rate, the unit's lower allowable rate must be used in determining if an emissions increase will occur at the unit.

3. What Constitutes a ''Clean Unit''?

For this exclusion to function, it is necessary to distinguish a well-controlled unit from a poorly controlled one. In other words, what criteria distinguish a unit eligible for this exclusion from one which is not? Criteria which allow a broad range of units to qualify could largely transform the existing applicability system into one based solely on assessing a unit's potential emissions, with the possibility of a dramatic increase in a unit's actual annual emissions without undergoing NSR.

The EPA proposes to require that in order to qualify as a ''clean unit'' an emissions unit must have a federally enforceable emissions limit that ''is comparable'' to the BACT or LAER requirements for that type of unit, whichever would otherwise be applicable to the proposed change. See proposed §§ 51.165(a)(1)(v)(C) (*10*) through (*13*), 51.166(b)(2)(iii)(L), 52.21(b)(2)(iii)(L), and 52.24(f). The EPA envisions that three types of limits would qualify: (1) BACT or LAER limits set within the last 10 years for the particular unit; (2) a limit set within the last 10 years for the particular unit by a State technology review program determined by EPA to be comparable to the Federal BACT or LAER programs; and (3) a limit found on a case-by-case basis—after notice and opportunity for public comment—to be comparable to the current BACT or LAER limits that would otherwise be imposed on the source after weighing the cost and benefits of additional or modified controls, including retrofit cost and benefits.

a. *Units with BACT or LAER Limits.* One starting point for determining whether a unit is well-controlled is the level of control required to satisfy BACT (in attainment/unclassified areas) or LAER (in nonattainment areas). For units which have recently undergone these reviews, re-evaluation of the technology shortly after the source is constructed or modified to determine if the technology is still ''state-of-the-art'' would likely result in very little or no incremental improvement in emissions control. Moreover, units that are recently permitted are far less likely to have physically deteriorated and more likely to be running near permitted capacity, reducing the risk that changes to the unit will result in increased utilization and increased actual emissions.

Therefore, the EPA is proposing that the new exclusion may presumptively apply to any unit which received a BACT or LAER limit in a currently applicable major NSR permit within 10 years of the proposed change under consideration. See proposed §§ 51.165(a)(1)(v)(C)(*11*)(*i*), 51.166(b)(2)(iii)(L)(*2*)(*i*), 52.21(b)(2)(iii)(L)(*2*)(*i*), and 52.24(f). In other words, for the first 10 years following issuance of a PSD or nonattainment NSR permit, units subject to BACT or LAER set in that permit are eligible for the clean unit exclusion. At least some members of the Subcommittee expressed concern that the 10-year period is too long given the improvement in control technology that can occur in some source categories. For this reason, EPA solicits comment on using a shorter period such as 5 years as the length of the Clean Unit presumption derived from a NSR permit.

During consideration of the Clean Unit Exclusion, several participants suggested that units subject to maximum achievable control technology (MACT) or reasonably available control technology (RACT) should also automatically qualify as clean units. A recently required MACT emissions limit, while not necessarily equal to BACT or LAER, is likely to result in significant emissions controls such that a BACT or LAER review would not necessarily result in significant additional emissions reductions. However, the EPA is also concerned that a MACT limit could be significantly less effective in limiting VOC emissions than BACT or LAER in many circumstances. A MACT emission limit may adequately control a toxic VOC but could result in emission increases of pollutants subject to NSR. For example, an incinerator installed to reduce a toxic VOC will increase nitrogen oxides (NO_X) emissions emitted to the atmosphere.

The EPA also has concerns with using Federal RACT limits to presumptively qualify a unit as a clean unit since RACT emission limits can be less stringent than LAER and BACT. Further, in some instances RACT is based on the attainment needs of the area and not a specific control technology standard. While EPA solicits comment on presumptively applying the clean unit exclusion test to units with Federal MACT or RACT limits, the EPA is not inclined to do so across the board. Rather, the EPA believes that MACT or RACT limits should be found to qualify for the Clean Unit exclusion using the case-by-case option described in section II.C.3.c.

*b. State Technology Programs Comparable to BACT or LAER.*There are many emissions units at stationary sources that were permitted according to a State's minor NSR permitting program. While these units were not subject to a major source BACT or LAER limit per se, they may have installed controls that would have satisfied major source BACT or LAER requirements at the time the permit was issued. For instance, several jurisdictions have control technology reviews as part of a State, local or tribal minor NSR program which requires new or modifying sources to meet emissions levels comparable to major source control technology requirements (BACT or LAER). For this reason, the EPA is proposing that permitting authorities may submit minor NSR control technology requirements for certification by the EPA that the minor NSR program requires control technology that would satisfy the requirements for the clean unit exclusion. See proposed §§ 51.165(a)(1)(v)(C)(*11*)(*ii*), 51.166(b)(2)(iii)(L)(*2*)(*ii*),

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increases for processes with rapidly changing and mixed feedstocks.

52.21(b)(2)(iii)(L)(*2*)(*ii*), and 52.24(f). Once determined by EPA to be comparable, all units subject to emissions limitation established under the jurisdiction's minor NSR program would be eligible for the clean unit exclusion for the first 10 years following issuance of the permit. This could also apply to permits that have been issued previously under minor NSR technology requirements that are later determined to be comparable to major source BACT or LAER requirements. In such a case, the clean unit exclusion would apply to the unit covered by the minor NSR permit, and it would take effect once EPA makes the certification of comparability (i.e., the clean unit test would apply only to modifications taking place after the EPA certification of comparability). The clean unit test could apply to the qualifying unit for up to 10 years after issuance of the minor source permit. The EPA also solicits comment on whether a shorter period, such as 5 years, would be more appropriate.

The EPA also solicits comment on the appropriate standards for EPA to use in determining whether a permitting authority's minor NSR program control technology requirements are comparable to the BACT and LAER requirements. The EPA envisions that as a minimum a ''pre-certified'' minor NSR program comply with 40 CFR 51.160 through 164.[10]

c. Qualification of Units on a Case-By-Case Basis. In many cases an emissions unit not subject to major NSR is constructed or retrofitted with a control technology or strategy comparable to the best controls applied in practice. This may occur when a source minimizes emissions in order to ''net'' a unit out of major NSR or applies controls to comply with other provisions of the Act. For this reason, the EPA's proposed regulations would allow a source having a limit on an emissions unit determined to be comparable to BACT or LAER for the particular unit considering cost and benefits of additional or modified controls, including retrofit cost and benefits to qualify for the ''clean unit'' exclusion on a case-by-case basis. Specifically, an existing unit which has not undergone a BACT or LAER determination or comparable State technology requirement can also qualify as a ''clean unit'' if, in the informed judgment of the permitting agency, a current BACT or LAER determination for the unit would not be expected to result in any lower level of emissions from the unit for the pollutant in question. The costs, benefits and technical consideration associated with the retrofit application of additional controls to the particular unit may be considered by the permitting agency in the evaluation. Since this in effect may require the permitting authority to engage in a technology review that is similar to BACT or LAER review in order to qualify a unit for this exclusion, the EPA is asking for comment on other approaches for qualifying units.

Once a permitting authority makes this determination through a process involving notice and opportunity for public comment, the unit would be eligible for the clean unit exclusion for the next 5 years. As with the other types of proposed clean unit exclusions, EPA requests public comments on the proposed exclusion eligibility period. See proposed §§ 51.165(a)(1)(v)(C)(*11*)(*iii*), 51.166(b)(2)(iii)(L)(*2*)(*iii*), 52.21(b)(2)(iii)(L)(*2*)(*iii*), and 52.24(f).

The EPA solicits comments on several other alternative bases upon which a permitting authority could take to make the determination that a unit has a comparable BACT or LAER emissions limitation. The first would be based on an average of BACT or LAER for equivalent or similar sources over a recent period of time (e.g., most recent 3 years). The second would be based on the unit's control level being within some percentage (e.g., 5 or 10 percent) of the most recent, or average of the most recent, BACT or LAER levels for equivalent or similar sources. The EPA solicits comment on these approaches and on the general issues concerning whether and how EPA should impose a specific methodology for determining that a specific emissions limit is ''comparable'' to the BACT or LAER limit that would result from a major source review.

For all of the above tests, the EPA realizes that there are many source and emission unit categories for which BACT or LAER determinations do not exist, let alone recent determinations. For these sources, the EPA proposes that their level of control be gauged against the control level associated with BACT or LAER for emission units with similar emission stream characteristics. Since this in effect requires the permitting authority to engage in a BACT or LAER review in order to qualify a unit for this exclusion, the EPA is asking for comment on other approaches for qualifying units.

States are encouraged to use the permitting process required by title V of the Act as the vehicle for determining and recording which units at a title V source can qualify for this exclusion.[11] The permitting authority could use the title V permit issuance, revision or renewal process as the mechanism for making the case-by-case determination (so long as the opportunity for public comment is provided). For convenience, one, many or all units at a source could be reviewed and subjected to public notice and comment concurrently with the issuance or renewal of a title V operating permit. For units eligible for the ''clean unit'' exclusion due to a prior NSR BACT or LAER determination, or a determination under a program found comparable by EPA, the title V permit offers the opportunity to clearly set forth the status of the unit under the clean unit exclusion. Qualifying clean units and the pollutant for which the determination was made should be clearly identified and listed in the title V permit as ''clean units'' for NSR purposes.

Under this proposal, a unit that does not initially qualify for the clean unit exclusion could install controls meeting the criteria the EPA establishes for well-controlled units and thereby qualify to use the exclusion. The controls or pollution reduction strategy that are the basis for the clean unit determination must be in place and federally enforceable at the time the source relies on an exclusion under this provision. So long as these federally enforceable conditions are met, the source is free to make any change at the permitted unit including those which could affect a unit's efficiency, capacity, availability, longevity and utilization. However, changes which would compromise the original emissions unit's BACT or LAER control level or air quality impact (e.g., modified stack parameters which would cause or contribute to violation of any applicable ambient standard, replacement of the unit with a different type or size of unit, or reconstruction of the unit) would not be allowed. Also,

[10] In a separate rulemaking EPA has proposed revising the public review and comment requirements at 40 CFR 51.161 to give States more flexibility in processing minor source permits for projects that are determined to be ''less environmentally significant.'' Certain minor source actions, e.g., netting, that in effect shield a source from major source permitting requirements would not qualify for less environmentally significant status. See 60 FR 45529, 45549 (August 31, 1995).

[11] While rules implementing title V address how the unit's major NSR permit and BACT or LAER limit are incorporated into the title V permit, it is not clear that the status of a unit as a NSR clean unit would be included in the title V permit as an applicable requirement. Whether the status of a unit as a NSR clean unit presumption is an applicable requirement in the title V permit will likely depend upon how the clean unit test is adopted by the permitting authority (e.g., adopted as a SIP requirement). The EPA solicits comment on the best approach for implementing and coordinating the review and designation of clean units with the title V permit process.

for units excluded from major NSR under this proposed revision, the physical or operational change must still comply with all otherwise applicable Act and SIP requirements including any federally enforceable limits on emissions or operations and minor NSR requirements.

Finally, the determination that a unit is ''clean'' or ''well-controlled'' under this proposal is an applicability test and is independent from the case-by-case determination of BACT or LAER for sources subject to major NSR. While control technology which qualifies a unit as ''clean'' may be ''comparable'' to BACT or LAER for a particular unit considering its unique circumstances, it is not necessarily equal to BACT or LAER for that unit when considered as part of a new major facility or major modification, and in no way establishes a presumptive BACT or LAER for that unit, source type or category. Further, a 5- or 10-year presumption that a unit is ''clean'' does not in any way ''freeze'' BACT or LAER determinations in permitting actions. The Act requires that BACT and LAER be current determinations for sources subject to major NSR and the clean unit designation does not override this determination.

4. Description of the Clean Facility Proposal

Similar to the clean unit exclusion, EPA is proposing an exclusion for changes at clean facilities. This ''clean facility'' exclusion will allow States to exclude from major NSR, proposed changes to an existing major stationary source that has undergone major NSR for the entire source within the last 10 years. See proposed §§ 51.165(a)(1)(v)(C)(*11*), 51.166(b)(2)(iii)(M), 52.21(b)(2)(iii)(M), and 52.24(f). Under this exclusion, a major source can make any change as long as the source would still be in compliance with its major NSR permit. The EPA envisions this to allow any changes that do not include adding new units or allowing emissions trades that were not evaluated for air quality impacts in the major NSR permit. The exclusion would, however, allow a source to replace or reconstruct existing units so long as they continue to meet the emissions limitations established in the permit. Thus, such replacement or reconstruction would not result in a different type of emissions unit than envisioned and covered by the major NSR permit and its requirements. The addition of new emissions units would not be allowed under the proposal because such changes would not be consistent with the existing NSR permit. However, all other changes consistent with the terms of the major NSR permit would not be considered a ''physical or operational change'' for the purposes of major NSR applicability. Similarly, emissions trades may not be permissible where a different air quality impact would result since the PSD or NSR permit might limit such differing impacts.

As proposed, a clean major stationary source is one that underwent NSR within the last 10 years. The EPA requests comment on this approach and specifically on whether this proposed approach should not allow units or facilities to be replaced or reconstructed.

D. Revision to the Netting Baseline

This preamble describes and solicits comment on a new method for determining an existing source's baseline emissions for purposes of determining whether a physical or operational change will cause an increase in emissions and trigger NSR.

1. Introduction

As discussed, in order to determine whether a physical or operational change will result in an increase in emissions, it is necessary to compare a source's emissions before the change (its baseline emissions) with its emissions after the change. The EPA's existing regulations generally define baseline actual emissions as ''the average rate, in tpy, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation.'' See, *e.g.*, existing § 52.21(b)(21)(ii). The Administrator ''shall'' allow use of a different time period ''upon a determination that it is more representative of normal source operation.'' Id. Prior to the WEPCO rule, EPA historically used the 2 years immediately preceding the proposed change to establish the baseline. (See 57 FR 32323.) However, in the WEPCO rule, EPA adopted a ''presumption'' that utility sources could use any 2-year period out of the preceding 5 years.

During the CAAAC Subcommittee deliberations, there was considerable interest in the issue of the proper baseline. For instance in the automobile industry, where low utilization rates have persisted at some plants for several years, EPA's baseline presumptions have the effect of leaving plant managers with the choice of surrendering capacity (that would not be considered representative of normal operations under the current NSR rules) or taking the time and expense to secure a major NSR permit for even small, non-excluded changes to a portion of the plant.

Provisions in the existing regulations which, at the discretion of the permitting authority, allow the use a different, ''more representative,'' period have not alleviated the problem in the view of many Subcommittee members. As with other aspects of current netting rules, establishing representative baseline periods other than the 2-year period preceding the proposed change can be complex and time-consuming, and often involves disputed judgment calls.

Several industry applicability proposals included changing to a netting baseline that allows sources to use the highest year or 12 consecutive months out of the previous 10 years. Generally, the participating State air pollution management officials favored this increase in flexibility. Some of the environmental group representatives also recognized that the existing baseline approach has the impact of taking away ''used and useful'' capacity and that a longer baseline period would be appropriate. On the other hand, some participants were concerned that the test for determining a net emissions increase take into account not only annual emissions levels but short-term levels as well. The proposal outlined below addresses these concerns.

2. Description of Proposed Netting Baseline

The EPA is today proposing to extend the time period for determining baseline in the definition of actual emissions to 10 years for all source categories and to allow sources to base their actual emissions on the highest consecutive 12 months during this 10-year period. See proposed §§ 51.165(a)(1)(xii)(b), 51.166(b)(21)(ii) and 52.21(b)(21)(ii). As described below, in nonattainment areas and ozone transport regions, the EPA proposes that the 12-month period begin on or after November 15, 1990 to be consistent with the area's emissions inventory and attainment plan requirements. See proposed § 51.165 (a)(1)(xii)(B). In addition, this proposal would replace the any 2-years-in-5 baseline established as a presumption for utilities in the WEPCO rulemaking and would be available for all source categories, subject to the restrictions discussed below. See, *e.g.*, existing § 51.166(b)(21)(v).

The EPA's intent is to allow sources to determine applicability based on their highest level of utilization and not necessarily their highest emissions rate. The emissions rate of units at issue may be subject to any number of current Federal or State restrictions (e.g., RACT,

MACT, BACT, LAER, NSPS, national emission standard for HAP (NESHAP)) as well as voluntary limits (e.g., reductions used for netting, offsets, Emission Reduction Credits creation) and these limits may have been imposed since the time the source achieved its highest emissions level. Therefore, these limits must be included in establishing the baseline emissions. For this reason, the EPA is today proposing that sources calculate the baseline by using their current emissions factor in combination with the utilization level from the 12-month time period selected. This safeguard insures that no significant loss of environmental protection will result from the proposed change.

Under the proposed provision, EPA also would limit the new baseline in nonattainment areas and ozone transport regions to no sooner than the enactment date of the 1990 Amendments, November 15, 1990. The 1990 Amendments included a number of changes in how emissions are to be inventoried and tracked, particularly in nonattainment areas and ozone transport regions. The changes strengthen reasonable further progress tracking requirements, offset limitations and RACT requirements for nonattainment areas and establish enhanced emissions inventory requirements for all areas. The EPA believes that allowing baselines prior to the 1990 Amendments may complicate and impede State and local efforts to track and reduce emissions from a 1990 emissions baseline which in many cases may be lower than pre-1990 emission levels. Therefore, the EPA is proposing to limit use of an expanded baseline in nonattainment areas and ozone transport regions to a period of time no earlier than November 15, 1990 and no greater than 10 years, whichever is more restrictive. This means that sources in nonattainment areas would not be able to utilize a 10-year look back until November 15, 2000.

In attainment/unclassifiable areas, use of pre-1990 emission baselines would also pre-date general emission inventory and reporting requirements of the 1990 Amendments which are expected to improve recordkeeping and inventory maintenance by State and local agencies. Unlike nonattainment areas and ozone transport regions, however, these inventory and data requirements are not directly linked to the PSD requirements. Therefore, the EPA sees no clear reason why the use of a 10 year look back should be limited to after November 15, 1990 in attainment/unclassifiable areas. However, EPA solicits comment on this issue for both attainment/unclassifiable areas and nonattainment areas.

It is the EPA's experience that many sources keep accurate records on emissions or operations for only 3 to 5 years, unless expressly required to do so for a longer period. A number of State and local permitting authorities have similar experiences. Thus, the EPA has reservations concerning the use of 10-year, and longer, baselines and solicits comment on whether a shorter (e.g., 5-year) period would be more appropriate. In addition, if the EPA adopts a 10-year look back period, the EPA also proposes that such period be available only when adequate emissions and/or capacity utilization data are available for the baseline calculation. The EPA solicits comment on the need to condition the use of such periods upon the accuracy and completeness of available data, and the need to establish specific criteria, through guidance or otherwise, for accuracy, completeness and recordkeeping when using older data.

As noted, the EPA's existing regulations provide that the source may seek to use another time period outside the 2 preceding years upon a finding by the permitting authority that this other period is ''more representative'' of normal source operations. See existing §§ 51.165(a)(1)(xii)(B), 51.166(b)(21)(ii), 52.21(b)(21)(ii), and 52.24(f)(13)(ii). This provision has been a source of confusion and uneven implementation. The EPA therefore proposes to eliminate this provision. In other words, if the EPA were to adopt a 10-year look back, a source may simply choose the highest consecutive 12-month period of utilization within the 10 years prior to a proposed physical or operational change (but not before November 15, 1990 in ozone transport regions and nonattainment areas). Neither the permitting authority nor the EPA will retain any discretion to allow a time period outside this extended range.

The EPA also solicits comment on how this proposed extension of the emissions baseline for netting may interact with the statutory requirements in section 182 (c) and (e) of the Act applicable in serious, severe and extreme ozone nonattainment areas. Section 182(c) (6), (7) and (8) of the Act provides special rules for modifications at major sources in serious and severe ozone nonattainment areas including an aggregation of all net increases in emissions from a source over 5 consecutive calendar years. Section 182(e)(2) of the Act governs applicability of NSR to modifications in extreme ozone nonattainment areas requiring any change that results in any increase in emissions from a discrete operation or unit to be subject to major NSR. While the determination of the emissions baseline is somewhat independent of the actual netting calculation, clearly the proposed new baseline can affect netting transactions and may be in tension with the design and intent of these statutory provisions.

This proposal does not extend the current 5-year contemporaneous period for considering increases and decreases for netting. See, *e.g.*, existing §§ 51.165(a)(1)(vi)(B), 51.166(b)(3)(ii), 52.21(b)(3)(ii), and 52.24(f)(6)(ii). While this proposal would allow a 10-year look back from the activity under review to determine baseline emissions, any contemporaneous increases and decreases must occur within the 5-year window to be applicable for netting. The EPA solicits comment on the effect of the differing look back and contemporaneous periods and any reasons why these periods should be consistent, over either 5 or 10 years.

3. Protection of Short-term Increments and NAAQS

In discussions of a longer baseline, environmental group representatives linked any change from the existing baseline with the adoption of safeguards for short-term NAAQS and PSD increments.[12] These representatives suggested that the current netting analysis be changed to require a source to go through major NSR when there is a net increase in short-term (e.g., hourly, daily, weekly or monthly, depending on the emission tracking capability of the source) emissions when past actual emissions are represented by the highest short-term emissions in the previous year. This step could provide assurances that peak emissions, which could cause violations of short-term NAAQS, would not be allowed to increase without major NSR. Some applicability subgroup members argued that the short-term test should be an air quality screening test rather than an NSR applicability trigger.

The EPA carefully considered the possibility of adding a short-term ''increase'' test to the netting calculation; however, ultimately decided against this in the proposal for two reasons. First, the EPA is concerned that a test that relies on a source's highest short-term actual emissions would be too easy to circumvent. For a short time, sources can run at maximum capacity so that the baseline short-term emissions would likely be nothing less than the source's maximum potential emissions.

[12] The PSD increments are explained in section IV.B.1.

Moreover, the EPA is not sure that limiting the source to its highest past short-term emissions level will necessarily provide any additional protection to NAAQS, increments or Class I AQRV. The current regulations already restrict the creditability of some decreases in emissions where the overall netting transaction could jeopardize air quality. In particular, a provision in the definition of ''net emissions increase'' allows credit for a reduction only to the extent that it has approximately the same qualitative significance for public health and welfare as the increase from the proposed change. See, existing §§ 51.165(a)(1)(vi)(E)(*4*), 51.166(b)(3)(vi)(*c*), 52.21(b)(3)(vi)(*c*), and 52.24(f)(6)(v)(*d*). In a June 28, 1989, rulemaking (54 FR 27286) EPA clarified that aspect of the regulations to require that, despite the absence of a significant net increase in emissions, an applicant proposing to net out of review must demonstrate that the proposed netting transaction will not cause or contribute to an air quality violation before the emissions reduction may be credited.

To ensure that the change to a netting baseline based on the highest 12 consecutive months out of the last 120 consecutive months does not adversely impact short- (or long-) term ambient standards, the EPA is proposing to clarify the regulations by requiring that, to be creditable for netting purposes, an emissions reduction must be sufficient to prevent the proposed increase from causing or contributing to a violation of any NAAQS or PSD increment and must not have an adverse impact on AQRV (including visibility) of Class I areas.[13] See proposed §§ 51.165(a)(1)(vi)(E)(*4*), 51.166(b)(3)(vi)(C), 52.21(b)(3)(vi)(C) and 52.24(f). As discussed above, this requirement is inherent in the EPA's current regulations and, therefore, should already be part of any netting analysis.

E. Pollution Control Project Exclusion

The 1990 Amendments are stimulating a vast number of sources in the country to undertake pollution control and pollution prevention projects during the next few years. As a result, most stakeholders urged EPA to clarify the applicability of major NSR requirements to pollution control and pollution prevention projects. The EPA has previously adopted a limited exclusion for pollution control project undertaken by utilities as part of the 1992 WEPCO rulemaking. See 57 FR 32314. Based on the stakeholder deliberations, EPA issued policy guidance which covered all other source categories and which excluded qualifying pollution control projects from major NSR.[14] Today, EPA proposes to replace both the WEPCO exclusion and the policy guidance with a single comprehensive regulatory exclusion for all types of pollution control projects (including add-on controls, switches to less-polluting fuels, and pollution prevention projects). The proposed exclusion is designed to minimize procedural delays while still ensuring appropriate environmental protection (i.e., that a project be allowed not cause or contribute to a violation of a NAAQS or PSD increment and not adversely impact on the AQRV of Class I areas).

While this proposal was modeled after the WEPCO exclusion, it contains several significant changes reflecting the fact that the WEPCO exclusion was limited to a single source category and covered only a small, finite set of pollution control projects specific to utility units. In contrast to the WEPCO exclusion, this proposal reflects the more complex task of addressing a vast array of pollution control and pollution prevention projects at a variety of sources facing numerous Federal, State and local environmental requirements. Specifically, this proposal:

- Provides a much broader definition of ''pollution control project'' than that adopted in the WEPCO rule and includes, unlike the WEPCO rule, pollution prevention projects;
- Deletes the requirement that add-on controls and fuel switches be subject to an ''environmentally beneficial'' test; instead only pollution prevention projects are subject to this additional safeguard;
- Incorporates the safeguard that no project, whether an add-on control, a fuel switch, or pollution prevention, can result in an increase in actual emissions that will cause or contribute to a violation of a NAAQS or PSD increment, and extends the policy to protection against adverse impacts of AQRV in a Class I areas.[15]

The EPA encourages commenters to address EPA's proposed decision to supersede the WEPCO pollution control project exclusion with a single exclusion applicable to all types of sources. Specifically, EPA invites comment on two alternative approaches: (1) In addition to today's proposed exclusion for all source categories, retain the WEPCO pollution control project exclusion for utilities only or (2) in lieu of the comprehensive exclusion proposed today, extend the WEPCO pollution control project exclusion to all source categories.

1. Background

In the WEPCO rulemaking, the EPA amended its PSD and nonattainment NSR regulations as they pertain to utilities by adding ''the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit'' to the list of activities excluded from major NSR applicability. See, *e.g.*, existing § 51.166(b)(2)(iii)(*h*). Because the WEPCO rulemaking was directed only at the utility industry, the EPA limited the types of projects eligible for the exclusion to those types of controls typically associated with that industry, namely add-on controls and fuel switches to a less polluting fuel.[16]

The EPA built two safeguards into the exclusion in the WEPCO rulemaking. First, a project that meets the definition of pollution control project would nonetheless not qualify for the exclusion where the ''reviewing authority determines that [the proposed project] renders the unit less environmentally beneficial.'' See, *e.g.*, existing § 51.165(a)(1)(v)(C)(*8*). This provision is buttressed by a second safeguard that directs permitting authorities to evaluate the air quality impacts of a proposed pollution control project that the reviewing authority believes could result in a significant net increase in representative actual annual emissions of a criteria pollutant (id.; see also 57 FR 32322), since under no circumstances can a pollution control project cause or contribute to violation of a NAAQS, PSD increment, or visibility limitation.[17] See, *e.g.*, existing § 51.165(a)(1)(v)(C)(*8*)(*ii*); 57 FR 32322.

[13] The AQRV in Federal Class I areas are explained in section IV.

[14] July 1, 1994 memorandum from John Seitz, Director, OAQPS, ''Pollution Control Projects and New Source Review (NSR) Applicability''.

[15] The WEPCO rule refers specifically to ''visibility limitation'' rather than ''air quality related values.'' However, EPA clearly stated in the preamble to the final rule that permitting agencies have the authority to ''solicit the views of others in taking any other appropriate remedial steps deemed necessary to protect Class I areas * * *. EPA emphasizes that all environmental impacts, including those on Class I areas, can be considered * * *.'' *See* 57 FR 32322. Further, the statutory provisions in section 165(d) of the Act plainly are intended to protect against any adverse impact on AQRV in such Class I lands (including visibility). Based on this statutory provision, EPA believes that any air quality assessment for a pollution control project should consider impacts on visibility and any other relevant AQRV for any Class I areas that may be affected by the proposed project.

[16] The definition also includes certain clean coal technology demonstration projects. See, *e.g.*, existing section 51.166(b)(2)(iii)(*i*) and (*j*). Today's proposal would not affect these applicability rules for certain clean coal technology projects that were codified in the WEPCO rulemaking.

[17] The WEPCO rule adds that when evaluating impacts the permitting authority may use that part

Subsequent to issuance of the WEPCO rule, EPA's July 1, 1994, policy guidance provided a limited pollution control project exclusion for other source categories on a case-by-case basis. The July 1994 guidance will remain in effect until the EPA takes final action on today's proposal.

2. Description of Proposed Exclusion of Pollution Control Projects

The EPA proposes to adopt for all source categories a pollution control project exclusion from the definition of ''physical or operational change'' within the definition of major modification. See proposed §§ 51.165(a)(1)(v)(C)(*8*), 51.166(b)(2)(iii)(H), 52.21(b)(2)(iii)(H), and 52.24(f). This proposed exclusion will shield these projects from being considered ''major modifications'' and subject to major NSR. As proposed, the exclusion encompasses add-on controls, switches to less polluting fuels and pollution prevention projects and is subject to one overarching safeguard first applied in WEPCO: that the proposed pollution control project cannot result in an emissions increase that will cause or contribute to a violation of a NAAQS or PSD increment. See 57 FR 32322. As discussed, while the WEPCO rulemaking also extended this prohibition to ''visibility limitations,'' EPA is proposing instead to focus the protection on AQRV (including visibility) in Class I areas. In addition, for pollution prevention projects, the permitting authority must find that the project is environmentally beneficial before such projects may qualify as a pollution control project.

a. Types of Projects Covered. (1) Add-On Controls and Fuel Switches. In the WEPCO rulemaking, EPA found that both add-on emissions control projects and fuel switches to less polluting fuels could be considered to be pollution control projects. Today's proposal affirms that these types of projects are appropriate candidates for the exclusion, but also greatly expands the types of add-on controls covered to include other control projects. See proposed §§ 51.165(a)(1)(xxv), 51.166(b)(31), 52.21(b)(31), and 52.24(f). These types of projects include:

—The installation of conventional and advanced flue gas desulfurization and sorbent injection for sulfur dioxide (SO_2);

—-Electrostatic precipitators, baghouses, high-efficiency multiclones, and scrubbers for particulate or other pollutants;

—Flue gas recirculation, low-NO_X burners, selective non-catalytic reduction and selective catalytic reduction for NO_X; and

—Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares and carbon absorbers for VOC and HAP.

Projects undertaken to accommodate switching to a less-polluting fuel, such as natural gas when the source is burning coal, would also qualify for the proposed exclusion. In some instances, where the emissions unit's capability would otherwise be impaired as a result of the fuel switch, this may involve certain necessary changes to the pollution generating equipment (e.g., boiler) in order to maintain the normal operating capability of the unit at the time of the project.

The EPA has also concluded that substitutions of less potent ODS for more potent ODS is environmentally beneficial and is therefore proposing that such substitutions be considered a pollution control project for PSD purposes. See proposed §§ 51.166(b)(2)(iii)(N) and 40 CFR 52.21(b)(2)(iii)(N). This proposed exclusion is described further in section VI.B.2. of this preamble.

(2) Pollution Prevention Projects. The EPA's policy is to promote pollution prevention approaches and to remove regulatory barriers to sources seeking to develop and implement pollution prevention solutions to the extent allowed under the Act. For this reason, the EPA proposes today to include in the definition of pollution control projects switches to inherently less-polluting raw materials and processes and certain other types of ''pollution prevention'' projects.[18] For instance, under these proposed regulations, VOC users who switch to water-based or powder paint application systems as a strategy for meeting RACT or switch to a non-toxic VOC to comply with MACT requirements, could qualify for this exclusion.

Accordingly, under this proposal permitting authorities would be allowed to consider excluding from major NSR raw material substitutions, process changes and other pollution prevention strategies where the proposed changes are determined to be environmentally beneficial as discussed below. See proposed §§ 51.165(a)(1)(xxv)(A)(*6*), 51.166(b)(31)(i)(F), 52.21(b)(32)(i)(F), and 52.24(f).

b. Safeguards. (1) General Applicability. For the purpose of this proposed exclusion, a pollution control project is an activity or project at an existing emissions unit where the primary purpose of such activity or project is the reduction of air pollutants subject to regulation under the Act at the emissions unit. See proposed §§ 51.165(a)(1)(xxv), 51.166(b)(31), 52.21(b)(31), and 52.24(f). The proposed exclusion would not be applicable to air pollution controls and emissions associated with the construction of a proposed new emissions unit. Consistent with the WEPCO rule and EPA's existing policy guidance the replacement of an existing emissions unit with a newer or different one (albeit more efficient and less polluting) or the reconstruction of an existing emissions unit would not qualify as a pollution control project. Similarly, the fabrication, manufacture or production of pollution control/prevention equipment and inherently less-polluting fuels or raw materials would not qualify as pollution control projects (e.g., a physical or operational change for the purpose of producing reformulated gasoline at a refinery is not a pollution control project under the proposed exclusion).

A point was raised to EPA that new pollution control technologies are likely to be developed over time that will meet the same criteria that technologies named above have met. Consequently, a process would be useful whereby any such new technology qualifies as a ''pollution control project'' when a history of performance has been established. The EPA is therefore proposing that a new technology which meets the following criteria should be considered eligible for a pollution control project exclusion: (1) It has been installed for the purposes of a pollution control project as defined in the regulation; (2) it has been demonstrated in practice; (3) it has been determined by the permitting authority to be environmentally beneficial. See proposed §§ 51.165(a)(1)(xxv)(A)(*7*), 52.21(b)(32)(i)(G), 51.166(b)(31)(i)(G), and 52.24(f).

The EPA solicits comment on extending the pollution control project

of any increase that exceeds an emissions level used for that source—if any—in the most recent air quality impact analysis in the area conducted for the purpose of title I.

[18] As defined in proposed sections, pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less-polluting raw materials, eliminates or reduces the release of air pollutants and other pollutants to the environment (including fugitive emissions) prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal [see Pollution Prevention Act of 1990, Pub. L. 101–508, section 6602(b) and section 6603(5) (A) and (B), 42 U.S.C. sections 13101(b) and 13102(5) (A) and (B); see also ''EPA Definition of 'Pollution Prevention,''' memorandum from F. Henry Habicht II, May 28, 1992].

exclusion to new qualifying technologies and the qualification criteria. Specifically, EPA requests comment on whether control technologies, other than those listed above and at §§ 51.165(a)(1)(xxv)(A)(*1*) through (*6*), 52.21(b)(32)(i) (A) through (E), and 51.166(b)(31)(i) (A) through (E) must be comparable in effectiveness to those listed technologies on a pollutant-specific basis in order to qualify for the exclusion contained under proposed §§ 51.165(a)(1)(xxv)(A)(*7*), 52.21(b)(32)(i)(G), 51.166(b)(31)(i)(G), and 52.24(f).

The EPA also solicits comment on whether applicability of the pollution control project exemption should be extended to ''cross media'' pollution control projects, and whether they should be required to meet the ''environmentally beneficial'' test.[19] To qualify for this exemption, as for all pollution control projects, a ''cross media'' pollution control project could not cause or contribute to a violation of any NAAQS or PSD increment or have an adverse impact on AQRV in a Class I area.

(2) The Cause or Contribute Test. A proposed pollution control project, or any physical or operational change, cannot result in an emissions increase that will cause or contribute to a violation of any NAAQS or PSD increment, or have an adverse impact on AQRV in a Class I area. See sections 110(a)(2)(C), 165, and 173 of the Act; see also 57 FR 32322–32323. To ensure that the proposed pollution control project exclusion does not have this proscribed impact, EPA is also proposing to adopt (with some changes) the air quality impacts safeguard currently in place for utility pollution control projects. See proposed §§ 51.165(a)(1)(v)(C)(*8*), § 51.166(b)(2)(iii)(H), § 52.21(b)(2)(iii)(H), and § 52.24(f).

It is possible that a pollution control project, while significantly reducing the emissions rate of a targeted pollutant, could still cause an increase in actual emissions of that or another pollutant at the source. This could occur either from the project causing collateral emissions (such as in the case of a VOC incinerator which causes NO_X emissions) or through a utilization change (where a project reduces an emission rate but increased utilization stemming from the project results in increased emissions of the same or other air pollutants). In either case, the emissions increases could cause or contribute to a violation of any NAAQS or PSD increment, or have an adverse impact on AQRV.

Under the WEPCO rule, permitting authorities can require a source to model its impacts whenever (1) the permitting authority has reason to believe that the proposed project would result in a significant net increase in actual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis; and (2) the permitting authority has reason to believe that such an increase would cause or contribute to a violation of any NAAQS or PSD increment or visibility limitation. If this analysis indicates that the increase in emissions will cause or contribute to a violation of any NAAQS or PSD increment, or result in either visibility limitation or impairment, the pollution control exclusion does not apply. See 57 FR 32322.

The EPA believes that such safeguard needs to be included in this proposal as well. Thus, where a pollution control project will result in a significant increase in actual emissions and the increased level has not been previously analyzed for its air quality impact and raises the possibility of a NAAQS or increment or adverse impact on an AQRV, the permitting authority would require the source to provide an air quality analysis sufficient to demonstrate that the impact of the project would not cause or contribute to a violation of any NAAQS or PSD increment, or have an adverse impact on AQRV. The EPA would not necessarily require that the increase be modeled, but the source must provide sufficient data to satisfy the permitting authority that the new levels of emissions will not cause or contribute to a violation of any NAAQS or PSD increment, and will have an adverse impact the AQRV in nearby Class I areas.

Since a significant increase in a nonattainment pollutant would be considered to contribute to the existing nonattainment problem, in the case of nonattainment areas the State or the source would be required under this proposal to mitigate (e.g, through offsets or SIP measures) any significant increase in a nonattainment pollutant resulting from the pollution control project. De minimis collateral emissions increases (e.g., less than 40 tpy of VOC in a moderate ozone nonattainment area) would not trigger such mitigation requirements. However, a de minimis increase may be subject to a State's minor NSR requirements.

(3) Determination of Increase in Emissions. The EPA is today proposing to use a representative actual annual emissions approach to determining whether a pollution control project will result in increased emissions. See proposed §§ 51.165(a)(1)(v)(C)(*8*), 51.166(b)(2)(iii)(H), 52.21(b)(2)(iii)(H), and 52.24(f). This is the methodology developed in the WEPCO rule and is explained in detail in that rulemaking. See 57 FR 32323. The use of this approach is premised on the EPA's experience and expectation that in most circumstances pollution control projects will not affect how the source is operated so that the calculation of whether a pollution control project will result in an emissions increase can be made through the simple comparison of pre-change and post-change emissions rates. Of course, where the permitting authority expects source operations to change, this methodology allows the post-change emissions to be projected based on the new operating levels. In the case of a pollution control project that will not affect utilization but collaterally increases a non-targeted pollutant, this proposal requires that the actual increase (calculated using the new emissions rate and current utilization pattern) must be analyzed to determine its air quality impact.

Although the EPA is supportive of pollution prevention projects and strategies, special care must be taken in classifying a project as a pollution control project and in evaluating a project under a pollution control project exclusion. Virtually every modernization or upgrade project at an existing industrial facility which reduces inputs and lowers unit costs has the concurrent effect of lowering an emissions rate per unit of fuel, raw material or output. Nevertheless, it is clear that these major capital investments in industrial equipment are the very types of projects that Congress intended to address in the new source modification provisions. See *Wisconsin Electric Power Co.* v. *Reilly*, 893 F.2d 901, 907–10 (7th Cir. 1990) (rejecting contention that the utility life-extension project was not a physical or operational change); *Puerto Rican Cement Co., Inc.* v. *EPA*, 889 F.2d 292, 296–98 (1st Cir. 1989) (major NSR was found to be applicable to a modernization that decreased emissions per unit of output). Moreover, projects which significantly increase capacity, decrease production costs, or improve product marketability may dramatically increase source operations. In these situations, the

[19] A ''cross media'' pollution control project could be defined as either a control technology or application to comply with limitations established under other Federal environmental laws (e.g., Safe Drinking Water Act or Clean Water Act) that results in emissions to the atmosphere. For example, to comply with an effluent limitation established under the Clean Water Act, a source chooses to install a control device that removes the pollutant from the wastewater stream and discharges it into the atmosphere. This type of pollution control project could qualify for the exclusion provide it is environmentally beneficial.

environment may or may not see a reduction in overall source emissions due to the project.[20] Nevertheless, the EPA believes that these types of projects may have other desirable environmental effects by reducing energy and raw materials consumption and minimizing waste by-products. Consequently, the EPA solicits comment on how to address pollution prevention projects that can be reasonably expected to result in a significant increase in emissions resulting from increased utilization of the affected emissions unit(s) where notwithstanding such increase an overall positive environmental benefit is evident. Specifically, where emissions are expected to increase significantly as a result of a pollution prevention project, should these types of projects be allowed to take advantage of this pollution control project exclusion?

3. The Environmentally Beneficial Test

The WEPCO rule also provided that, to qualify for exclusion, a pollution control project cannot render the unit less environmentally beneficial. For the proposed list of pollution control projects and for fuel switches to a less-polluting fuel, EPA is satisfied that the overall impact on the environment of these projects is beneficial and that, consequently, such projects are desirable from an environmental perspective. These are the very types of pollution controls that have historically been applied to new and modified major and minor sources for the purpose of reducing emissions based on known and permissible environmental effects. Inherent in their historic use has been the basic understanding that from an overall environmental perspective the use of such controls is acceptable. The EPA has no reason at this time to doubt the validity of this presumption when such controls are applied to existing sources in a manner consistent with standard and reasonable practices.[21] Consequently, as part of the exclusion for pollution control projects, EPA's proposal would not require an overall environmental impact test for the listed pollution control projects. See proposed §§ 51.165(a)(1)(xxv)(A) (1) through (5), 51.166(b)(31)(i) (A) through (E), 52.21(b)(31)(i) (A) through (E), and 52.24(f).

However, the EPA proposes to retain the environmentally beneficial standard for pollution prevention projects. See proposed §§ 51.165(a)(1)(xxv)(A)(*6*), 51.166(b)(31)(i)(F), 52.21(b)(31)(i)(F), and 52.24(f). Unlike the list of pollution control projects described above for which the environmental impacts are known and EPA is satisfied that the projects will be environmentally acceptable, a project that may be acclaimed as a pollution prevention project may not be as well documented or substantiated as others and its effectiveness may depend on site-specific factors. Any project requesting a pollution prevention exclusion should be reviewed by the permitting authority to ensure that the project's overall impact on the environment is beneficial.[22] Once a particular kind of project has been demonstrated to be environmentally beneficial, the permitting authority could rely on this demonstration in evaluating subsequent applications for the same kind of project. A subsequent project could be presumed environmentally beneficial unless case-specific factors or impacts would indicate otherwise.

4. Procedural Safeguards

Nothing in current guidance or in this proposal voids or creates an exclusion from any applicable minor NSR preconstruction review requirement in any SIP that has been approved pursuant to section 110(a)(2)(C) of the Act and 40 CFR 51.160 through 164. See footnote 10. Accordingly, the EPA believes that a pollution control project qualifying for this proposed exclusion generally will be required by the applicable SIP to obtain a minor NSR permit prior to beginning construction. The EPA expects the minor NSR permitting process to be the mechanism by which the permitting agency reviews the pollution control project to ensure that the project design is consistent with standard and reasonable practices, determines if a significant net increase in representative actual emissions will occur and, if so, whether the resultant air quality or AQRV impacts are acceptable. See 57 FR 32322.

In addition, as discussed above, for a proposed project to qualify as a pollution control project the permitting agency must first determine that the project will be environmentally beneficial. The decision-making process should include documentation of the basis for a finding that a proposed pollution prevention project is environmentally beneficial. The EPA also solicits comment on the adequacy of these procedural safeguards and the need for any additional or alternative safeguards.

5. Emission Reduction Credits

In general, certain pollution control projects approved for an exclusion from major NSR could result in emission reductions which may serve as NSR offsets or netting credits. Under this proposal, credit may be given for all or part of the emission reductions equal to the difference between the pre-modification actual baseline emissions and post-modification PTE for the decreased pollutant provided that (1) the project will not result in a significant collateral increase in actual emissions of any criteria pollutant, (2) the project is still considered environmentally beneficial, and (3) all otherwise applicable criteria for the crediting of such reductions are met (e.g., quantifiable, surplus, permanent, and enforceable). Where an excluded pollution control project results in a significant collateral increase of a criteria pollutant, emissions reduction credits from the pollution control project for the controlled pollutant could still be granted provided, in addition to (2) and (3) above, the actual collateral increase is reduced below the applicable significance level, through either internal contemporaneous reductions or external offsets. However, neither the exclusion from major NSR nor any credit (full or partial) for emission reductions would be available where the type or amount of the emissions increase which would result from the use of such credits would lessen the environmental benefit associated with the pollution control project to the point where the project would not have initially qualified for an exclusion.

The EPA solicits comment on alternative methods for calculating emissions reduction credits, especially if the NSR applicability rules are revised.

[20] This is in marked contrast to the addition of pollution control equipment which typically does not, in EPA's experience, result in any increase in the source's utilization of the emission unit in question.

[21] The presumption that the listed projects are environmentally acceptable is premised on an understanding that such controls would be designed and operated in a manner consistent with standard and reasonable practices, (e.g., increases in collateral pollutants are minimized within the control's inherent design, no unacceptable increased risk due to the release of toxic pollutants would occur). Where a permitting agency determines that an otherwise listed project would not be constructed and operated in such a manner, then that specific project would not qualify as a listed project for the purpose of the exclusion.

[22] For example, a pollution prevention project which while decreasing emissions of a criteria pollutant results in an unacceptable increased risk due to the release of air toxics should not be considered environmentally beneficial. However, the EPA expects that many pollution prevention projects will be for the purpose of compliance with title III MACT requirements and by their nature will result in reduced risk from air toxics. Consequently, in judging whether a pollution prevention project can be considered environmentally beneficial, permitting authorities may consider as a relevant factor whether a project is being undertaken to bring a source into compliance with a MACT, RACT, or other Act requirement.

F. Proposed Plantwide Applicability Limitations (PAL)

The EPA today proposes a new applicability approach for existing sources under which a source, if authorized by a State in a SIP, may base its NSR applicability on a plantwide emissions cap, termed a plantwide applicability limitation (PAL). So long as source activities do not result in emissions above the cap level, the source will not be subject to major NSR. The voluntary source-specific PAL is a straightforward, flexible approach to determine whether changes to an existing major stationary source result in an emissions increase. In the NSR Reform Subcommittee deliberations, the PAL was viewed as an alternative that a plant manager could readily understand. Instead of a case-by-case assessment of whether a modification is excluded from major NSR, the manager knows that as long as the plant stays within its emissions cap, major NSR will not be triggered. Production units can be started and stopped, product lines reconfigured, and products changed and revamped without delay from major NSR.

In addition, the PAL approach should provide a valuable tool for managing a number of other Act requirements. For instance, a NSR PAL may also include terms that allow changes to be made without triggering minor NSR or which essentially preauthorize the minor NSR approval, as allowed by State law and the SIP. In fact, the EPA and the State of Oregon have been working with Intel to develop a NSR/title V permit that uses Oregon's plant site emission limit program, minor NSR pre-approval, pollution prevention, and synthetic minor limits on any HAP to create a flexible permit under title V, major NSR, and the State's preconstruction review program. Available information regarding this permit is in the public docket identified at the beginning of this preamble.

In short, EPA foresees the PAL option offering a number of advantages for industry, permitting authorities and the environment, including (1) increased operational flexibility and the ability to make timely changes to react to market demand; (2) certainty regarding the level of emissions at which a stationary source will be required to undergo major NSR (thereby eliminating the need to establish a baseline for each modification, calculate the contemporaneous increases and decreases, and determine whether the source qualifies under another exclusion or another emissions increase test); (3) a decreased permitting burden for the source and the permitting authority; (4) an incentive for source owners and operators to create room for growth under the cap by implementing pollution prevention and other pollution reduction strategies on existing emissions units; and (5) reduction of some of the ''paper'' emissions in the system, thereby creating additional room for growth for new and modified sources.

1. Background

Plantwide emissions limits for NSR applicability have been used in Oregon for many years and have been utilized by individual sources on a case-by-case basis. The state-wide applicability system in Oregon, known as the ''plant site emission limit'' program, bases major NSR applicability on an emission limit set for each major source in the State. When the program originated, the State capped sources at their actual emissions levels. New sources are capped at their NSR permitted level. During the NSR Reform Subcommittee deliberations, representatives from several companies with operations in Oregon briefed members on the advantages of the system for their firms. They focused on the flexibility afforded under the cap and their ability to expand operations and production without regulatory review.

During the NSR Reform Subcommittee deliberations, the EPA also developed and presented a voluntary, source-specific PAL approach, similar to that demonstrated by a Minnesota Manufacturing and Mining (3M) facility in St. Paul, Minnesota. This permit established a PAL which allowed 3M to make many changes to its facility without triggering NSR review. The source's baseline emissions were based on a level that was lower than past actual emissions but reflected most current actual emissions based on current operations with new controls. Since the 3M permit, EPA understands that other States (and sources) have experimented with the issuance of permits with emissions caps under EPA's existing regulations. Additional information on these approaches is contained in the docket for this proposal.

2. Description of the PAL Proposal

The EPA proposes to revise the NSR regulations to allow States to authorize PAL approaches on a voluntary source-by-source basis. Although a source-by-source PAL approach may be implemented in many situations under the current regulations, several PAL-related issues are not clearly addressed by the current regulations, policies, or practice. The EPA believes that regulatory changes would allow for more ease, clarity, and certainty in the implementation of a PAL approach. Accordingly, the EPA proposes to define PAL and PAL major modification. See proposed §§ 51.165(a)(1)(xxx) and (a)(1)(xxxi), 51.166(b)(44) and (b)(45), 52.21(b)(45) and (b)(46), and 52.24(f).

The EPA proposes to define ''plantwide applicability limitation'' as a federally enforceable plantwide emissions limitation established for a stationary source to limit the allowable emissions of a source to a level such that major NSR is not required for changes under that emissions limitation. The applicable emissions limitation must be established in a federally enforceable permit that includes all conditions needed to make the limitation practically enforceable. The EPA proposes to define a ''plantwide emissions limitation major modification'' as any emissions increase over the PAL, notwithstanding the general definition of ''major modification.''

The EPA proposes to add regulatory provisions that (1) allow the use of a PAL for applicability determinations for major modifications rather than the existing or proposed provisions, (see proposed §§ 51.165(a)(9)(i), 51.166(u)(1) and 52.21(x)(1)); (2) prescribe the basis for establishing a PAL and additional PAL terms and conditions, (see proposed §§ 51.165(a)(9)(iii), 51.166(u)(3) and 52.21(x)(3)); (3) describe control technology application when a source proposes a PAL major modification, (see proposed §§ 51.165(a)(9)(iv), 51.166(u)(4) and 52.21(x)(4)); (4) describe public notice and comment procedures for establishing a PAL, (see proposed §§ 51.165(a)(9)(ii), 51.166(u)(2) and 52.21(x)(2)); (5) describe the process for periodic reevaluation of a PAL, (see proposed §§ 51.165(a)(9)(v), 51.166(u)(5) and 52.21(x)(5)); and (6) describe additional conditions that would ensure a PAL remains protective of air quality while providing flexibility for source operations, (see proposed §§ 51.165(a)(9)(iv)(A), 51.166(u)(4)(i) and 52.21(x)(4)(i)).

3. Discussion

The EPA has determined that the voluntary source-specific PAL is a practical method to provide both flexibility and regulatory certainty to many existing sources, as well as benefits to permitting authorities, while maintaining air quality. Accordingly, the EPA today proposes to revise its NSR regulations to provide for this approach as a voluntary source-specific

option that States may adopt in their SIP.

The regulatory proposal allows PAL to be established for existing major stationary sources in PSD areas, and for proposed and existing major stationary sources in nonattainment areas. In all cases, the EPA is proposing that the PAL be established through a public participation process consistent with the requirements at 40 CFR 51.161, and with a public comment period of at least 30 days. See proposed §§ 51.165(a)(9)(ii), 51.166(u)(2) and 52.21(x)(2).

The EPA considered a number of regulatory options addressing new and existing sources in both areas and is requesting comment on emissions levels for PAL for both areas. The EPA believes that the proposed PAL regulatory provisions offer the best approach for both proposed and existing major stationary sources located in nonattainment areas and existing major stationary sources in attainment/unclassifiable areas. In PSD areas, the ''Clean Facility'' exclusion offers the best flexibility for new major stationary sources. Certainly, when a facility cannot exercise the clean facility exclusion either because its permit is older than 10 years or because a change is not consistent with the PSD permit, it will have historic emissions of at least 2 years upon which to establish a PAL.

A permitting authority may choose to adopt an area-wide PAL approach, rather than a voluntary source-specific approach, so that all major sources in the entire area, designated as nonattainment or attainment/unclassifiable for a given pollutant, would have a PAL. Area-wide PAL approaches would be options for States and not mandatory for any area under this proposal. The EPA seeks comment on area-wide PAL approaches in light of the source specific voluntary criteria in this proposal and requests comment on other criteria or minimum requirements for area-wide PAL approaches. The EPA also seeks comment on whether States adopting an area-wide PAL system should be allowed to establish PAL at levels higher than actual emissions.

The EPA proposes that once a PAL's is established for a facility, the source may make any physical or operational changes at the facility as long as its emissions remain under the PAL. Under the proposal, for a source to increase emissions over its PAL, whether or not in connection with a physical or operational change, it must first undergo major NSR. The EPA proposes to provide that emissions levels set by the PAL may be reevaluated periodically, consistent with the title V permitting and public participation process, to review the need for revisions. The EPA also proposes to require that the PAL must be federally and practicably enforceable and therefore must be incorporated into federally enforceable permits containing compliance methods and monitoring requirements.

a. PAL Levels. The EPA proposes that a PAL be based on plantwide actual emissions, including a reasonable operating margin less than the applicable significant emissions rate, for existing sources or on a level established pursuant to recent (within the preceding 5 years) major nonattainment NSR where the source-wide levels were completely offset and relied upon in an EPA-approved attainment demonstration. See proposed §§ 51.165(a)(9)(iii), 51.166(u)(3) and 52.21(x)(3). The EPA requests comment on alternatives for establishing a PAL, including (1) Actual emissions, as defined in existing § 51.166(b)(21)(ii); (2) actual emissions, as defined in proposed § 51.166(b)(21)(ii); (3) actual emissions with the addition of an operating margin greater than the applicable significant emissions rate; (4) for a new stationary source, limits established pursuant to review of the entire facility under PSD, and (5) for nonattainment pollutants (in nonattainment areas), any emissions level completely offset and relied upon in an EPA-approved State attainment demonstration plan, even when the source has not recently received a major NSR permit.

b. Options for Permitting Authorities. The proposal would incorporate the PAL approach into the NSR rules by adopting new PAL provisions in §§ 51.165, 51.166, and 52.21. A number of new provisions have been developed to specify the requirements of using a PAL approach. The EPA requests comments on these provisions which are described in more detail below.

The proposed rules allow the use of a PAL for NSR applicability in lieu of the applicability provisions in § 52.21. See proposed § 52.21(x). Similarly, revisions to §§ 51.165 and 51.166 are proposed to provide an alternative applicability approach that States may adopt into SIP to facilitate use of voluntary source-specific PAL. See proposed §§ 51.165(a)(9) and 51.166(u). Under the proposed PAL rules, States may choose to adopt or accept delegation of PAL approaches to apply at sources only in lieu of otherwise applicable major NSR applicability rules, or to apply in lieu of both major and minor NSR requirements. When adopting the PAL approach, States may choose in their SIPs or delegation agreement to adopt the PAL approach on a limited basis. For example, States may choose to adopt the PAL approach only in attainment/unclassifiable areas, only in nonattainment areas, for specified source categories, or only for certain pollutants in these areas. States may also choose to allow the PAL approach only for sources with a record of existing emissions or normal operations for at least 2 years, in order to establish a PAL based on historical actual emissions.

c. Changes Under the PAL Approach. The EPA requests comment on several possible scenarios involving changes under the PAL approach. First, under this proposal, facilities that wish to increase source-wide emissions over the PAL would trigger major NSR. See proposed §§ 51.165(a)(9)(iv)(B), 51.166(u)(4)(ii) and 52.21(x)(4)(ii). In some instances, the increase will result from the addition of a new unit or physical or operational change to an existing unit. Clearly, the units associated with the increase would be reviewed for control technology, BACT or LAER, air quality impact modeling, and emissions offsets, if applicable. However, the EPA raises for consideration the situation where a source may wish to increase emissions above the PAL as a result of an increase in an overall plant production rate. In this case, it may not be obvious which units would have to apply BACT or LAER. As proposed, a PAL major modification would require BACT or LAER for each pollutant limited by the PAL which will be increased. Thus, BACT or LAER would apply to each emissions unit that contributes to the emissions increase that occurs above the latest PAL. Id.

The EPA requests comment on how to apply the major NSR requirements to emissions increases that are not directly associated with a particular modification or physical change to an emissions unit. Major NSR could be applied to: (1) all modifications that have occurred under the PAL; (2) all modifications that have occurred under the PAL since the last PAL renewal; (3) all modifications that have occurred under the PAL in the last 5 years; (4) only those modifications that can be associated with the increase, as proposed by the source, or (5) the entire facility and BACT or LAER can apply where most appropriate, i.e, any uncontrolled units or the less controlled units.

In light of the benefits offered by this approach and the ability of the States to impose control technology requirements in SIP, the EPA requests comment on whether to require, for all new units

which net out of major NSR or for all new units added under a PAL, that States must impose some level of control technology, or similarly whether to require in the Federal regulations the application of a particular level of control technology.

d. Plantwide Applicability Limitation Review and Adjustments. The PAL, once included in a permit, may be adjusted for a number of reasons. Industry, regulatory agencies, and the public need to understand what adjustments to a PAL may be necessary, both on an immediate basis and during some periodic review cycle. The EPA requests comment on why, how, and when a PAL should be lowered or increased without being subject to major NSR. The need for adjustments would arise, for example, (1) Where technical errors have been made, or technical improvements have become available with regard to calculating past actual emissions or potential emissions or emissions factors; (2) when new requirements apply to the PAL pollutant, such as RACT or other SIP-required reductions [23]; (3) to account for the generation of offsets or permanent shutdowns where the State has the authority to remove permanent shutdowns from the emissions inventory after a certain time period; (4) when any changes (though consistent with the PAL) might cause or contribute to a violation of any NAAQS or PSD increment or would have an adverse impact on air quality related values; and (5) during periodic review, consistent with the title V permit renewal process of the appropriateness of emissions levels set in the PAL. A concern was raised in the NSR Reform Subcommittee discussions about the uncertainty that results from the State review and renewal of the PAL as well as any authority to adjust the PAL. It has been recognized that sources will want to maximize the room for growth under a PAL. If there are too frequent opportunities for a downward adjustment to the PAL, a source may be reluctant to accept a PAL for fear of losing allowable emissions through the State's ability to make adjustments.

This proposal requires adjustments to the PAL to incorporate new applicable requirements. See proposed §§ 51.165(b)(9)(v), 51.166(u)(5) and 52.21(x)(5). Nothing in this proposal prevents the State's PAL program from being more stringent by requiring adjustments in other circumstances such as those described above. In addition, the EPA solicits comments on the need for a specific provision that would require the PAL to be adjusted at any time to address any technical errors in the emissions calculations and other permit deficiencies when discovered by either the source owner or operator or the permitting authority after the permit has been issued.

e. Plantwide Applicability Limitations in Serious and Above Nonattainment Areas. The EPA also solicits comment on how a PAL will comply with section 182(c) and (e) of the Act which contains special provisions for modifications to major sources in serious, severe and extreme ozone nonattainment areas. For serious and severe nonattainment areas, depending on the baseline used to establish a PAL, a PAL may effectively assure that sources do not increase emissions (thereby changes under the PAL would not trigger these special provisions). This is because the PAL in an ozone nonattainment area would in most cases be based on actual emissions of the source and require any increase over the PAL to be subject to major NSR with no allowance for de minimis emission increases over the PAL. Thus, with these stipulations, the de minimis emissions rate (25 tpy) under section 182(c)(6) of the Act could not be exceeded without triggering major NSR. In extreme ozone nonattainment areas, section 182(e)(2) of the Act requires major NSR for ''any increase'' at any discrete operation or unit. In such areas a PAL may be problematic because it could allow for an increase at an emissions unit by a change under a PAL, although there would be no emissions increase of the source's PAL. The provisions of section 182(e)(2) appear to allow for a PAL provided that any increase at an emissions unit would impose a LAER emissions limit on that unit and the unit's increase in emissions would have to be ''internally offset'' within the source, which is in effect a 1.3 to 1 internal ''netting'' transaction. Thus a PAL in an extreme nonattainment area may have to be a ''declining value'' cap reducing at a rate that ensures sufficient ''internal offsets'' are undertaken to fulfill the requirements of section 182(e)(2) of the Act. The EPA welcomes additional comment on how a PAL may comport with the statutory requirements for modifications to major sources in these ozone nonattainment areas.

f. Air Quality Changes. Certain changes under the PAL, such as changes in effective stack parameters, can change a source's impact area, and must be assessed to demonstrate protection of NAAQS, increments, and AQRV. See proposed §§ 51.165(a)(9)(iv)(A), 51.166(u)(4)(i) and 52.21(x)(4)(i). The EPA requests comment on when modeling or other types of ambient impact assessments should be required for changes occurring under a PAL. Comments may also address the usefulness of existing guidance on similar issues (see e.g., June 28, 1989 Federal Register Notice addressing CMA (54 FR 27274) and the Emissions Trading Policy Statement (51 FR 43814)), and what should be done to protect AQRV in Class I areas.

G. Actual-to-future-actual Methodology

As previously discussed, the EPA explicitly limited the scope of the WEPCO rulemaking to one source category, i.e., electric utility steam generating units. In the final rule, however, the EPA indicated that it would ''consider the desirability of adopting for other source categories the changes to the methodology for determining whether a source change constitutes a modification'' in a subsequent rulemaking. See 57 FR 32333. In previous sections, the EPA discusses its proposals to adopt a new pollution control project exclusion applicable to all source categories and to replace its existing baseline regulations with a new provision, again applicable to all source categories. There remains the question of the ''future-actual'' methodology which allows a utility to use a prediction of its post-change actual emissions—excluding any increases in utilization caused by demand growth—to determine whether the change at issue will increase emissions over baseline levels.

The WEPCO rule was challenged by both industry and environmental petitioners. These challenges included a demand from some industries that EPA expand the WEPCO rule to all source categories and a demand from an environmental group that EPA abandon the rule or at least the demand growth exclusion. This litigation is now inactive pending the outcome of this rulemaking. Today, EPA proposes to allow use of the future-actual methodology for all source categories. See proposed §§ 51.165(a)(1)(xii)(F), 51.166(b)(21)(vi), 52.21(b)(21)(vi) and 52.24(f).

As discussed in section II.A. of this preamble, EPA proposes that States be given the choice of whether to retain in their SIP the current actual-to-potential test, or to adopt the actual-to-actual test for all source categories. Although EPA is also proposing the actual-to future

[23] Emissions reductions of HAP to meet MACT at emissions units under a PAL would generally not necessitate a downward adjustment to the PAL because the PAL is not designed to limit HAP. However, if MACT reductions are relied on in the SIP (e.g., VOC reductions in nonattainment areas used for RFP or attainment demonstrations) then the PAL needs adjustment downward.

actual test for the Federal permitting program in lieu of the current actual-to-potential test, EPA solicits comments on whether to retain the actual-to-potential test. In addition, EPA solicits comments on whether to leave the scope of the future actual methodology the same—available only for utility units or eliminating the methodology completely.[24] In addition, in regard to use of a future actual methodology, the EPA solicits comment on what changes if any should be made to the demand growth exclusion and the 5-year tracking requirement.

1. Background

As noted, the WEPCO rule in EPA's regulations prescribed a new methodology for determining whether a physical or operational change would result in a significant increase in emissions and therefore constitute a major modification. The rule provided that the post-change emissions level of a utility unit would be calculated using a projection of the unit's ''future actual'' emissions. The rule was limited to existing electric utility steam generating units and did not apply to the addition of a new unit or the replacement of an existing unit.[25]

Pursuant to the WEPCO rule, the future actual projection is the product of (1) the hourly emissions rate, which is based on the unit's physical and operational capabilities following the change and taking into account federally enforceable operational restrictions that would affect the hourly emissions rate following the change; and (2) projected capacity utilization, which is based on both the unit's historical annual utilization and all available information regarding the unit's likely post-change capacity utilization. See 57 FR 32323.[26] To guard against the possibility that significant unreviewed increases in actual emissions would occur under this methodology, the EPA provided in its final regulations that any utility which uses the ''representative actual annual emissions'' methodology to determine that it is not subject to NSR must submit annually for 5 years after the change sufficient records to demonstrate that the change has not resulted in an emissions increase over the baseline levels. See 57 FR 32325. To meet this requirement, utilities can use continuous emissions monitoring data, operational levels, fuel usage data, source test results, or any other readily available data of sufficient accuracy for the purpose of documenting a unit's post-change actual annual emissions. Where the change does not increase the unit's emissions factor, the utility may submit annual utilization data, rather than emissions data, as a method of tracking post-change emissions. Id. If, during the required 5-year tracking period, the unit's post-change actual emissions exceed its pre-change baseline level, the unit is then subject to NSR. Emissions increases which occur after the required 5-year tracking period are presumed not to be related to the earlier change.[27]

As discussed, the NSR regulatory provisions require that the physical or operational change must ''result in'' an increase in actual emissions in order to consider that change to be a modification. See also the discussion of the term ''modification'' in section II.B. of this preamble. In other words, NSR will not apply unless there is a causal link between the proposed change and any post-change increase in emissions. In the WEPCO rule, EPA clarified this provision in the context of modifications at electric utility generating units to exclude increases due to ''independent factors'' such as demand growth. The EPA stated that:

> where projected increased operations are in response to an independent factor, such as demand growth, which would have occurred and affected the unit's operations during the representative baseline period even in the absence of the physical or operational change, the increased operations cannot be said to result from the change and therefore may be excluded from the projection of the unit's future actual emissions. Conversely, where the increase could have occurred during the representative baseline period but for the physical or operational change, that change will be deemed to have resulted in the increase.

Thus, the promulgated regulatory provision excluded from the calculation of future emissions:

> that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

See, *e.g.*, existing § 51.166(b)(32)(ii).

The EPA explained that this provision allows demand growth to be excluded from the calculation of future emissions only ''to the extent it—and not the physical or operational change—is the cause of the emissions increase.'' See 57 FR 32327. On the other hand, any emissions increases attributable to a physical or operational change that ''significantly alters the efficiency of the plant * * * must be included in the post-change emissions calculations.'' See 57 FR 32327. Thus, the question of exclusion of independent factors, such as system-wide demand growth, is ''a question of fact which must be resolved on a case-by-case basis and is dependent on the individual facts and circumstances of the change at issue.'' Id.

2. Limitation of the WEPCO Rule to One Source Category

The EPA indicated in the WEPCO rule that it had ''high confidence'' that a workable ''future-actual'' methodology could be developed for the utility industry for all changes that did not involve construction of a new unit or the replacement of an existing unit. See 57 FR 32333. Specifically, the EPA pointed to several factors, including (1) a limited and technologically homogeneous source population; (2) oversight by State Public Utility Commissions that typically evaluate utility growth and utilization projections; and (3) requirements in title IV of the Act that mandate continuous emissions monitors (CEM) or other highly accurate methods for recording actual emissions, as well as special reporting requirements. In EPA's judgment, these factors meant that permitting authorities could make independent assessments of the likely post-change emissions and utilization rates of utility emissions units, and could track these predictions for the relevant period to ensure that the utility did not exceed its predicted level of emissions.

The EPA continues to view these characterizations as generally accurate. There are a relatively limited number of electric utility installations and, due to

[24] This discussion of the use of the future-actual methodology as an applicability test is separate from the proposed use of the methodology to project emission increases from pollution control projects in section II.E.

[25] A unit is considered replaced if it would constitute a reconstructed unit within the meaning of 40 CFR 60.15 (the NSPS test for ''reconstruction''). The EPA reasoned that since there is no relevant operating history for wholly new units and replaced units, it is not possible to reasonably project post-change utilization for these units, and hence, their future level of ''representative annual emissions.'' For other changes, past operating history and other relevant information provides a basis for reasonable projections. See 57 FR 32323.

[26] In projecting future utilization and emissions factors, the permitting authority may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title V of the Act. See 57 FR 32323, footnote 19.

[27] The permitting authority may require a longer period, not to exceed 10 years, where it determines that no period within the first 5 years following the change is representative of normal source operations. 57 FR 32325.

title IV and other regulatory programs, the EPA and State and local permitting authorities have extensive information on the type, fuel, size, and other characteristics of the electric generating units in operation. Most of the utilities operating these units are subject to regulatory oversight by a State Public Utility Commission (PUC) which regularly reviews growth patterns and utility strategies for meeting future electrical demand. Finally, as a result of title IV, most large utility units are now, or will be shortly, using CEM to demonstrate continuous compliance with many of the Federal and State requirements applicable to their units. Similarly, the EPA expects that most major sources in the country will be upgrading their monitoring and reporting capabilities due to the Act's monitoring and title V operating permit programs. Thus, these sources should also be able to provide the necessary documentation of their compliance with a post-change emissions prediction.

However, utilities remain the only source category where projections of demand and facility utilization are typically assessed by an independent regulatory agency (the State PUC) and are available to the public. Because of this, permitting authorities should be able to find independent data and assessments regarding current operations and costs for the utility unit subject to the change as well as projected data for the unit after the change. Similarly, the PUC should have made an assessment of future demand growth and utility plans to meet this increased demand so a permitting authority should be able to secure independent corroboration of utility claims in this area as well. Because this kind of information is typically not available for other source categories, the EPA is concerned about the basis permitting authorities would have to review projections for other source categories.

On the other hand, the 5-year tracking provision that was adopted in the final WEPCO rule makes the accuracy of the future projection subject to a safeguard that should guarantee the accuracy of the prediction for at least 5 years. This tracking period may be extended to 10 years where the permitting authority is concerned that the first 5 years will not be representative of normal source operation. See, *e.g.*, existing § 51.166(b)(21)(v). Even after this time period, the permitting authority may still consider whether a particular increase is ''caused'' by the change and thus results in an emissions increase subjecting the original change to major NSR. See 57 FR 32326. In proposing to expand the ''future actual'' methodology to all source categories, the EPA also solicits comment on the adequacy of these safeguards and whether the ''future-actual'' methodology should either be retained only for the electric utilities, or be eliminated entirely.

3. Issues Regarding the ''Future-actual'' Methodology

The EPA seeks comment on two specific parts of the WEPCO rule. First, the EPA solicits comment on whether a demand growth exclusion should be included, with or without changes. Second, the EPA solicits comment on whether the 5-year reporting provision is working as intended and whether it should be changed in any way.

As discussed, the WEPCO rule requires the permitting authority to exclude from the post-change emissions estimate, any increase in utilization that is unrelated to the particular change, ''including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.'' While this provision ''does not amount to a per se exclusion of demand growth from the emissions increase calculation'' (57 FR 32327), it may create confusion outside the utility area as to when demand growth increases may be excluded.

The WEPCO preamble is very clear that any increases at a unit that result from a change that significantly affects the efficiency of the unit must be included in the calculation of future actual emissions, although EPA declined to create a presumption that every emissions increase that follows a change in efficiency (at an utility electric generating unit) is inextricably linked to the efficiency change. Id. Indeed, where the proposed change will increase reliability, lower operating costs, or improve other operational characteristics of the unit, increases in utilization that are projected to follow can and should be attributable to the change. These factors are the very factors that utilities use to order the production dispatch of the various units in the system. The EPA believes that this approach has proven to be effective in distinguishing between demand growth and other factors that result in load shifting for utilities. Comment is requested on the experience to date with the use of the WEPCO demand growth exclusion.

Moreover, it is clear for other source categories that predictions of future demand and its impact on individual emissions units are far more complicated and uncertain. For consumer-driven industries, for instance, demand varies and presumptions regarding its size and source would be more speculative than in the utility industry. In most industries, the prediction of future-actual emissions would be left to the permitting authority for a case-by-case determination of whether the proposed change will cause any increase in emissions or whether all or part of any projected increases will be caused by independent factors. For this reason, EPA seeks specific comments on whether the demand growth exclusion should be (1) expanded to all source categories, (2) retained only for the electric utility sector, or (3) eliminated for all industries.

In addition, the EPA solicits comment on the 5-year tracking requirement which mandates that permitting authorities track projections of future actual emissions for the 5-year period following the change to insure the accuracy of such projections. The EPA believes that the mechanism is working as intended. However, the EPA invites the public to comment on this issue and the experience to date of applicability determinations making use of this safeguard.

H. Proposal of CMA Exhibit B

As part of the settlement of a challenge to the EPA's 1980 NSR regulations by CMA and other industry petitioners, the EPA agreed to propose (for public comment) and take final action on a methodology for determining whether a source has undertaken a modification based on its potential emissions. The exact regulatory language the EPA was to propose was set forth in Exhibit B to the Settlement Agreement, which is contained in the docket for this rulemaking. Under this methodology, sources may calculate emissions increases and decreases based on either the actual emissions methodology in the existing rules or the unit's potential emissions, measured in terms of hourly emissions (i.e., pounds of pollutant per hour). Sources could use this potential-to-potential test for NSR applicability, as well as for calculating offsets, netting credits and other emissions reductions credits.

The following discussion describes the proposed alternative in more detail and provides the EPA's preliminary assessment of this alternative.

1. Description of the Exhibit B Methodology

Exhibit B contains a series of revisions to the EPA's NSR regulations. These revisions are all designed to provide sources with the alternative of using their hourly potential emissions to determine baselines for NSR

applicability and other NSR purposes. First, Exhibit B would add the following exclusion to the definition of major modification:

A major modification shall be deemed not to occur if one of the following occurs: (a) there is no significant net increase in the source's PTE (as calculated in terms of pounds of pollutant emitted per hour); or (b) there is no significant net increase in the source's actual emissions.

Exhibit B would also delete all references to actual emissions in the definition of net emissions increase and adds language indicating that all references to ''increase in emissions'' and ''decrease in emissions'' in the definition of ''net emissions increase'' ''shall refer to changes in the source's PTE (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.'' [28]

Other changes in Exhibit B modify the applicability baseline by eliminating the reference to the 2-year baseline period and to a method for determining actual emissions during the representative period.[29] Exhibit B also provides a methodology for determining if an increase in hourly emissions is significant.[30] Finally, Exhibit B provides express authorization for sources to use potential emissions in calculating offsets and in creating emission reduction credits.[31] Industry has championed the Exhibit B alternative because it would maximize the flexibility that a source has in calculating the net emissions increase due to a modification, which would exclude more physical and operational changes at existing sources from major NSR. The Exhibit B approach would also greatly simplify the task of tracking emissions increases and decreases because the level of operations and actual emissions would generally no longer be pertinent.

2. The EPA's Preliminary Analysis

The EPA has undertaken a preliminary analysis of the impact on the NSR program of Exhibit B changes. The EPA agrees that the Exhibit B alternative would provide maximum flexibility to existing sources with respect to determining if a significant net emissions increase would result from a physical change or change in the method of operation. The primary effect of an hourly potential test is to eliminate a source's level of operations as a factor when determining whether a proposed change will result in an increase. Past and future level of utilization of the source are completely disregarded, unless restricted in some way by a federally enforceable SIP or permit limit. Consequently, an existing source could make any change so long as the change does not significantly increase the source's hourly potential emissions rate. For instance, under this test, where a source has a widget maker with maximum hourly emissions of 10 pounds per hour, the source may make any changes it wishes to that machine so long as the hourly emissions rate remains at 10 pounds per hour or less.

Moreover under Exhibit B, an existing source could also use as netting credits a reduction in the hourly potential emissions rate at one emissions unit, even though that emission rate has never been actually realized, against an increase in the hourly potential emissions of a new or modified unit. Thus the widget maker could use credit for reducing the potential hourly emissions from a unit in the plant, even though it had never operated at that emissions level. This credit would allow the hourly emissions rate of the modified unit to increase to greater than 10 pounds per hour without subjecting the source to NSR.

While EPA agrees that the Exhibit B alternative would give a source maximum operational flexibility and reduce the administrative burden for source and permitting agencies, there is concern for the environmental consequences. For example, assume the emissions unit at the widget factory that is emitting 10 pounds an hour but has historically operated at 40 percent capacity due at first to operating cost, but with age, reduced efficiency and reliability. Under the Exhibit B alternative, the owner could modernize the unit, thus lowering the operating costs and increasing efficiency and reliability. This change will allow the owner to use the machine at much higher levels (e.g., more hours per day or week) than it had in the past. As a result actual emissions (measured in tpy) could more than double due to the increase in utilization even though hourly potential emissions remain the same.

Further, since Exhibit B would allow sources to generate netting credits and emission reduction credit (ERC) for offsets based on potential hourly emissions, even if never actually emitted, and unused operating capacity. The effect could be to sanction an even greater actual emissions increase to the environment without any review. Of particular concern are potential emissions levels, which may be consistent with older sources, whose impact have never been assessed.

For example, suppose an old ''grandfathered'' [32] source has an hourly PTE of 100 pounds per hour, which is well under the SIP allowable limits based on some other factor (e.g., process weight table). Unless there are more restrictive permit conditions, 8760 annual hours of operation are assumed, so its annual PTE is 438 tpy. Assume the process is old and inefficient, however, so the source over its life has averaged about 3000 hours of operation annually and emitted 150 tpy. Under Exhibit B, the difference, 278 tpy, is available as a netting credit. However,

[28] For example, Exhibit B calls for EPA to propose these changes to § 52.21 by deleting ''actual'' wherever it appears in paragraph (b)(3), except in paragraph (b)(3)(vi)(B) and adding a new paragraph (b)(3)(ix) to read as follows: ''(ix) For the purposes of this subsection, 'increase in emissions' and 'decrease in emissions' shall refer to changes in the source's potential to emit (as calculated in terms of pounds of pollutant emitted per hour) or in its actual emissions.''

[29] For example, Exhibit B calls for EPA to propose these changes by deleting the second sentence and the word ''2-year'' in the first sentence of existing paragraph (b)(21)(ii).

[30] Since EPA's ''significance levels'' are expressed in tons per year, Exhibit B called for any increase in a source's PTE (as calculated in terms of pounds of pollutant emitted per hour) to be extrapolated to a maximum annual emission rate in order to determine if it is significant. For example, exhibit B proposed to revise § 52.21(b)(23)(iv) by changing it to read as follows: ''A net emissions increase in a source's PTE (as calculated in terms of pounds of pollutant emitted per hour) is significant if that increase, as multiplied by 8760 and divided by 2000, exceeds the rates specified in subparagraph (i) above.''

[31] For example, Exhibit B proposed to revise § 51.165(a)(3)(i) to read as follows: ''Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection, the baseline for determining credit for emissions reductions is either (A) the PTE (as calculated in terms of pounds of pollutant emitted per hour) or (B) the actual emissions of the source from which offset credit is to be obtained'' and by deleting § 51.165(a)(3)(ii) (A) and (B) and renumbering the remaining paragraphs accordingly. However, this proposal on offsets may conflict with the 1990 Amendments. That is, section 173(c) of the Act requires that a source secure sufficient emissions reductions to assure that ''the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction * * * in the *actual emissions* of such air pollutants.'' (Emphasis added). Thus, offsetting emissions reductions (including emissions reduction credits used for offsets) must be calculated in terms of actual emissions.

The CMA Exhibit B also calls for EPA to propose language regarding the amount of offsetting emissions. The relevant passage requires offsets to ''represent (when considered together with the plan provisions required under section 172 of the Act) reasonable further progress (as defined in the plan provisions required under section 172 of the Act).'' The EPA views this proposed insert as merely a restatement of the requirements in sections 172 and 173 of the Act. This proposal could be added as § 52.21(a)(3)(ii)(H).

[32] In this example the ''grandfathered'' describes a source that was permitted to construct prior to promulgation of EPA's PSD regulations. Thus, this source was not subject to the applicable PSD requirements (e.g., control technology review and modeling analysis).

because the plant had never operated more than 3500 hours per year and the 150 tpy emission rate had been constant for several years prior to the most recent inventory, 150 tpy was the value the State used for various air quality analyses. In this example the source could build a second unit with a PTE of 288 tpy by simply limiting the existing unit to its nominal 3000 hours of operation per year.

The magnitude of the environmental impact of Exhibit B, if promulgated, is difficult to predict. Its effects will vary from State to State depending to a great degree on how much cumulative difference exists between the unused potential emissions (so-called ''paper'' emissions and actual emissions in a given inventory of sources and to what extent those ''paper'' emissions have been used in attainment demonstrations, impacts analyses, etc. If there is little difference between annual allowable and actual emissions as may be the case in some States, the choice of either level as the baseline for netting and other ERC's purposes would have little significance with regard to the impact on air quality.

The EPA conducted an analysis to estimate the potential environmental impacts associated with the CMA Exhibit B potential-to-potential approach. (See ''Results of Data Gathering and Analysis Activities for the CMA Exhibit B Settlement Agreement,'' November 1988, which has been placed in the public docket identified at the outset of this preamble.) This analysis was performed to estimate the difference between allowable and actual emissions for permitted facilities in selected study areas. Available actual, permitted, and SIP allowable emissions data were obtained from the States of North Carolina, Texas, Illinois, and Oregon.

Due to problems with the data and other circumstances, the analysis focused only on the States of Texas and Illinois because these States appeared to have a more thorough data base and realistic distribution of data.[33] Both Texas and Illinois have engaged in substantial permitting activity over the years. The completeness, availability and accessibility of their data, and the mix of source categories thus was found to represent more typical differences between allowable and actual emissions. From each State, a cross section of sources were chosen. Allowable and actual emissions were determined for each source in the sample, based on both annual and hourly emission rates. For the analysis, this information was then segregated by pollutant and source type, and, for combustion sources, further segregated by unit size.

The results of the Texas and Illinois analysis indicate that typical source operation frequently does result in actual emissions that are substantially below allowable emissions levels. In these two States, actual emissions represent from 30 to 86 percent of the allowable emissions, depending on source category and pollutant.

Finally, one of the most troubling side effects of the Exhibit B proposal is that it could ultimately stymie major new source growth by allowing unreviewed increases of emissions from modifications of existing sources to consume all available increment in PSD areas. After the minor source baseline date has been established in an area, all increases, whether subject to major NSR or not, consume increment. As illustrated in the example above, under the CMA Exhibit B test an old grandfathered source could experience a ''significant'' net increase in annual actual emissions, yet it would not necessarily be subject to review. Since increment consumption after the minor source baseline date is calculated based on actual emissions increases, the ''minor'' modification of the grandfathered source would still consume increment. If a major new source with state-of-the-art emission controls proposes to locate in an area in which the increment has been consumed in this manner, it would be barred from building unless and until the increment problem was resolved. At the same time, older plants would continue to be able to make changes resulting in significant unreviewed, and possibly uncontrolled, actual emission increases.

3. The EPA Action

As provided under the CMA Settlement Agreement, the EPA is today proposing the regulatory changes contained in Exhibit B as another alternative, and seeks comments on those changes and the EPA's preliminary analysis described above. The EPA also solicits comment on (1) the environmental impact of the Exhibit B proposal and how any adverse environmental impacts associated with the Exhibit B alternative could be minimized or eliminated; (2) the impact of Exhibit B on the permitting of new ''greenfield'' sources; and (3) whether Exhibit B is consistent with the air quality planning goals of the NSR program. That is, while Exhibit B could allow significant increases in actual emissions to be unreviewed, section 173 of the Act requires offsets to be based on actual emissions, and the PSD increment system as well as many nonattainment area plans are keyed to an actual emissions baseline.

If EPA were to promulgate the Exhibit B settlement as final rules, the Exhibit B rules would need to be updated to reflect other rule changes since 1980 as well as provisions of the 1990 Amendments. In this context, the EPA also solicits comment on updating the Exhibit B language.

I. Allowed Activities Prior to Receipt of Permit

Several industry members of the Subcommittee recommended that EPA change the NSR regulations to enable sources to engage in a broader range of activities prior to receipt of an NSR permit in cases involving modifications to existing sources. See, e.g., 40 CFR §§ 51.166(b)(11) and 52.21(b)(11). These industry members asserted that it was unnecessary and inappropriate to prohibit preliminary activities to achieve the statutory purpose of requiring a permit before construction begins, and that such prohibitions caused delay and added expense for no good purpose. EPA realizes that there is a wide difference of opinion on these issues and is soliciting comments. Set forth below is a summary to assist in formulating comments.

New Source Review is a *pre*construction requirement, and the statute plainly bars construction without a permit. The congressional policy behind this is obvious: to insure that well-reasoned permitting decisions that may involve millions of dollars and significant, long-lasting environmental impacts are made *before* companies begin actual construction on a new or modified source of air pollution. If it were otherwise, and companies were given unlimited ability to place ''equity in the ground'' by constructing plants before a permit is issued, permitting authorities' discretion in making permit decisions may be compromised, and the ability of EPA and citizens to challenge the permit that is eventually issued may likewise be undermined. Thus, the general policy at issue is clear, and it is likewise clear that core activities at an industrial site, such as the fabrication or

[33] In conjunction with its plant site emission limit program, Oregon requires sources, after operation for a specified period of time, to take enforceable permit restrictions on annual allowable emissions based on annual actual emissions during normal operation. This requirement effectively removes ''paper emissions'' from its inventory. Oregon appears to be unusual in its comprehensive application of this requirement; consequently, its data could not form the basis of any conclusions about CMA Exhibit B. North Carolina's historical data was determined to be insufficient to allow statewide analysis.

installation of pollution-generating equipment, constitute ''construction'' within the meaning of the Act. At the same time, the statute does not address the details of the construction process, nor does it constrain EPA's discretion to fashion regulatory mechanisms to harmonize the needs of environmental protection and economic growth in a manner consistent with the legislative purpose. Consistent with these statutory goals, the regulations and EPA's longstanding policy clearly identify the scope of prohibited preconstruction activities. The current regulations and policies remain in effect regardless of today's request for comment.

Accordingly, EPA today solicits comments regarding (1) whether there exists a significant problem with the current system, and the specific nature of such problem(s), and if so, (2) whether a broader range of preliminary activities should be allowed prior to the issuance of a final NSR permit, and (3) how EPA would implement any approach ultimately adopted. EPA is seeking comments regarding the need for potential changes to the current regulations that would allow greater flexibility with respect to construction activities in the case of a proposed modification to the source, while preserving the essential characteristics of a preconstruction review program.

The EPA solicits comments on all aspects of this issue, including comments suggesting specific regulatory language to implement it. In taking final action on this proposal, EPA may adopt specific regulatory language consistent with this discussion without further public notice.

III. Proposed Revisions To Control Technology Review Requirements

A. Introduction

New major emitting facilities and major modifications proposed in areas designated ''attainment'' or ''unclassifiable'' under section 107 of the Act must apply the BACT for each pollutant subject to regulation under the Act (in addition to other preconstruction review requirements). See sections 165(a)(4) and 169(3) of the Act. New or modified major stationary sources proposing to locate in an area designated ''nonattainment'' under section 107 of the Act are required to meet the LAER.[34] See section 173(a)(2) of the Act.

The deliberative nature of BACT and, to some extent, LAER determinations has spawned considerable controversy. Issues have included (1) the scope and comprehensiveness of the universe of candidate technologies which must be considered; (2) when the universe of control technology candidate technologies may be closed to the introduction of new technologies relative to a given permit application and, (3) the methodology for analyzing the candidate technologies for BACT.

The CAAAC made several recommendations to EPA that address issues regarding the management of EPA's BACT/LAER data base and the process by which BACT or LAER is determined. Upon evaluation of those recommendations the EPA is taking steps, described in this preamble, to improve and make more accessible its existing database on BACT and LAER determinations and other technical information resources. These improvements will not only limit the costs permit applicants incur in identifying and evaluating available controls, but will also facilitate timely review of the BACT analysis. The EPA is also proposing regulatory revisions that provide a framework for BACT determinations under EPA-approved State administered programs and a specific, reliable and efficacious methodology for federally-administered programs, which would be available for States to adopt. In proposing these revisions and taking final action, EPA will also discharge certain obligations arising out of several judicial and administrative matters. See section IV.I. of this preamble.

The EPA is also proposing regulatory revisions that significantly limit a permit applicant's responsibility to review new control technologies that are developed or emerge after a complete permit application has been submitted. This revision will reduce the number of delays associated with evaluating emerging control technologies in the post-completeness stage of the permitting process. See proposed § 51.166(j)(5).

The CAAAC's discussions focused primarily on BACT; no specific recommendations were made concerning the methodology for determining LAER. Therefore, the EPA is not proposing changes to existing regulations which govern how to determine LAER.[35] However, the recommendations and resultant improvements to EPA's control technology information systems, the proposed regulatory language pertaining to the universe of candidate technologies, and limitations on the consideration of new technologies also extend to LAER. Thus, the EPA is proposing to add such new provisions applicable to LAER, which are analogous to the proposed changes described above for BACT under the PSD program. See proposed § 51.165(a)(2)(ii).

B. Proposed Revisions to the Methodology for Determining BACT

1. General Description of the BACT Determination Process

Typically, the proposed Major Source Permit Applicant Conducts a BACT analysis to be submitted with the permit application to the permitting authority. The analysis includes an evaluation of the technical feasibility and the energy, environmental, economic impacts, and other costs associated with various alternative control options. The applicant includes in its application the BACT analysis and what it considers to be the best control technology or system of controlling emissions for the particular source or project. The permitting authority reviews the applicant's analysis and, after taking into account the energy, environmental, and economic impacts and other costs, and the public's views, specifies an emissions limitation for the source that, in the permitting authority's reasoned judgment, reflects BACT.[36]

2. The Core Criteria

As noted, BACT requires the adoption of an emission limitation based on the ''maximum degree of reduction...which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable.'' See section 169(3) of the

[34] In serious and severe ozone nonattainment areas, section 182(c)(7) of the Act specifies that BACT may apply in certain circumstances.

[35] A subsequent proposed rulemaking, for implementing changes to the NSR regulations pursuant to provisions in title I parts C and D of the 1990 Amendments, will further update the control technology requirements at 40 CFR 51.165(a)(2) to reflect statutory requirements.

[36] BACT is defined in section 169(3) of the Act as, ''[A]n emission limitation based on the maximum degree of reduction * * * which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.'' 0Section 169(3) also provides that in no event may BACT result in emissions that exceed those allowed by any applicable standard established under section 111 or 112 of the Act. In addition, if the reviewing authority determines that there is no economically reasonable or technologically feasible way to measure the emissions, and hence to impose an enforceable emissions standard, it may require the source to use a design, equipment, work practice or operational standard or combination thereof, to reduce emissions of the pollutant to the maximum extent practicable. See also existing §§ 52.21(b)(12) and 51.166(b)(12).

Act. The Act confers substantial discretion on the permitting authority in establishing BACT.

The State flexibility in weighing relevant factors and determining BACT in any particular circumstance is addressed in the legislative history associated with congressional adoption of the PSD program in the 1977 Amendments. The legislative history provides that a central benefit of State flexibility is that it facilitates implementation of the best available controls, allowing for the widespread adoption of improved technologies far more quickly than would occur with a uniform standard:

> The decision regarding the specific implementation of best available technology is a key one and the committee places this responsibility with the State, to be determined in a case-by-case judgment. It is recognized that the phrase has broad flexibility in how it should and can be interpreted, depending on actual construction location.
>
> In making this key decision on the technology to be used, the State is to take into account energy, environmental, and economic impacts and other costs of the application of BACT. The weight assigned to such factors is to be determined by the State. Such a flexible approach allows the adoption of improvements in technology to become widespread far more rapidly than would occur with a uniform Federal standard. The only Federal guidelines are EPA's individual new source performance standards and hazardous emissions standards, both of which represent a floor for the State's decision.[37]

The legislative history also indicates that an intended benefit of the BACT requirement is the minimization of the amount of increment consumed by any single source, thus allowing for greater growth in an area:

> In the long run, the growth potential of these clean areas may be quickly filled without a reasonable policy to prevent significant deterioration. The first new source built in an area would often absorb the entire available air resource, leaving no capacity for future expansion or growth.
>
> Under the policy to prevent significant deterioration in this bill, the growth options should be enlarged. This is because the provision requires that any major source be constructed to utilize the best available control technology. This should leave room for additional growth.[38]

The legislative history describes the breadth of State discretion in regulating significant air quality deterioration in a community. While the legislative history recognizes that the BACT requirement helps limit the amount of increment new sources consume, it also recognizes that a proposed source meeting BACT may nevertheless consume substantial increment. The legislative history provides that the permitting authority has broad discretion in deciding how much, if any, incremental air quality deterioration to apportion to a proposed source meeting BACT. The legislative history also indicates that a State has discretion to reject a permit application for a proposed source because of impacts the proposed source could have on the character of the community:

> This congressional directive enables the State to consider the size of the plant, the increment of air quality which will be consumed by any particular major emitting facility, as well as such other considerations as anticipated and desired economic growth for the area. The balancing of these factors allows States and local communities to judge how much of the defined increment of significant deterioration will be used by any major emitting facility. If, under the design which a major facility propose [sic], the percentage of the increment would effectively prevent growth after the proposed major facility was completed, the State or community could either refuse to permit construction or limit its size. This is strictly a State and local decision; the legislation provides the parameters for that decision.
>
> Similarly, when an analysis of energy, economics, or environmental considerations indicates that the impact of a major facility could alter the character of that community, then the State could, after considering those impacts, reject the application or condition it within the desires of the State or local community. Flexibility and State judgment are the foundations of this policy.

Accordingly, in adopting the PSD program, Congress emphasized the importance of thorough and public analysis in PSD decision-making. One of the enumerated purposes of PSD is to assure that any decision to permit increased air pollution in any area to which PSD applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision-making process. See section 160(5) of the Act.

In summary, for a given proposed source or modification, BACT is not a preordained level of emissions reduction, but the result of a determination by the permitting authority based on an analysis of available control methods, systems, and techniques. The permitting authority establishes an emissions limitation based on the maximum degree of reduction that is achievable in light of the circumstances of the individual case taking into account the energy, environmental, economic impacts and other costs of the candidate control alternatives, and the concerns of the State and local community that could be impacted by the source under consideration. Consequently, the EPA believes a BACT determination should, at a minimum, meet two core requirements, including (1) all of the available control systems for the source, including the most stringent, must be considered in the determination,[39] and (2) the selection of a particular control system as BACT must be justified in terms of the statutory criteria and supported by the record, and must explain the basis for the rejection of other more stringent candidate control systems. However, an applicant proposing the most stringent candidate control alternative need not provide cost and other detailed information in regard to other control options.[40]

Today, the EPA is proposing to make the core criteria described herein the minimum requirements for determining BACT. The EPA is proposing to codify in the Federal PSD regulations at 40 CFR 52.21, a specific methodology for determining BACT that effectively implements the statutory requirements and the core criteria. See proposed § 52.21(j)(5) and (n)(2)(iii). However, to allow states more flexibility under their own rules for making case-specific BACT determinations, EPA is proposing to insert the core criteria for BACT determinations into the part 51 PSD regulations. Thus, so long as the core criteria are met, these proposed revisions allow for other methodologies that provide equivalent results with less time and effort. See proposed § 51.166(j)(5) and (n)(2)(iii). The EPA requests public comment on this approach and on the proposed core criteria.

3. Description of the Federal Methodology for Determining BACT

Since late 1987 EPA has recommended a specific process for determining BACT. The recommendation evolved from a 1986 national program audit that identified BACT determinations as a deficient aspect of the PSD permitting process, and a 1987 EPA permit appeal

[37] See S. Rep. No. 127, 95th Cong., 1st Sess. 31 (1977).

[38] *Id.*

[39] An applicant could limit its proposed list of technology alternatives to the most effective control technologies. Consideration of technologies that are outdated or are clearly inferior to those in the applicants proposed list would not be necessary. The EPA is also proposing in this notice, limits on the applicant's responsibility to consider control technologies that have not been demonstrated in practice as of the time a permit application is determined to be complete. See section IV.D. of this notice.

[40] The applicant may need to consider collateral emission increases of hazardous air pollutants under other State programs.

decision.[41] The EPA's recommended methodology for determining BACT is described in detail in the 1990 Draft NSR Workshop Manual[42] and is summarized below.

The first step is to identify, for the emissions unit in question, all ''available'' control options.[43] See proposed § 52.21(j)(5). Available control options are those air pollution control technologies or techniques with a practical potential for application to the emissions unit and the regulated pollutant under evaluation, and which have been ''demonstrated in practice.'' See proposed §§ 52.21(b)(42) and (j)(5)(i). Air pollution control technologies and techniques include the application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels or treatment or innovative fuel combustion techniques for control of the affected pollutant. See section 169(3) of the Act. In some circumstances, inherently lower-polluting processes are appropriate for consideration as available control alternatives.

By proposing that for consideration in permit applications, technologies should be ''demonstrated in practice,'' EPA intends to require consideration of technologies in EPA's RACT/BACT/LAER Clearinghouse (see section III.C. of this preamble), technologies identified or required in a regulatory context and technologies meeting minimum operating performance requirements. The EPA proposes to authorize limiting consideration of emerging technologies that are identified after an application is complete. This is discussed in more detail in sections III.D.1. and III.D.2. of this preamble.

In the second step, the technical feasibility of each control option that was identified in step one is evaluated with respect to the source-specific (or emissions unit-specific) factors. See proposed § 52.21(j)(5)(i). One or more of the options may be eliminated from consideration where they are demonstrated to be technically infeasible. A demonstration of technical infeasibility should be clearly documented and should show, based on physical, chemical, and engineering principles, that technical difficulties would preclude the successful use of the control option on the emissions unit under review.

The control technology options identified as available and technically feasible are then ranked by overall control effectiveness for the pollutant under review, with the most effective control alternative at the top. At this point in the analysis, it is initially assumed that the most stringent alternative represents BACT pending the consideration of the source-specific energy, environmental and economic impacts, and other costs associated with each control option. See proposed § 52.21(j)(5)(i). Both beneficial and adverse impacts should be discussed and, where possible, quantified. In general, the BACT analysis should focus on the direct impact of the control alternative.

Cost is often a major concern of the owner or operator of the proposed source and should be included in the analysis. Both average cost effectiveness and marginal (incremental) cost effectiveness should be derived for the control alternatives and considered in the final decision.[44]

If the applicant is disposed toward selecting the most stringent emissions control alternative in the listing as BACT, irrespective of cost, then the analysis need only address generation of other air pollutants, e.g., toxic pollutants. See proposed § 52.21(j)(5)(i). If there are no outstanding issues that would justify selection of an alternative control option, the analysis ends and the results are proposed as BACT.

In the event that the most stringent candidate control alternative is shown to be inappropriate, due to energy, environmental or economic impacts and other costs, the rationale for this finding must be documented for the public record. See proposed § 52.21(j)(5)(i). Then the next most stringent alternative in the listing becomes the new control candidate and is similarly evaluated. This process continues until the technology under consideration cannot be eliminated by any source-specific environmental, energy or economic impacts which demonstrate that alternative to be inappropriate as BACT.

In summary, under the methodology just described, the most effective control option not eliminated based on relevant statutory factors is proposed as BACT for the pollutant and emission unit under review. The EPA believes the proposed BACT determination methodology is a rigorous and reliable way of determining a level of control that conforms with the statutory definition of BACT and the core criteria. For this reason the EPA is proposing to codify this methodology in the Federal NSR regulations. The proposed Federal regulations could also serve as a template for those States that choose to incorporate this method into their SIP.

The EPA requests public comments on alternative methods for determining BACT. Commenters should explain or illustrate how such alternative method will satisfy the following core criteria proposed in this document: (1) All available control systems for the source must be considered in the determination, including the most stringent emissions control alternative, and (2) selection of a particular control system as BACT, and the basis for the rejection of the other more effective emissions control systems, must be justified in terms of the statutory criteria and supported by the record. Specifically, the comments should address how the alternative methodology would provide for consideration of energy, environmental, and economic impacts and other costs. See section 169(3) of the Act.

4. Additional Guidance for BACT Determinations

The Federal analytical methodology outlined above provides for reasoned BACT determinations, but it does not dictate a particular result. Although the progression of the analysis is logical, the CAAAC suggested that it would be helpful for EPA to develop more detailed guidance addressing how the method actually works in real-life applications. The CAAAC recommended that the EPA provide

[41] See ''New Source Review Task Force Report,'' Final Draft, Dec. 1986. *Honolulu Resource Recovery Facility,* PSD Appeal No. 86–8 (Remand Order, June 22, 1987). ''Operational Guidance on Control Technology for New and Modified Municipal Waste Combustors,'' June 26, 1987. ''Improving New Source Review,'' Memorandum from Craig Potter, Assistant Administrator for Air and Radiation to EPA Regional Administrators, Regions I–X, December 1, 1987.

[42] See Chapter B of EPA's 1990 Draft NSR Workshop Manual for a more detailed description of EPA's BACT determination policies, including guidance addressing the consideration of energy, environmental, and economic impacts.

[43] The term ''emissions unit'' may also represent a process or a system that might collect emissions from several discrete pieces of equipment.

[44] Cost effectiveness is the cost of control divided by the mass of emissions (usually in tons) reduced by that control. Average cost effectiveness is the cost per ton that would be incurred compared with baseline controls, (i.e., either uncontrolled or the control level that would be required in the absence of the major source requirements for which the source is making application). Marginal or incremental cost effectiveness is the difference in cost per ton of emissions reduced at the next most stringent level of control, when comparing two control options.

The EPA has developed and published detailed procedural information for performing cost analyses, including average and incremental cost effectiveness, in the OAQPS Cost Manual. The Manual is available through the National Technical Information Service (NTIS) 5285 Port Royal Road, Springfield, Virginia 22161; Phone No. (703) 487–4807. Government agencies can order it from the EPA CTC. The EPA has made parts of the Manual dealing with general cost analysis procedures available as retrievable electronic files on the CTC bulletin board. See also footnote 49 for computer access information.

guidance in the form of specific examples illustrating (1) how the consideration of energy, environmental or economic factors justified establishing a less stringent control technology as BACT, and (2) how the BACT process may properly result in a BACT determination based on control technology more stringent than that initially proposed by the source.

The EPA agrees that the issuance of guidance in the form of illustrative examples would improve understanding of EPA's BACT determination process. Therefore, the EPA is preparing a case study report, containing examples of BACT determinations properly employing the EPA methodology. The EPA's guidance will examine several instances in which a technology less stringent than the most stringent one was determined to represent BACT, and other instances where the permitting authority imposed BACT requirements that were more stringent than those proposed by the applicant. This document will be made available to the public when it is completed, independent of this proposed action. In addition, the existing ''OAQPS Cost Manual'' provides basic guidance on how to perform cost analyses for air pollution control equipment. See footnote 45.

C. Improving Information about Available Control Technologies: Changes to the Reasonably Available Control Technology (RACT)/BACT/ Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC)

The EPA established the original computerized database of BACT and LAER determinations (the BACT/LAER Clearinghouse) at the request of permitting agencies to promote sharing of technology determinations in the permitting process. The clearinghouse was installed on the OAQPS Technology Transfer Network (TTN) for convenient public access. The 1990 Amendments now requires the EPA to make information regarding emission control technology available to the States and to the general public through a central database. The 1990 Amendments directs that the database include control technology information received from States issuing NSR and operating permits, which include RACT[45] SIP requirements. See sections 108(h) and 173(d) of the Act. This discussion will refer to the database as the RBLC. The EPA also established the Control Technology Center (CTC) to assist State and local permitting agencies in identifying and evaluating new control technologies or control technologies for industrial categories that have been previously uncontrolled. It maintains a separate bulletin board (CTC BBS) that operates in concert with the RBLC.

Both bulletin boards, the RBLC and the CTC BBS, are useful sources of publicly available information on control technology determinations, but they are not exhaustive. The CAAAC made numerous detailed recommendations for improving the content and management of the RBLC.[46] The following discussion explains several steps the EPA has taken or is planning to take to improve the control technology information resources that it manages.

- The EPA is proposing in this rulemaking to require permitting authorities to submit BACT and LAER determinations to the RBLC within 60 days following permit issuance. See section VI.C. of this preamble.
- Based on the CAAAC's recommendation that the RBLC should comprehensively catalog information on critical data elements for new entries (rather than obtaining missing data for existing entries), the EPA is considering ways to ensure—through better cooperation with permitting authorities and private industry—that the RBLC is complete and comprehensive. The EPA intends to focus the RBLC's resources on providing complete and correct information about new permit determinations. Data gaps in old determinations will be addressed as resources allow.
- The EPA has simplified the RBLC's reporting form and limited the information in the RBLC. Data fields that were of questionable value or have received little use have been deleted. These changes are expected to reduce the burden on permitting agencies and encourage participation. The EPA has also prepared a stand-alone program on computer disk for use by agencies to submit determinations as an alternative to completing forms and direct data entry to the RBLC.
- The EPA intends, as resources allow, to establish standard emission units for reporting emission limits from all major process categories.
- The EPA intends, as resources allow, to implement a process to highlight the most stringent determinations reported to the RBLC and to provide follow-up verification on installation and compliance.
- Due to the case-by-case and evolutionary nature of BACT, as well as limited Agency resources, EPA does not intend to implement a recommendation that the EPA prepare written guidance indicating demonstrated technology that presumptively should be considered BACT or LAER for certain industries. Nevertheless, EPA will publicize the RBLC's capability to present technology determinations in rank order (most to least stringent) for a particular process and pollutant. The EPA has already placed such lists for several common sources and pollutants in retrievable document files on the RBLC and will periodically update and add to these rankings. Process-and pollutant-specific rankings can be generated directly by users by performing standardized search and download procedures that are integral functions of the RBLC.
- The EPA intends to up-date its RBLC users manual to more clearly explain options and searches available to users. The manual is available in hardcopy from the National Technical Information Service (NTIS) of the U.S. Department of Commerce, the CTC (for government agencies), or as a retrievable file on the RBLC. The RBLC also offers an informational flyer which, in part, fulfills basic user manual functions. The flyer is available to anyone free of charge from the CTC[47] and is a retrievable document file on the RBLC. The EPA will continue to utilize the CTC and the RBLC as well as other available electronic media to disseminate other guidance and technical information such as the OAQPS ''Cost Manual.''

If fully implemented, the impact and scope of the CAAAC's recommendations to expand and improve EPA's technology information services would require a substantial increase in resources. The EPA invites comments on funding alternatives for the RBLC and CTC BB. The EPA also seeks comments on a strategy for prioritizing all or part of the RBLC's functions if full funding is not available.

D. Streamlining BACT/LAER Determinations

The EPA's current policy calls for consideration of available control techniques, including emerging technology, in making BACT and LAER

[45] The RACT is an acronym for reasonably available control technology, which applies to existing stationary sources located in nonattainment areas. See section 172(c)(1) of the Act.

[46] July 1, 1994 Letter from Patrick M. Raher to Mary D. Nichols transmitting CAAAC's Recommendations for NSR rule reforms.

[47] Inquiries may be addressed to: Control Technology Hotline, Information Transfer Group, OAQPS (MD–12), Research Triangle Park, NC 27711, Hotline No. (919) 541–0800, OAQPS TTN: Electronic bulletin board, computer access telephone number (919) 541–5642; Internet Access: TELNET ttnbbs.rtpnc.epa.gov.

determinations until the time that a final NSR permit is issued.[48] During the NSR Reform Subcommittee meetings, industry representatives expressed concern about instances when applicants have been required to consider emerging technologies long after their applications were prepared but before a final permit was issued. This practice interposes significant uncertainty in business planning as well as permit delays. For example, permit applicants face the risk of having to substantially redesign a project due to the emergence of new control technology prior to final permit issuance. Further, there are research and related transaction costs, and even project jeopardy, when permit processing is extended while more information about the availability and achievability of an emerging technology is assessed.

The EPA is today proposing to alter its current policy and proposing accompanying changes to its NSR regulations to address this problem. These proposed changes strike a balance between providing more certainty for industry in making technology choices for planning major projects, and ensuring that state-of-the-art technologies are adequately considered.

1. Permit Applications Must Include Analysis of Control Technologies That are Demonstrated in Practice

Specifically, the EPA is proposing to require that the BACT analysis or LAER determination that is submitted with a permit application consider technologies that have been ''demonstrated in practice.'' See proposed §§ 51.165(a)(2)(ii)(A), 51.166(j)(5)(i), and 52.21(j)(5)(i). The proposed regulations define ''demonstrated in practice'' to include all technologies required and reported through existing regulatory programs and those that, while not identified in the regulatory arena, meet specific criteria for determining their availability and appropriateness for consideration in a BACT or LAER analysis. See proposed §§ 51.165(a)(1)(xxviii), 51.166(b)(42), 52.21(b)(43), and 52.24(f).

With regard to regulatory documentation, technologies from the following sources must be considered in the BACT or LAER analysis:

(a) The EPA's RACT/BACT/LAER Clearinghouse;

(b) Major source construction permits issued pursuant to parts C (PSD) and D (NSR in nonattainment areas) of title I of the Act;

(c) Emissions limitations contained in federally-approved implementation plans, excluding emissions limitations established by permits issued pursuant to programs for non-major sources;

(d) Permits and standards developed under sections 111 and 112 of the Act; and

(e) Alternative Control Techniques Documents and Control Techniques Guidelines that have been issued by the EPA.

The EPA is not proposing to require that operating permits issued under federally-approved title V Act programs be among the sources of available control technology that must be examined in preparing a permit application except where sources are issued an ''integrated'' NSR and Operating permit. Title V permits generally compile requirements that are independently established under other Act programs. Title V programs do not mandate substantive requirements concerning the selection, installation and performance of control technologies. Therefore, a title V permit, unless it jointly imposes the substantive requirements of a major NSR permit, would likely not provide significant new control technology information.

Control technologies that may not be implemented in a regulatory context of a substantive Act program may nevertheless be available for a given BACT or LAER analysis. For example, sources often install state-of-the-art technology in order to be classified as a minor source or to avoid NSR requirements for major modifications. (In this case permitting authorities are encouraged to report the technology to the RBLC.) Furthermore, new technologies and innovations of existing technologies occasionally evolve without wide publicity in the regulatory arena. Such technologies also deserve consideration. Consequently, the EPA also proposes to define ''demonstrated in practice'' to include any technology that meets the following criteria: (1) it has been installed and operating continually for at least 6 months on an emissions unit(s) which has been operating at least at 50 percent of design capacity during that period of time; and (2) its performance has been verified during that 6-month period with a performance test or performance data while operating under a load that coincides with either the operation of the emissions units served by the control technology at their PTE, or 90 percent of the control technology's design specifications. See proposed §§ 51.165(a)(1)(xxviii), 51.166(b)(42), 52.21(b)(43), and 52.24(f). The 6-month operating requirement within the definition of ''demonstrated in practice'' is proposed to establish a minimum operating history to demonstrate the performance and reliability of the new technology. The EPA believes that a 6-month period is appropriate because this is the maximum amount of time currently allowed for the shakedown period for establishing emissions of replacement emissions units in NSR netting transactions. See existing §§ 51.165(a)(1)(vi)(F), 51.166(b)(3)(vii) and 52.21(b)(3)(vii). The EPA also believes that the 50 percent continual load factor provides some assurance that the control technology has been placed in meaningful service during the 6-month period, while recognizing that higher loads may not be sustainable by the source for extended periods of time so soon after start-up.

Knowledge of the control technology's ability to perform effectively at specified loads is essential for its consideration in a BACT or LAER determination. Therefore EPA is proposing to add the emissions load criteria for testing a control technology's performance during the 6 months in which the sustained operability of the technology is established. This testing requirement is similar to that found under the NSPS, which requires facilities to conduct performance tests within the period 60 to 180 days after start-up to determine compliance with the applicable standards. See existing 40 CFR 60.8(a). The EPA requests comment on the criteria and rationale described above for determining if a control technology has been demonstrated in practice.

Further, EPA is proposing that consideration of a technology that is demonstrated in practice outside the regulatory context not be required if the operation period and performance test concluded less than 90 days prior to the date a permit application is complete.[49] See proposed §§ 51.165(a)(2)(ii)(A), 51.166(j)(5)(i)(A) and 52.21(j)(5)(i)(A). The proposed 90-day period preceding the date of complete permit application allows time for the installation and performance that is ''demonstrated in practice'' to be publicized in trade journals and company newsletters and the results to be examined by the scientific community. On the other hand, having the 90-day period keyed to the completeness date creates an incentive for the source to resolve incomplete applications expeditiously.

The following examples illustrate the proposed process.

[48] See J. Seitz memo, ''BACT/LAER Determination Cutoff Date,'' January 11, 1990.

[49] In the case of foreign technology that has been installed and operating outside the U.S., the same proposed criteria would apply in determining whether a technology has been demonstrated in practice.

Example A: On June 1 a permit applicant submits an application that is subsequently determined to have been complete on the date of the submittal. The applicant in this case would be responsible for evaluating all technologies reported or required in a regulatory context as of the date of submittal. Those technologies that have been ''demonstrated in practice'' via the operating and performance criteria specified above, as of 90 days prior to June 1st would also have to be evaluated.

Example B: On June 1st, a source submits a permit application. One month later (May 1st), the permitting authority determines the application to be incomplete. The source submits new information on August 1st and the permitting authority finds the application complete as of the day the new information was submitted. The applicant would be responsible for evaluating all technologies reported or required in a regulatory context as of May 1st. Those technologies that have been ''demonstrated in practice'' via the operating and performance criteria specified above as of 90 days prior to the original submittal date would have to be evaluated. Comment is solicited on the proposed 90-day post-demonstration period in light of the 6-month demonstration period within the definition of ''demonstrated in practice.''

Finally the proposed regulations would require, in evaluating control technologies that are demonstrated in practice under both the regulatory and performance-based criteria, the consideration of control technologies on the basis of technology transfer. Technology transfer is appropriate when sources or source categories have similar emission stream characteristics. See proposed §§ 51.166(j)(5)(ii) and 52.21(j)(5)(ii).

Some industry and State representatives on the NSR Reform Subcommittee expressed concern about the administrative delays if a permit application is determined incomplete due to the inadvertent omission from a BACT or LAER analysis of a technology alternative that has been ''demonstrated in practice.'' For example a technology that has recently been ''demonstrated in practice'' may have been publicized in a less well-known publication, and thereby escaped notice of the applicant. Certainly, overt disregard of reasonably accessible information would be grounds for determining the application to be incomplete. Inadvertent omissions should be evaluated by the permitting authority in light of case-specific factors. In all instances, if a technology that should have been evaluated is identified and the permitting authority sustains the completeness finding, there is still a duty to evaluate the omitted technology relative to the other technology alternatives prior to permit issuance.

2. Permitting Authority May Limit Consideration of New or Emerging Technologies After Complete Application

New or emerging technologies are those technologies that have been developed but have not satisfied the criteria to be classified as ''demonstrated in practice.'' Some NSR Reform Subcommittee members recommended that EPA prohibit any consideration of new or emerging technologies identified after the permit application is complete. Other members recommended that EPA not allow any limitations on consideration of new or emerging technologies prior to the end of the public comment period on a permit application. The EPA is proposing new regulatory provisions that would authorize the permitting authority to cut-off consideration of technologies that evolve or appear after the permit application is complete, except under limited circumstances described below. See proposed §§ 51.165(a)(2)(ii)(B) and (a)(7)(iii), 51.166(j)(5)(iii) and (q)(3) and 52.21(j)(5)(iii) and (q)(3).

The EPA today proposes to add provision concerning public recommendations on new and emerging control technologies as part of the new provisions for public participation. Under the proposed rules, the permitting authority may require commenters to submit a recommendation, accompanied by reasonably available information, regarding new or emerging control technologies. The accompanying information could include the name and location of the source utilizing the control technology, the manufacturer and type of control device, the date on which the technology was installed and became operational, appropriate performance requirements, and any resulting test or performance data available. See proposed §§ 51.165(a)(7)(ii) and 51.166(q)(2). With regard to the implementation of the Federal PSD requirements at § 52.21, the EPA is proposing to require that public commenters include the above information along with any recommendation for further consideration of new control technology alternatives. See proposed § 52.21(q)(2).

It should be noted that the existing NSR regulations at § 51.165(a) do not contain an explicit provision for public participation procedures as do the PSD regulations in parts 51 and 52. Nevertheless, the public participation procedures set forth under § 51.161 generally apply for both major and minor new source review permitting. In the proposal, certain minor source actions, e.g. netting, that in effect shield a source from major source permitting requirements would not qualify for less environmentally significant status. In order to make clear the regulatory context for today's proposed provisions concerning a cutoff date and informational requirements for public commenters, the EPA is today proposing to amend § 51.165 to refer to the existing requirements at § 51.161.[50] See proposed § 51.165(a)(7).

The permitting authority shall be responsible for evaluating the supporting documentation that has been provided by commenters asserting new or emerging technologies warrant consideration as BACT or LAER. Based on the facts that are presented, the permitting authority will either accept the recommendation at face value, reject it as being insufficiently demonstrated, or refer it to the permit applicant for further consideration. The EPA is also proposing to require the permitting authority to notify the permit applicant within 10 working days of receipt of comments recommending a new technology for which the permitting authority determines the comments have met the specificity criteria it has established relative to the cut-off date. See proposed §§ 51.165(a)(7)(iii), 51.166(q)(3) and 52.21(q)(3). This requirement would provide applicants with an opportunity to respond to the comments and expedite their investigation relative to the proposed project.

The permitting authority, in determining the extent to which commenters' recommendations deserve further consideration, should consider the difficulty of private citizens and small organizations in getting access to detailed supporting data. If information about the emerging technology is limited, commenters should document their attempts to obtain data about the source and the recommended technology. For example, the commenter may present logs of telephone conversations with company officials and correspondence with trade associations, environmental associations, government agencies and technical consultants that might have relevant information regarding the availability and effectiveness of the technology. A list of questions that are asked and respective responses may be

[50] In a separate rulemaking EPA has proposed revising the public review and comment requirements at 40 CFR 51.161 to give States more flexibility in processing minor source permits for projects that are determined to be ''less environmentally significant.'' See 60 FR 45529, 45549, (August 31, 1995).

helpful. While this information may not actually demonstrate the availability of a recommended technology, it will provide the permitting authority with information to help determine whether further evaluation is warranted either by its staff or the source. The EPA requests comment on the proposed criteria for evaluating public comments addressing the availability of new technologies and the appropriate burden of proof that commenters should bear after a permit is determined to be complete.

Unlike a recommendation to consider new or emerging technology as discussed above, the identification of a technology alternative that has been ''demonstrated in practice'' and should have been assessed prior to completeness, places no burden on the commenter to supply qualifying information about the technology. The permitting authority must ensure that the omitted technology alternative is adequately considered in the BACT or LAER determination. The permitting authority may be able, however, to determine if the alternative is inferior to the technology proposed by the applicant. In all circumstances the permitting authority would be responsible for considering the comments and documenting its associated decisions for the public record.

The proposed approach for considering new or emerging technologies promotes certainty and limits permitting burdens for those applicants that have included a thorough review of control technologies in their permit applications. The proposed regulations would require consideration of only those post-completeness emerging technologies whose availability and effectiveness are substantiated to the satisfaction of the permitting authority.

This proposal also preserves opportunity for public participation. In all instances, the public would have the right to submit comments addressing whether all control technologies that were, in fact, ''demonstrated in practice'' prior to completeness, were adequately considered in the permit application and during review by the permitting authority. In addition, public commenters have the opportunity to recommend new or emerging technologies provided that recommendations are accompanied with supporting information about the existence and capabilities of the technology. The permitting authority would be required to consider timely and documented public comments addressing technologies that emerge after completeness.

In light of the considerations described above, the EPA is also proposing regulatory changes to revise its policy that sets the permit issuance date as the final cut-off for consideration of new and emerging technologies. Proposed revisions to the Federal regulations would set the final cut-off at the close of the public comment period, unless the permit is reopened for review or the source fails to commence construction within a prescribed time period after the permit is issued.

The EPA also requests public comment on alternative regulatory changes that would (1) allow State NSR programs to wholly preclude consideration of public comments about technology that is new or emerging after an application is complete; and (2) provide in the Federal NSR program for wholly precluding consideration of public comments about technology that is new or emerging after an application is complete.

Rules that allow or provide for entirely precluding public comment on technology that emerges after a permit application is complete would provide greater certainty for business planning and have administrative ease and simplicity benefits. On the other hand, such rules would potentially eliminate public input on emerging technologies and for go any resulting emission reductions benefits. If EPA did allow or provide for a categorical cutoff of public comment addressing technologies emerging after an application is complete, EPA may also need to include an exception that provides for consideration of new or emerging technologies in circumstances where substantial time elapses between the completeness determination and final permit issuance (e.g., a permit applicant submits an application that is determined complete but significant deficiencies that substantially delay permit processing with the application are discovered during the full permit review).

Under all of the alternatives presented, the permitting authority would be required to consider public comment addressing whether the technologies available (i.e., ''demonstrated in practice'') at the time the permit is complete were adequately evaluated. The EPA seeks public input on these alternatives and related issues.

E. Proposed Complete Application Criteria

In several of the proposed regulatory and policy changes based on the consideration of the CAAAC recommendations, the completeness determination has emerged as a key step in the permit review process. The cut-off date EPA is proposing to authorize for consideration of new and emerging technology for BACT or LAER, and the proposed procedures for FLM notification and coordination are inseparably tied to the completeness date. As discussed in this section and in section V. (Class I Areas), the evaluation and determination of whether a permit application is complete is the responsibility of the permitting authority. Consequently, EPA is proposing minimum criteria upon which the permitting authority should base its completeness determination. Broadly, EPA is proposing that a permit application shall contain information necessary to make the demonstrations, analyses, and determinations required under the NSR regulations. See proposed §§ 51.165(a)(6), 51.166(n), and 52.21(n).

The completeness criteria is derived from applicable existing provisions on ''Source information'' at §§ 51.166(n) and 52.21(n) that remain unchanged by this rulemaking, as well as proposed revisions and new provisions. In addition, the EPA proposes renaming §§ 51.166(n) and 52.21(n) to ''Complete application criteria,'' and adding similar provisions to § 51.165. Specifically, proposed revisions to §§ 51.166(n)(1) and 52.21(n)(1) assign the completeness determination to the permitting authority and indicate the determination shall be made upon the presence and adequacy of analyses and information required under §§ 51.166(n)(2) through (n)(5) and §§ 52.21(n)(2) through (n)(5), respectively. Proposed revisions at §§ 51.166(n)(2) and (n)(3), and at §§ 52.21(n)(2) and (n)(3), require that the application contain sufficient information to substantiate the following: (1) the BACT recommendation pursuant to proposed §§ 51.166(j)(5) or 52.21(j)(5); (2) the analyses required by §§ 51.166(k) through (m) or §§ 52.21(k) through (m); (3) the additional impact analysis pursuant to §§ 51.166(o) or 52.21(o); (4) determinations and analyses related to the protection of Federal Class I areas pursuant to §§ 51.166(p) or 52.21(p); (5) the establishment of PALs under §§ 51.166(u) or 52.21(x); and (6) undemonstrated technology waiver applications under §§ 51.166(s) and 52.21(v), as appropriate. The EPA is proposing as independent requirements for completeness at §§ 51.166(n)(4) and (n)(5), and §§ 52.21(n)(4) and (n)(5), that key information from the permit application be registered on the applicable EPA electronic bulletin board

and that FLM review and coordination has been provided.

The EPA is proposing similar completeness criteria at § 51.165(a)(6) for nonattainment area major source construction permit applications. Under the proposed provisions, the plan shall require the application to include information pertaining to the LAER, or where applicable, the BACT determination, statewide compliance and undemonstrated technology or application waiver.[51]

The EPA expects that the demonstration of statewide compliance would be met by the owner or operator of the proposed source submitting, with the permit application, the compliance certifications for all other major stationary sources that it owns or operates in the State. See section 173(a)(3) of the Act. Title V compliance certifications may serve to satisfy this demonstration. However, with regard to facilities that have certified noncompliance or have experienced noncompliance since the last title V certification, an updated compliance certification may be necessary to demonstrate statewide compliance.

By proposing these complete application criteria, EPA is not proposing additional substantive requirements for either PSD or nonattainment NSR permits, but is summarizing the information and analyses required by the provisions of the respective program. Generally, information necessary for purposes of a completeness determination is described with the substantive requirements, e.g., see the discussions contained in this proposal on BACT, protection of Federal Class I areas, PALs and undemonstrated technology waivers.

F. Proposed Undemonstrated Control Technology or Application (UT/A)

1. Introduction

The EPA proposes to revise the existing Innovative Control Technology (ICT) Waiver. This provision allows sources to satisfy the BACT requirement through the use of innovative control technologies. It is termed a waiver since a source is allowed an extended period of time to bring the new technology into compliance with the required performance level. The EPA today proposes to make the innovative technology alternative simpler and more attractive in PSD areas and, for the first time, proposes to add a similar waiver to nonattainment NSR regulations. These changes are intended to facilitate the use of innovative or undemonstrated pollution control, prevention, or reduction technologies in NSR permitting.

The utilization of undemonstrated technologies or applications generally involves risk-taking on the part of the source, the permitting agency, the public, and the environment. The CAAAC's NSR Reform Subcommittee and the EPA recognized the risks associated with undertaking innovative projects while also recognizing the potential benefits to all stakeholders of a well designed and frequently used waiver that leads to greater use of previously undemonstrated control strategies. As a result, the CAAAC provided the EPA with a series of detailed recommendations on how the existing waiver should be recast. The EPA has evaluated the recommendations and proposes to adopt many of them. Further, the EPA believes that the following proposal minimizes the uncertainty to the source while protecting the environment from undemonstrated technologies that fail.

Specifically, the EPA proposes (1) changing the name of the waiver to ''UT/A'' and changing the definition to expand the environmental considerations, (2) adding UT/A provisions for nonattainment area sources, (3) ensuring FLM consultation in UT/A decisions for sources in PSD areas locating near Class I areas, (4) establishing reference BACT/LAER levels in the permit that grandfathers sources out of application of later demonstrated technologies if the UT/A fails, (5) establishing protective emission limits in the permit for the duration of the waiver, (6) requiring that contingency measures be addressed and established in the application and the permit, (7) reducing the duration of the waiver, and establishing a limit on the number of UT/A waivers issued for any given UT/A to that necessary to demonstrate the performance of a technology or application. The EPA is proposing modifications to the existing ICT regulations that reflect the differences in the proposed UT/A approach. Many of the existing provisions of §§ 51.166(s) and 52.21(v) will remain unchanged. In several instances, the EPA is proposing only minor conforming changes. See proposed §§ 51.166(s)(2) and 52.21(v)(2) and newly created § 51.165(a)(8).

2. Description of Proposed UT/A Waiver

Section 111(j) of the Act provides for the issuance of waivers to sources which propose the use of control technology which the Administrator determines to be innovative. Concerned that a source would be able to obtain a section 111(j) waiver but remain subject to BACT requirements thus discouraging innovation, the EPA incorporated into the PSD regulations a corresponding ICT waiver. See 45 FR 52676 (August 7, 1980). However, this waiver has not been widely used since its adoption 15 years ago.

The CAAAC's NSR Reform Subcommittee examined the reasons for the ICT waiver's limited usage and developed three possible outcomes, other than performance as expected, for the installation of undemonstrated control technology—that the technology performs better than expected; that there is a ''marginal'' failure; or that there is a ''gross failure.'' The Subcommittee recommended options to reward the source for incurring the risk of failure, procedures to be taken by the permitting agency in case of failure, and certain air quality safeguards.

a. Proposed New Definition and Scope. The CAAAC recommended that the EPA replace the existing ''Innovative Control Technology'' name with the term ''UT/A.'' The CAAAC recommended the following definition for the waiver: ''any system, process, material, or treatment technology that shows substantial likelihood to operate effectively and to achieve either: (a) greater continuous reductions of air pollutant emissions than any demonstrated system, or (b) comparable emission reductions at lower cost, lower energy input, with lesser non-air environmental impacts, or with other advantages that are defined and mutually agreed on a case-specific basis to justify the use of UT/A provisions.'' In developing the proposed UT/A definition, the EPA has slightly modified the CAAAC's suggested definition. See proposed §§ 51.166(b)(19) and 52.21(b)(19). For PSD areas, the Agency proposes to interpret ''comparable emission reductions'' as allowing the UT/A to achieve marginally less emission reductions in the pollutants subject to BACT than the otherwise applicable BACT. This proposed flexibility allows a permitting agency to issue a PSD UT/A waiver for an undemonstrated technology that achieves somewhat less than the otherwise applicable BACT emission limit provided that the benefits (i.e., energy, environmental or economics) associated with the UT/A

[51] The upcoming proposed rulemaking to implement changes to the NSR regulations pursuant to provisions in parts C and D of the Act as amended in 1990 will provide additional detail of required information for offset showings and the alternatives analysis.

clearly compensate for the increase in emissions. (As is discussed in the next section, the EPA does not believe that such ''comparable'' emissions reductions can satisfy LAER.) In addition, EPA's proposed UT/A definition includes undemonstrated pollution prevention techniques as potentially eligible UT/A candidates. See also discussion of pollution prevention issues in section IV.H. of this preamble.

The EPA has made some changes to the UT/A definition recommended by the CAAAC. The EPA is not proposing the general catch-all phrase for other mutually agreed upon advantages because it is vague and unnecessary, and could potentially lead to misuse of the waiver. In addition, although the choice of ICT or UT/A is generally a mutual agreement between the permitting authority and the source, the existing ICT rules properly make clear that the source makes the request for an ICT, and the permitting authority approves or disapproves the request. The EPA is also omitting ''non-air'' from the CAAAC recommended UT/A definition to allow air-related impacts to be factored into the decision process thus expanding the arena of potential environment impacts that can be considered. The EPA solicits comment on this proposed definition, particularly on whether any other factors should be included in the definition. The proposed PSD definition of UT/A does not affect the section 111(j) ICT waiver for sources seeking a waiver under the NSPS.

b. Extension to Nonattainment NSR. The CAAAC's Subcommittee recommended that the UT/A waiver be extended to major nonattainment NSR, in light of the increased number of sources subject to nonattainment NSR after the 1990 Amendments. Many of these sources will be relatively small (compared to typical pre-1990 major nonattainment NSR sources) and may have relatively unique emission units which could greatly benefit from expanded use of undemonstrated control technologies and applications.

However, expanding the UT/A waiver to nonattainment area NSR could create a discrepancy between the UT/A definition and the statutory definition of LAER. The recommended UT/A definition provides that a control technique may qualify if it achieves ''comparable emission reductions.'' As previously discussed, the EPA interprets this as allowing the UT/A to achieve marginally less emission reduction than the applicable emissions level which would otherwise be required by the major NSR permit. However, section 171(3) of the Act defines LAER as the more stringent of either: (1) The most stringent emission limitation contained in the implementation plan of any State for such class or category of source; or (2) the most stringent emission limitation achieved in practice by such class or category of source. The LAER requirement, unlike BACT, does not allow consideration of economic, energy, or other environmental factors to compensate for less emission reductions. Accordingly, it is inappropriate to include in the definition of UT/A for nonattainment areas technologies that achieve only comparable emission reductions.

The EPA is proposing to expand UT/A waiver applicability to nonattainment area NSR and require that all applicable part D requirements (e.g., LAER and offsets) are met prior to issuance of a waiver. See proposed §§ 51.165(a)(1)(xxvi), and 51.165(a)(8). This action supports an Agency objective, as stated in a June 15, 1993 memorandum from Carol Browner, EPA Administrator, entitled ''Pollution Prevention Policy Statement: New Directions for Environmental Protection,'' to further pollution prevention by providing opportunities for technological innovation. The EPA is proposing the recommended UT/A definition for nonattainment NSR, but replaces ''comparable'' with ''equal'' in the ''emission reductions'' language and omits the general, catch all ''other advantages'' language for the same reasons EPA declined to use the language in the PSD context. The EPA solicits comment on this definition, particularly on whether any factors other than those proposed should be included in the definition.

To provide EPA information on the waiver's utilization and types of technologies or applications approved, the EPA is proposing that a copy of the waiver be submitted to the Agency within 30 days of its approval. See proposed §§ 51.165(a)(8)(ix) and 51.166(s)(9).

c. Federal Land Manager (FLM) Consultation. As part of the UT/A waiver approval process, the CAAAC recommended that the FLM be consulted before the permitting authority approves an UT/A waiver where impacts on Class I area air quality or AQRV's may result from the UT/A source. Existing §§ 51.166(s)(2)(vi) and 52.21(v)(2)(vi) require that before an ICT waiver can be approved the Class I area protection provisions of §§ 51.166(p) and 52.21(p) must be satisfied with respect to all periods during the life of the ICT source or modification. The EPA believes these provisions and revisions to §§ 51.166(p) and 52.21(p) proposed in this document, address these concerns and proposes to retain these provisions for a UT/A waiver under PSD.

d. Content of a UT/A Waiver. Based on the CAAAC's recommendations, the EPA proposes to revise the existing ICT waiver provisions to require that the UT/A waiver contain the emission control performance objective of the UT/A and the otherwise applicable BACT or LAER standard identified in the UT/A permit for reference, but not as enforceable limits during the life of the UT/A waiver. See proposed §§ 51.166(s)(5)(i) and 52.21(v)(5)(i). With regard to a nonattainment area NSR UT/A waiver, the EPA is proposing that the undemonstrated technology comply with the applicable LAER limit. See proposed § 51.165(a)(8)(v)(A).

The CAAAC recommended that, in addition to including the otherwise applicable BACT or LAER emission limit and the UT/A's emission limit objective in the permit, the permitting authority should also establish an upper emission limit for the UT/A. Based on the Subcommittee's discussions, the Agency interprets this recommendation as being an enforceable emission limit established by the permitting authority and not to be exceeded during the term of the UT/A waiver. This issue is discussed further in section IV.f of this preamble.

As recommended by the CAAAC, a proposed UT/A waiver application and permit should include (1) identification of potential failure modes, (2) projections of corresponding emissions increases expected from such failure modes, (3) characterization of such failure modes and corresponding emission increases as marginal or gross failures, and (4) identification of potential contingency measures, both short- and long-term, to reduce or mitigate emission increases in the event of worse-than-expected emissions during the term of the UT/A waiver. The CAAAC recommended that these elements be included in the UT/A permit and that the potential contingency measures not be construed to limit the consideration or use of any other contingency measures that may be identified later, if such measure would better ameliorate worse-than-expected UT/A performance. These projections and contingency measures would, as for any NSR permit term, be subject to public notice, comment and review and approval by the permitting authority.

The EPA has evaluated and largely agrees with the CAAAC's recommendations. Thus, the EPA proposes regulations requiring the permitting authority to include in UT/

A approved permits (1) the UT/A's emission control performance objective and applicable reference BACT or LAER emission limit and (2) the identification and classification of potential failure modes and associated contingency measures. See proposed §§ 51.165(a)(8)(v) (A) and (C), 51.166(s)(5) (i) and (ii), and 52.21(v)(5) (i) and (ii). The EPA also proposes that an application for a UT/A waiver include a detailed description of the continuous emission reduction system and all information used or consulted in applying for a UT/A waiver. See proposed §§ 51.165(a)(6)(ii)(C), 51.166(n)(2)(iii) and 52.21(n)(2)(iii).

The CAAAC recommended that EPA should allow the initial compliance demonstration requirements to be revised by mutual agreement within the life of the UT/A provisions. The CAAAC's rationale was to allow improvements in the suitability, representativeness, repeatability, accuracy, or reliability of emission control performance test results, or for such other causes as are mutually agreed to justify a revision. Currently a permitting authority has the flexibility to revise compliance demonstration requirements in a permit as allowed by applicable law. In addition, EPA is currently modifying its title V permit revision process to allow sources considerable flexibility in making changes to existing permit terms. The EPA expects to allow compliance demonstration changes in the UT/A context consistent with the Title V revision process.

e. Failure of a UT/A. The Subcommittee acknowledged that the UT/A may fail to achieve its emission control performance objective and that the level of failure may vary thereby warranting different types of corrective action. As described in the preceding section, the EPA is proposing regulations largely consistent with the CAAAC recommendations that would require the UT/A permit to include potential failure modes. Based on the CAAAC's recommendation, the EPA proposes that potential failure modes be identified as either ''marginal'' or ''gross'' and that emissions levels associated with a ''marginal'' and a ''gross'' failure be specified in the permit along with the corresponding remedial actions. See proposed §§ 51.165(a)(8)(v)(B), 51.166(s)(5)(ii) and 52.21(v)(5)(ii). ''Marginal'' and ''gross'' failure should be expressed as both an emission rate (e.g., pounds/hour) and mass emission limit (e.g., pounds/million British thermal units). Recognizing that the installation of each UT/A will be unique, the EPA is proposing to provide the permitting authority with the flexibility to define both ''marginal'' and ''gross'' failure on a case-by-case basis. To protect public health, NAAQS and AQRV, the EPA is proposing that the ''gross'' failure limit be included in the permit as an enforceable emission limit that is not to be exceeded during the term of the UT/A waiver. See proposed §§ 51.165(a)(8)(viii), 51.166(s)(8) and 52.21(v)(8).

The EPA envisions that a ''marginal'' failure would be addressed with specific contingency measures, but the source would not need to abandon the technology. Thus, the permitting authority is provided with the flexibility to either permit the UT/A at its ''marginal'' failure emission level or require the source to install technology capable of achieving the appropriate reference emission limit (i.e., BACT or LAER). See proposed §§ 51.165(a)(8)(vii), 51.166(s)(7) and 52.21(v)(7). The EPA solicits comment on whether specific definitions of ''marginal'' and ''gross'' failure should be established by the Agency by rule or guidance.

f. Incentives. Recognizing that a very limited number of PSD ICT waivers have been requested or approved since 1980, the NSR Reform Subcommittee discussed various options for promoting the use of UT/A's. One option discussed by the Subcommittee would allow a source to use, bank, or trade the portion of emission offsets of a nonattainment pollutant that becomes surplus when the UT/A achieves greater emission reductions than originally anticipated. The second option would allow the permitting authority, on a case-by-case basis, in conjunction with the source and subject to public review, to agree on values of either mass emission reduction credits or emission impact reductions in PSD areas in the UT/A permit. The third option, applicable to both PSD and nonattainment areas, would limit the benefit accruing to the UT/A source to protection from enforcement of the initial UT/A emission limit during the life of the UT/A waiver.

The EPA agrees that incentives should be provided to encourage the development of UT/As and is requesting comment on whether existing policies (e.g., Emission Trading Policy Statement (51 FR 43814) and Economic Incentive Program (59 FR 16690)) provide sufficient guidance concerning emission reduction credits thus making specific UT/A provisions that address credits unnecessary. In addition, the EPA solicits comment on the second option identified by the Subcommittee, i.e. some type of PSD emission reduction (or emission impact reduction) credit. In regard to the third option, the EPA believes that both the current ICT and the proposed UT/A waivers provide the protection envisioned by the Subcommittee, namely a limited shield from enforcement during the term of the UT/A waiver, assuming all applicable UT/A requirements are met. However, the proposed UT/A waiver regulations specifically require the permitting authority to establish an enforceable upper emission limit which is not to be exceeded during the term of the UT/A waiver. See proposed §§ 51.165(a)(8)(viii), 51.166(s)(8) and 52.21(v)(8).

g. *Duration and Number of UT/A Waivers.* The CAAAC recommended that UT/A waiver provisions expire no later than 4 years after start of operation or 7 years after the initial UT/A permit is issued, whichever is earlier, or by any earlier date mutually agreed upon by the parties. As described below, EPA is proposing a shorter waiver period. The EPA is also proposing that upon expiration of the UT/A provisions, either the initial UT/A emissions limit, or a revised limit that meets the requirements for either better-than-expected or less-than-expected emissions control performance, as appropriate, would be incorporated into a final permit (i.e. no longer an UT/A waiver). The EPA also proposes to require reporting of the final permit limits to EPA's RACT/BACT/LAER Clearinghouse. See proposed §§ 51.165(a)(8) (vi) and (vii), 51.166(s) (6) and (7) and 52.21(v) (6) and (7).

The EPA is proposing that the UT/A be allowed no longer than 2 years from the time of startup or 5 years from permit issuance (2/5 years), whichever is earlier, to achieve the emission control performance objective on a continuous basis. See proposed § 51.165(a)(8)(ii)(B), and the amendatory language for §§ 51.166(s)(2)(ii) and 52.21(v)(2)(ii). This proposal is applicable to both PSD and nonattainment area UT/A waivers. The Agency is proposing a compliance timeframe other than the CAAAC's recommendation due to comments received during the Subcommittee's deliberations that indicated, as a general rule, an UT/A must perform as envisioned within a relatively short timeframe, primarily due to production constraints, or it is replaced with a conventional control technology. In addition, in order to protect air quality, especially for nonattainment areas, the EPA considers the proposed 2/5 year compliance timeframe more appropriate than the CAAAC's recommendation.

The EPA solicits comment on the allowable length of a compliance schedule to meet the reference BACT or LAER and on whether the allowable length should be longer for BACT than for LAER.

The CAAAC recommended that the number of UT/A waivers approved for any given UT/A should not exceed the quantity that the permitting authority deems appropriate to determine the particular UT/A's emission control performance potential, its capability to operate safely and effectively, and its capability to protect health, safety, and welfare.

Section 111(j) of the Act contains the same language identified by the Subcommittee; however, neither existing § 51.166(s) nor § 52.21(v) contain such provisions. While EPA is inclined to allow additional waivers if the criteria specified in section 111(j)(1) are met, EPA does have reservations about reissuing waivers for the same system, particularly in nonattainment areas. For both PSD and nonattainment area UT/A waivers, the EPA is proposing to incorporate the criteria referenced in section 111(j)(1)(C) and found in section 111(j)(1)(A) (ii) and (iii) of the Act. See proposed §§ 51.165(a)(8)(x), 51.166(s)(10) and 52.21(v)(9). The EPA solicits comment on this proposal.

G. Pollution Prevention

1. The Pollution Prevention Act (PPA) and the EPA's Pollution Prevention Policies

In 1990 Congress passed the PPA which established as national policy ''that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.'' See 42 U.S.C. sec. 13101(b). In subsequent correspondence (memorandum dated May 28, 1992, from Hank Habicht III, EPA Deputy Administrator, to all the EPA personnel and memorandum dated June 15, 1993, from Carol Browner, EPA Administrator, to all the EPA personnel), the EPA provided guidance on interpreting the PPA and integrating pollution prevention into the Agency's activities.

The Subcommittee developed several draft recommendations on pollution prevention issues, which were adopted by the CAAAC. The CAAAC also submitted a document from the Business Roundtable related to the definition of pollution prevention. The CAAAC recommended that the EPA define pollution prevention consistent with the PPA and that the term ''pollution prevention project'' include ''pollution prevention processes, strategies, or systems,'' so that the concept is not limited to technology.

In adopting the PPA, Congress found that ''[t]here are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw material use.'' See 42 U.S.C. sec. 13101(2). The PPA defines ''source reduction'' to mean any practice which (1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and (2) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. See 42 U.S.C. sec. 13102(5)(A). The PPA expressly provides that the term ''source reduction'' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant or contaminant through a process or activity which itself is not integral to and necessary of the production of a product or the providing of a service. See 42 U.S.C. sec. 13102(5)(B). Under the PPA, recycling, energy recovery, treatment, and disposal are not included within the definition of pollution prevention.

In the May 28, 1992 EPA pollution prevention policy memorandum, the Agency provided guidance on incorporating pollution prevention into the Agency's ongoing programs. The guidance provides that the selection of a pollution prevention option, in any given situation, depends on the requirements of applicable law, the level of risk reduction achieved, and the cost-effectiveness of that option. In addition, the policy provides that the Agency's environmental management hierarchy is as follows: (1) Prevention, (2) recycling, (3) treatment, and (4) disposal or release, should be viewed as a set of preferences, rather than an absolute judgment that prevention is always the most desirable option. The Agency's hierarchy is applied to many different kinds of circumstances that will involve judgment. Finally, the Agency distinguishes between prevention and recycling by including what is commonly called ''in-process recycling,'' as ''prevention'' but excluding ''out-of-process recycling.'' This guidance memorandum further observes that recycling conducted in an environmentally sound manner shares many of the advantages of prevention in that it can reduce the need for treatment or disposal, and conserve energy and resources.

2. Pollution Prevention in BACT and LAER

The CAAAC recommended that the EPA issue guidance or regulatory authority allowing consideration of pollution prevention when determining BACT or LAER. The CAAAC also recommended that the Agency create separate categories of demonstrated and undemonstrated pollution prevention BACT and LAER. The categories would include systems, processes, or strategies expected to achieve either (1) more stringent emission levels than demonstrated BACT and LAER or (2) comparable emission levels at lower energy input, lower collateral emissions or having cross-media environmental benefits, or other advantages that are defined and mutually agreed upon to justify the pollution prevention approach. Both demonstrated and undemonstrated pollution prevention BACT would take cost into account.

The Agency examined whether existing regulations provide permitting agencies with the flexibility to consider pollution prevention techniques in their analysis of control options. The Act defines ''best available control technology'' as ''an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under the Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant.'' See section 169(3) of the Act.

The Agency interprets the phrase ''production processes and available methods, systems and techniques'' in

the statutory BACT definition to encompass pollution prevention techniques. Existing §§ 51.166(b)(12) and 52.21(b)(12) incorporate the BACT definition into PSD regulations. The EPA solicits comment on any potential revisions or new provisions in the PSD regulations that would further facilitate consideration of pollution prevention techniques.

Any major stationary source or major modification locating in an area designated nonattainment pursuant to section 107 of the Act is required to meet LAER. See, *e.g.*, sections 172(c)(5) and 173 of the Act. The LAER is defined as the more stringent of (1) the most stringent emission limitation contained in the implementation plan of any State for such class or category of source, unless the owner or operator demonstrates that such limitations are not achievable; or (2) the most stringent emission limitation achieved in practice by such class or category of source. See section 171(3) of the Act. In general, the LAER requirement is based on whether an emission limitation is achievable and, unlike BACT, does not provide for consideration of economic, energy, or other environmental factors on a case-by-case basis. The Agency has interpreted the LAER definition as including any method of emissions reduction provided it achieves the lowest emission rate feasible. Thus, for nonattainment area purposes, pollution prevention techniques can be considered as a control option; however, the techniques must achieve the same emission rate as otherwise applicable LAER.

After review of the Subcommittee's deliberations, the CAAAC's recommendation and public comment, the EPA believes that current PSD and nonattainment NSR regulations, combined with today's proposed version of UT/A waivers, provide the permitting agencies with the flexibility to consider pollution prevention techniques when considering either BACT or LAER control options. Thus, the EPA does not find that additional regulatory authority is necessary. The EPA solicits comment on this view and any suggested rule changes to facilitate the consideration of pollution prevention in NSR permitting.

The Agency also reviewed the CAAAC's recommendation to create separate categories for demonstrated and undemonstrated BACT and LAER control options in regard to the UT/A waiver. As discussed above, the Agency's interpretation of the definitions for BACT and LAER provide for the inclusion of pollution prevention techniques when considering available control options. With respect to a separate category for undemonstrated pollution prevention options and as discussed in the UT/A waiver section, the EPA considers all undemonstrated control options, including pollution prevention, to be eligible to qualify for this waiver. Thus, because the Agency interprets BACT and LAER to allow for demonstrated and certain undemonstrated pollution prevention techniques and because EPA is proposing to explicitly provide that undemonstrated pollution prevention techniques may qualify for a UT/A waiver, the EPA does not believe it necessary to create a separate and unique category for either demonstrated or undemonstrated pollution prevention control options.

Finally, EPA notes that it has addressed pollution prevention elsewhere in this document. In section II.E. of this preamble, EPA proposes to include pollution prevention projects in the proposed pollution control project exclusion. The EPA also proposes an accompanying definition of pollution prevention based on the PPA and EPA's pollution prevention policies. See proposed §§ 51.165(a)(1)(xxix), 51.166(b)(43), 52.21(b)(44), and 52.24(f).

H. States' Discretion To Adopt or Enforce More Stringent Requirements

The regulatory revisions proposed in this action represent minimum Federal requirements under the Act. States retain full discretion to adopt or enforce more stringent air quality protection requirements consistent with section 116 of the Act.

I. Addressing the EPA's Obligation under Pending Settlement Agreement

The ''top-down'' process, the methodology described in section IV.B. of this preamble, is the EPA's recommended approach for determining BACT and is based on the EPA's interpretation of existing statutory and regulatory requirements. On March 29, 1989 (supplemented on May 3 and 10, 1989), the American Paper Institute and the National Forest Products Association (collectively ''API'') petitioned the EPA to rescind the top-down policy and initiate a rulemaking on BACT determinations. The EPA denied this request on May 12, 1989 (supplemented on June 13, 1989), explaining that the top-down approach was neither at variance with, nor a revision of, the PSD regulations, and that no rulemaking was required. Subsequently, API filed suit in the U.S. Court of Appeals for the District of Columbia and in the U.S. District Court for the District of Columbia. *API* v. *Reilly*, No. 89–1428 (D.C. Cir. filed July 10, 1989); *API* v. *Reilly*, No. 89–2030 (D.C.C. filed July 18, 1989). The District Court action was dismissed on January 5, 1993 for lack of subject matter jurisdiction.

A consortium of utilities filed a similar petition for review of the EPA's actions, *Alabama Power Co.* v. *EPA*, No. 89–1429 (D.C. Cir. filed July 11, 1989), and the case was consolidated with the pending *API* case in the D.C. Circuit. On February 1, 1990, the Utility Air Regulatory Group submitted an administrative petition concerning the EPA's policy and practice on BACT determinations. The API also challenged a 1990 draft guidance document by the EPA on top-down BACT, *API* v. *Reilly*, No. 90–1364 (D.C. Cir. filed July 13, 1990).

All of these judicial and administrative matters were resolved by a settlement agreement in which the EPA agreed to publish, by January 6, 1992, a proposed rule ''to revise or clarify the regulations defining BACT'' and ''to revise or clarify how BACT determinations should be made.'' See 56 FR 34202 (July 26, 1991) (request for public comment on proposed settlement). The EPA also agreed to take final action on the proposed rule as expeditiously as practicable. In the event the EPA did not take the specified action, the parties' sole and exclusive remedy under the express terms of the settlement agreement was to reactivate the underlying litigation.

This publication of proposed rules revising and clarifying the BACT regulations and how BACT determinations should be made triggers certain obligations by the other parties to the settlement. The EPA's final action on the proposed rules will discharge all of its remaining obligations under the settlement agreement and require the dismissal or withdrawal of the remaining judicial and administrative matters described above.

IV. Class I Areas

A. Introduction

The EPA is today providing guidance and proposing a number of revisions to the PSD regulations at 40 CFR 51.166 and 52.21 to address the protection of air quality and air quality related values in Class I areas. In many instances, where it has been deemed appropriate, the EPA is taking action consistent with, or similar to, the CAAAC's recommendations.

In general, the EPA is proposing several changes to better facilitate State notification and coordination with the FLM and to provide the States, permit

applicants and FLM with clearer guidance about their relative roles and responsibilities. The EPA is proposing ''significant impact levels'' for Class I increments that would exclude proposed sources with de minimis ambient impacts from the requirement to conduct comprehensive Class I increment analyses and enable the permitting authority to determine that the emissions from such source would not contribute to an increment violation. The EPA is also establishing a general policy, and proposing regulatory language, allowing the use of offsets to mitigate adverse impacts on AQRV in Federal Class I areas. This policy will provide a reasonable way to allow the permitting of sources that would otherwise face permit denial because of their adverse impact on AQRV. The EPA is also proposing several clarifications to its PSD regulations where confusion about a requirement has created controversy or impeded more expeditious permit review.

B. Background

1. Overview of PSD Requirements for Class I Areas

The PSD program applies to ''PSD areas''—areas designated as ''attainment'' or ''unclassifiable'' pursuant to section 107 of the Act.[52] A fundamental aspect of the PSD program is an assessment of a proposed source's impact on the amount of air quality deterioration that is allowed within a particular PSD area. All PSD areas are categorized as either Class I, II or III. See section 162 of the Act. The classification of an area determines the corresponding ''maximum allowable increases'' of air quality deterioration (''increments'') for that area. See section 163 of the Act. Only a relatively small increment of air quality deterioration is permissible in Class I areas and, consequently, these areas are afforded the greatest degree of air quality protection.

The PSD program provides an additional layer of special protection for Federal Class I areas. See section 165(d)(2) of the Act. Mandatory Federal Class I areas are national parks greater than 6,000 acres in size, national wilderness areas greater than 5,000 acres in size and other areas specified in section 162(a) of the Act. These Federal Class I areas are mandatory in that they may not be redesignated as any other classification. All other PSD areas in the country were initially designated as Class II areas in accordance with section 162(b) of the Act. Federal lands not already designated as Class I areas under section 162(a) may be redesignated as Class I areas. See section 164 of the Act.

The FLM and the Federal official charged with direct responsibility for management of any Federal lands within a Class I area have an ''affirmative responsibility'' to protect the AQRV (including visibility) of such lands.[53] See section 165(d)(2)(B) of the Act. The FLM protects AQRV through a prescribed statutory role in assessing the potential impacts of a proposed PSD source. See section 165(d)(2)(C) of the Act. If a proposed source does not cause or contribute to a violation of a Class I increment, the FLM may, nevertheless, demonstrate to the satisfaction of the permitting authority that the source will have an adverse impact on AQRV in a specific Federal Class I area and, if so demonstrated, the PSD permit shall not be issued. Conversely, if the proposed source will cause or contribute to a violation of a Class I increment, then the owner or operator must demonstrate to the satisfaction of the FLM that there will be no adverse impact on AQRV. See sections 165(d)(2)(C) (ii) and (iii) of the Act.

2. The Need To Improve PSD Permit Requirements Related to the Protection of Air Quality Related Values (AQRV) in Federal Class I Areas

Over the past several years Congress, the FLM, and others increasingly have expressed concern about the effects of air pollution being observed and documented in Federal Class I areas, as well as the failure of Act programs to adequately protect Federal Class I areas from such effects. The U.S. General Accounting Office has issued reports addressing these issues.[54]

The FLM have sought to protect Federal Class I areas by, among other efforts, identifying concerns about the potential impacts associated with emissions from new source growth. In their attempts to protect these lands, FLM have indicated that their failure to receive timely notice of relevant permit applications has undermined their ability to exercise their affirmative responsibility to protect Class I areas and that permitting authorities have given insufficient weight to concerns of FLM. Permit applicants have complained that EPA's existing regulations are unclear and that there is confusion and uncertainty about the PSD permit requirements related to the protection of AQRV in Federal Class I areas. Moreover, permitting authorities examining permit applications in the face of objections by FLM have complained to the EPA about the lack of guidance on Class I area protection and the consideration that should be given to an FLM's concerns. The EPA's proposal, described below, attempts to address these various concerns and, thereby, improve the PSD permitting process.

C. The EPA Proposal

1. Defining AQRV and Determining Adverse Impacts

The Act and the existing PSD regulations are silent in explaining what an AQRV (other than visibility) is, what procedures should be followed for defining an AQRV, and what criteria should be used for setting critical pollutant loadings for determining whether an adverse impact on AQRV would occur. The EPA is proposing to add general definitions for the terms ''AQRV'' and ''adverse impact on AQRV.'' In addition, the EPA is clarifying the role and responsibilities of the FLM in the PSD permitting process.

a. Definitions. The EPA is proposing to add definitions of ''air quality related value'' and ''adverse impact on air quality related values'' to both sets of PSD regulations. As noted, the Act is silent in defining AQRV other than visibility. However, the legislative history provides the following:

[T]he term ''air quality related values'' of Federal lands designated as class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16

[52] Areas having air quality that meets the national ambient air quality standards (NAAQS) are designated ''attainment,'' and areas for which there is insufficient information to reach a conclusion about their air quality status are designated ''unclassifiable'' in accordance with procedures set forth in section 107 of the Act.

[53] The ''FLM'' is defined as the Secretary of the department with authority over such lands, i.e., Department of the Interior and Department of Agriculture. See Act section 302(i). It should be noted that FLM authority has been delegated to other officials within these Departments. For example, the Assistant Secretary for Fish and Wildlife and Parks is the FLM for areas under the jurisdiction of the National Park Service and U.S. Fish and Wildlife Service. In today's notice, the EPA is proposing to clarify the definition of ''FLM'' to reflect the FLM's authority to designate another official to act on his or her behalf with respect to Federal Class I areas. See proposed sections 51.166(b)(24) and 52.21(b)(24).

[54] See U.S. General Accounting Office Report to the Chairman, Environment, Energy, and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, ''Air Pollution: Protecting Parks and Wilderness from Nearby Pollution Sources'' (February 7, 1990) reprinted in 136 Cong. Rec. S2879–2880 (March 21, 1990); U.S. General Accounting Office Testimony before the Environment, Energy and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, ''Air Pollution: Regional Approaches Are Needed to Protect Visibility in National Parks and Wilderness Areas'' (April 29, 1994).

U.S.C. 1), the purpose of such national park lands ''is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

S. Rep. No. 127, 95th Cong., 1st Sess. 36 (1977).

The EPA proposes to define ''AQRV'' as a scenic, cultural, physical, biological, ecological, or recreational resource which may be affected by a change in air quality, as defined by the FLM for Federal lands and as defined by a State or Indian Governing Body for nonfederal lands within their respective jurisdictions. See proposed §§ 51.166(b)(40) and 52.21(b)(41). The proposed definition addresses the fundamental purposes for which such lands have been established and preserved. The proposed definition also recognizes that (1) The FLM have the responsibility to identify AQRV for Federal lands, and (2) the Act gives authority to States and Indian Governing Bodies to identify AQRV for areas within their respective jurisdictions.[55] The EPA is proposing to define ''adverse impacts on air quality related values'' as a deleterious effect on any AQRV defined by the FLM, resulting from the emissions of a proposed source or modification, that interferes with the management, protection, preservation, or enjoyment of the AQRV of a Federal Class I area. See proposed § 51.166(b)(41) and § 52.21(b)(42). Under the part 52 PSD regulations, the proposed definition would be in addition to the existing definition of ''adverse impact on visibility'' [§ 52.21(b)(29)] which is derived from the EPA's visibility regulations adopted pursuant to the Act's visibility protection program. See existing 40 CFR 51.301(a) and 51.307. Under the Federal PSD requirements, EPA intends that the definition of ''adverse impact on visibility'' continue to be used when the AQRV of concern is visibility. The new definition is intended to encompass all AQRV.

The proposed definition of ''adverse impact on air quality related values'' includes the requirement that such determinations be made on a case-by-case basis, considering the change in existing air quality that will result from the emissions of a particular pollutant from a proposed major source or major modification.[56] Moreover, a determination of whether a source will have an adverse effect must consider the AQRV specifically identified by the FLM and, for each affected AQRV, the projected impact of the emissions from the proposed PSD source on the existing background air quality (including the predicted impacts of recently-permitted sources not yet in operation) in the Class I area.[57] Thus, the FLM's demonstration of adverse impact on AQRV, may consider a source's impact on existing conditions, which may already be regarded as ''adverse.'' The adverse impact demonstration is also discussed in section IV.C.2.d. of this preamble.

The proposed definition also recognizes that the term ''adverse impact on air quality related values'' has special meaning under the Act that is properly limited to Federal Class I areas. See section 165(d) of the Act. As described previously, permits must be denied to sources whose emissions would have an adverse impact AQRV in a Federal Class I area, even though no violation of a Class I increment would result from those emissions.

b. Role of the FLM in Defining Specific AQRV. In general, the EPA explicitly recognizes that FLM have special expertise and knowledge about the Federal Class I areas which they manage. In addition, the EPA agrees with the CAAAC's recommendation that the FLM should be expressly recognized as having the primary responsibility for the identification of specific AQRV.

The EPA believes that it is appropriate not to propose regulations that would dictate how the FLM identify AQRV (and associated critical pollutant loadings) or demonstrate an adverse impact on AQRV. These responsibilities are closely tied to the role of the FLM mandated by the Act, and are also integral to the management of those AQRV under the mandates of the Federal Lands statutes as well (e.g., Wilderness Act, 16 U.S.C. 1131 *et seq.*, and 1916 National Park Service Organic Act, 16 U.S.C. 1 *et seq.*) Furthermore, because of the wide variety of Federal Class I areas and AQRV, sensitivities of critical receptors, and the unavailability of data in many cases, the EPA believes that the FLM must have sufficient latitude to address these issues on an area-by-area, as well as a permit-by-permit, basis. At the same time, the EPA encourages FLM to identify AQRV on a regional or national basis where appropriate, and to establish general procedures for identifying AQRV.

c. Role of the FLM in Triggering a Class I Area Analysis. It is generally agreed that not all sources applying for PSD permits should have to provide information concerning potential Class I area impacts. Various factors concerning a particular source, including the type and amount of its emissions, and the source's distance from the Class I area, will influence whether the emissions from a proposed source have the potential to adversely impact a Class I area. This proposal links the requirement for a permit applicant to provide Class I impact information with the filing of a notice by the FLM (or certain other government officials) which (1) alleges that emissions of a particular pollutant from a proposed major emitting facility may cause or contribute to a change in air quality in a particular Class I area, and (2) identifies the potential adverse impact of such change in air quality on each affected AQRV. The proposal is consistent with section 165(d)(2)(C)(i) of the Act which provides that once such a notice is filed a permit shall not be issued unless the applicant demonstrates that its proposed emissions will not cause or contribute to a violation of the Class I increments. See proposed §§ 51.166(p)(2)(i) and 52.21(p)(2)(i). The proposal also is in accordance with the provisions under section 165(e)(3)(B) of the Act which require, for a proposed source, an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility, at the site of the proposed source and ''in the area potentially affected by the emissions from such facility.''

The permitting authority would determine the status of the Class I increments considering, as appropriate, the analysis provided by the applicant. The analysis of potential impacts on Class I area resources will help provide the basis for an eventual determination of whether the source will have an adverse impact on AQRV. The EPA generally believes that the combined informational requirements contained in this proposed provision will greatly facilitate resolution of AQRV issues which must ultimately be addressed as a prerequisite to permit issuance. That

[55] Section 164(e) of the Act provides for EPA protection of AQRV when the EPA is requested to resolve a dispute between a State and Tribe about the redesignation of an area or a proposed PSD permit. The reader is also referred to the discussion in section IV.C.5 of this preamble, where EPA clarifies its position concerning the authority of States and Indian tribes to establish AQRV for their respective lands.

[56] In determining whether emissions from a proposed source would present an adverse impact, the effects of hazardous and toxic pollutant emissions should be considered in the analysis if they are constituents of any criteria pollutant emitted in ''significant'' amounts by the source.

[57] In a previous rulemaking, EPA determined that an assessment of whether a proposed source would cause an adverse impact on visibility requires the permitting authority to review the new source's impact in the context of background impacts caused by both existing and previously permitted (not yet constructed) sources. See 50 FR 28548 (July 12, 1985).

is, the analyses will reveal whether the Class I increments will be violated; establish the relative roles of the applicant; the FLM and the permitting authority in making decisions concerning the AQRV; and provide information needed to determine potential AQRV impacts. Moreover, this proposal would limit an applicant's responsibility to perform Class I area assessments to circumstances where there is an identified potential that the proposed source will have an adverse impact on a Class I area.

If the proposed source will cause or contribute to a violation of a Class I increment, the applicant will provide information pertaining to the source's impacts on, as appropriate in light of the FLM's notice, such things as soils, vegetation and visibility to demonstrate that there will be no adverse impact on the potentially affected AQRV identified by the FLM. See section 165(d)(2)(C)(iii) of the Act. If the FLM agrees with this demonstration, and so certifies, the permitting authority may issue the PSD permit even though a violation of a Class I increment has been shown. Alternatively, when the applicant's analysis shows, to the satisfaction of the permitting authority, that the proposed source will not cause or contribute to a violation of a Class I increment, the information pertaining to impacts on the potentially affected AQRV identified by the FLM will help the FLM determine if the proposed source will have an adverse impact on AQRV, and to make a demonstration of such adverse impact to the permitting authority, where appropriate.

While the Act is silent concerning the timing for filing the notice of potential adverse impacts, the EPA believes that it is reasonable and appropriate to require the FLM or other named officials to file the notice before the permitting authority issues its completeness determination on the permit application. See proposed §§ 51.166(p)(2)(i) and 52.21(p)(2)(i). One reason for this proposal is that the filing of the notice establishes certain informational requirements which serve as a measure of the application's completeness. Moreover, it is generally important that EPA require that the notice be filed early in the permit process to expedite permit review. A requirement for early notice submittal helps ensure that the Class I area issues are identified by FLM and other officials early in the permit process and enables the applicant to provide the appropriate Class I analyses in a timely manner so as not to delay the review and issuance of the permit.

The EPA encourages, particularly where a source proposes to locate within 100 kilometers of a Federal Class I area, the applicant to coordinate with the FLM prior to the submittal of its application in order to be able to learn of any FLM concerns and to submit the Class I analyses along with the other required information in its initial permit application. Otherwise, the FLM would be expected to file the notice alleging potential affects on the Federal Class I area, where appropriate, during the 30-day period for review of the application for completeness, as provided under this proposal and described in section IV.C.2.c of this preamble. In the absence of a notice being filed concerning potential Class I impacts, the applicant will still be required to demonstrate that emissions from the proposed source do not cause or contribute to any violation of the Class II increments or NAAQS.

This proposal to require the applicant to complete a comprehensive Class I impact analysis is tied directly to the filing of a notice (alleging potential adverse impacts) prior to the permitting authority's issuance of its completeness determination. However, this proposal is not intended to preclude the FLM from raising new concerns about effects at a later time during the permit review. The FLM may ultimately submit a demonstration of adverse impact on AQRV even if a notice has not been previously filed. In such cases, where additional information is needed to enable the FLM to make the necessary demonstration, the EPA believes that the permitting authority has discretion to determine whether, and to what extent, the applicant should be required to produce the additional information.

The EPA requests comments on this aspect of the proposal in light of the importance of having to file a notice alleging potential Class I impacts in order to trigger the applicant's responsibility to perform an analysis of its Class I impacts. The EPA has considered alternative approaches for triggering the Class I analysis, including a mandatory Class I analysis for any proposed major source or major modification proposing to locate within 100 kilometers, or some other specific distance, from a Federal Class I area. The proposed approach is consistent with the Act requirement for the filing of a notice.

With respect to alternative approaches not proposed, a rigid distance-based test may necessarily be either over- or under-inclusive. For example, if a cutoff of 100 kilometers was established, some sources locating within 100 kilometers from a Federal Class I area may be required to perform an analysis even though there is no potential that the proposed source will have an adverse impact on the area. Conversely, sources proposing to locate more than 100 kilometers from a Federal Class I area that may nevertheless adversely impact a Class I area would not be required to carry out the appropriate Class I analyses. Thus, a rigid distance cutoff would still need some kind of accompanying triggering mechanism to establish the informational requirement for Class I impacts for potential sources of concern locating beyond any specified cutoff distance. The EPA is interested in alternative approaches which will establish a reasonable requirement for Class I analyses at a reasonable point in the permit process.

With regard to the notice, the EPA believes that it should be in writing, preferably in the form of a letter to the permitting authority, and should address at a minimum (1) the specific pollutant emissions from the proposed source that may cause or contribute to a change in air quality in the specified Federal Class I area, and (2) the potential adverse impact of such change on each specified AQRV. While the alleged change in air quality and potential impacts are naturally preliminary, and perhaps somewhat speculative, the intent is that the allegation should present a potential linkage between the proposed source—based on its specific pollutant emissions and its relative location to the affected Class I area—and the specified AQRV in the affected Federal Class I area as to warrant the required Class I analysis.

The notice is also intended to provide the applicant with sufficient information to focus the required Class I analysis on the appropriate pollutant emissions and AQRV of concern to the FLM. Accordingly, the notice should not be used by the permitting authority for any prejudgment as to whether any potential effects on AQRV will be adverse. If it is plausible that a source may impact the affected Class I area, further analysis should generally be performed. The only basis for rejecting such notice, and thereby determining that a Class I analysis is not required, is that the permitting authority finds no potential linkage between the proposed source's potential impact (i.e., change in air quality in the Class I area) and the AQRV identified by the FLM.

An important related issue concerns the responsibility for carrying out any additional technical analyses which may be necessary for the FLM to demonstrate that a source's emissions will have an adverse impact on AQRV. The EPA generally expects the analyses performed by the applicant under the

proposed provisions to enable a FLM to evaluate the impacts on AQRV. In some cases, however, additional information may be necessary to make a thorough AQRV assessment and there is a question as to who should bear the responsibility for such information. Applicants for PSD permits are typically required to provide information and analyses necessary for the permitting authority to make a variety of ambient air quality decisions because, among other reasons, applicants have detailed knowledge about the proposed source's emissions and operations. Yet, applicants should not necessarily be expected to conduct an unlimited number of studies. The permitting authority should ultimately determine, based on consultation with the FLM, what additional information collection should be required of the applicant.

The EPA solicits public comment on this issue in order to establish an equitable approach for completing the required analyses for Class I areas applicable to individual PSD permit applicants. Specifically, the EPA seeks input in determining what the respective responsibilities of the FLM and the permit applicant should be for carrying out the analyses necessary to enable the FLM to demonstrate an adverse impact on AQRV. The EPA will consider such input and decide whether the regulations should explicitly address these individual roles.

This proposal also recognizes that the FLM is not the only official authorized by the Act to file the notice concerning potential impacts on a Federal Class I area. Section 165(d)(2)(C)(i) of the Act authorizes that the notice be filed by any one of several officials, including the Federal official charged with direct responsibility for management of any lands within the Class I area potentially affected, the Federal Land Manager of such lands, the EPA Administrator, or the Governor of an adjacent State containing such Class I lands. Accordingly, the EPA is including in the proposal that the FLM or other named officials may file a notice when it is believed that a proposed source may affect air quality in a Federal Class I area. See proposed §§ 51.166(p)(2)(i) and 52.21(p)(2)(i). In addition, the EPA is proposing to define the term ''Federal official,'' which is used in the proposed regulatory provision as well as in the Act, as the Federal official charged with direct responsibility for management of any lands within a Federal Class I area.[58] See proposed §§ 51.166(b)(39) and 52.21(b)(40).

d. Informational Responsibilities of the FLM. The EPA believes that a logical adjunct of an FLM's expertise and responsibility for protecting the AQRV of Federal Class I areas and identifying a potential adverse impact on AQRV is the responsibility to provide relevant information to persons involved in the permitting process. Permitting authorities and permit applicants should have access to any information concerning AQRV which an FLM has defined for any Federal Class I areas that may be affected by a proposed source or modification. To address this concern, the EPA is proposing that the FLM be required to provide pertinent information, where available, to PSD permit applicants upon request. See proposed §§ 51.166(p)(2)(ii) and 52.21(p)(2)(ii).

Specifically, the proposal would benefit the owner or operator of a proposed facility that may have an adverse impact on AQRV in a Federal Class I area. The proposed regulations generally call for the FLM to provide all available information about relevant AQRV and methods for analyzing potential impacts on those AQRV when the applicant requests such information. This information would include a current listing of the AQRV, sensitive receptors and critical pollutant loadings for each AQRV, as well as the methods and tools (e.g., models) available to analyze the potential impacts for the affected Class I area. The FLM also would be expected to provide copies of relevant previous findings of adverse impact on AQRV that have been made as part of other PSD permit reviews affecting the same Class I area.

The EPA is pursuing the development of a computerized compilation or clearinghouse of available Class I area information. The cooperation of the FLM would be critical to the utility of this resource. Relevant information would be posted as it becomes available. To the extent that the relevant information is posted in the clearinghouse, it would not be necessary to provide such information to an applicant. If however, the FLM has new information not yet available in the clearinghouse, the FLM should directly provide such information to the applicant when a request is made. This clearinghouse is described in section IV.C.6 of this preamble.

2. Improving Federal Land Manager (FLM)/Permitting Authority Coordination

The CAAAC recommendations reflected general agreement that better State and FLM coordination is integral to avoiding delays and controversies during the PSD permitting process. Accordingly, the EPA is proposing a general provision which requires that the permitting authority provide for consultation and coordination with the FLM. See proposed §§ 51.166(p)(2)(iii) and 52.21(p)(2)(iii). The permitting authority is expected to use its judgment in deciding the appropriate measure of consultation and coordination that will ensure adequate input from the FLM as well as adequate consideration of the FLM's expertise and findings concerning potential Class I area impacts. While this particular provision affords the permitting authority flexibility in determining the appropriate level of interaction with the FLM throughout the permitting process, the EPA also believes that certain specific points of consultation and coordination, as described below, are needed to ensure that the FLM is given adequate opportunity to carry out the responsibilities conferred on the FLM by the Act.

a. Pre-application Coordination. The EPA is today proposing to require that the FLM be informed of any advance notification received by the permitting authority from a prospective applicant involving a source that would construct within 100 kilometers of a Federal Class I area. As proposed, the affected FLM must be notified within 30 days of the permitting authority's receipt of any such advance notification of a PSD permit application. See proposed §§ 51.166(p)(3)(i) and 52.21 (p)(3)(i).

The EPA recognizes that the type of early notification that a prospective applicant may provide to the permitting authority will vary from one situation to the next. Thus, the type of notification provided by the permitting authority to the FLM should be commensurate with the type of information which is received. For example, a brief letter or phone call from the permitting authority to the FLM may be appropriate when the information about the potential project is only very preliminary. Generally, it should not be necessary to notify the FLM more than once concerning any early contacts by a prospective applicant with the permitting authority. An exception would be where, as described below, a pre-application meeting is arranged as a

[58] The EPA is using the term ''Federal official'' to reflect the terminology used in the Act. The legislative history uses the term ''supervisor of a class I area'' in lieu of ''Federal official.'' See S. Rep. No. 127, 95th Cong., 1st Sess. 35–37 (1977). Once a notice is filed alleging possible adverse impacts, the FLM—not any other Federal official, unless duly designated by the FLM—is authorized to demonstrate to the satisfaction of the permitting authority that a proposed source will have an adverse impact on AQRV and that the permit should be denied (as described elsewhere in this preamble). See section 165(d)(2)(C)(ii) of the Act.

result of subsequent communications between the applicant and the permitting authority.

Consistent with CAAAC recommendations, the EPA is also proposing to require that the permitting authority provide the FLM with notice of, and reasonable opportunity to participate in, pre-application meetings scheduled with prospective PSD applicants that would locate within 100 kilometers of a Federal Class I area. See proposed §§ 51.166(p)(3)(iii) and 52.21(p)(3)(ii). If given such an early opportunity, the FLM would be expected, where possible, to inform the prospective applicant of concerns about Class I impacts, as well as any intention to file a notice alleging potential Class I impacts.

While this proposal for advance notification applies specifically to prospective sources and modifications located 100 kilometers or closer to a Federal Class I area, there should be no automatic presumption that sources located farther than 100 kilometers will not affect a Federal Class I area.[59] There will be instances where it would be prudent for the permitting authority to notify the FLM of a prospective source that would locate more than 100 kilometers from a Federal Class I area. As further described below, the FLM will receive summary notification of such distant sources at the permit application notification stage and may be interested in learning about them as early as possible. However, the EPA has declined to propose requirements for mandatory pre-application notification beyond the 100-kilometer distance. Nevertheless, the EPA will consider a more inclusive cutoff, e.g., 200 kilometers, for mandatory pre-application notification, if for some reason it is unable to implement the database that is intended to inform FLM about the more distant proposed new major sources and major modifications.

The EPA requests public comments on all aspects of these proposed regulatory revisions addressing advance notification, including the appropriate type of notification, the mandatory notification within 100 kilometers of a Federal Class I area, and the 30-day timeframe for providing such notification to the FLM. The EPA is interested in the public's views about the need for these changes in light of the other regulatory revisions, described below, that the EPA is proposing to improve FLM coordination, including the proposed requirement that permit applications for all PSD sources and modifications proposing to locate within 100 kilometers of a Federal Class I area must automatically be transmitted to the FLM.

b. Coordination of the Permit Application. Several of the CAAAC recommendations addressed improving coordination between the permitting authority and the FLM once a permit application has been received. Similar to the recommendations for pre-application coordination addressed previously, such coordination was considered important in helping to avoid disputes and delays in carrying out the permit review process.

The EPA is proposing to revise the notification requirements that apply when the permitting authority receives a PSD permit application. The proposed notification requirements are to apply on the basis of the proximity of the proposed source or modification to a Federal Class I area. However, as described previously, sources proposing to locate near a Federal Class I area are not automatically assumed to have an adverse impact on that area. With the proposed revisions, the FLM is afforded an opportunity to review the contents of any PSD permit application to determine whether sufficient information is available to assess the potential impacts on a Federal Class I area. As described earlier, in section IV.C.1.c of this preamble, the EPA has proposed to require that the FLM (or other named officials) file a notice alleging potential Class I impacts in order to trigger specific Class I informational needs in the permit application. The proposed 100 kilometer cutoff described below applies only to the automatic notification (including forwarding of permit application) of the FLM that such source has applied for a PSD permit.

(1) Notification to FLM for Sources Located Within 100 Kilometers of a Federal Class I Area. Because sources located within a 100-kilometer range of Federal Class I areas generally have the greatest potential for affecting the air quality in those areas, EPA is proposing to require notification of the affected FLM when a PSD permit application is received for a new or modified source proposing to locate within 100 kilometers of a Federal Class I area. The proposed notification includes sending a copy of the permit application and any other relevant information. See proposed §§ 51.166(p)(4)(i) and 52.21(p)(4)(i).

The proposed regulations do not mandate that the permitting authority, itself, must send each affected permit application to the FLM. Instead, the State may elect to require the PSD applicant to directly transmit a copy of its application and other relevant information to the FLM. In either case, the EPA believes that the permitting authority will want to ensure that the FLM receives the application promptly so there will be few, if any, delays to the initial phase of the permit process.

With regard to the existing notification provision at § 51.166(p)(1), the EPA proposes to move this provision to a more appropriate location. This provision requires that the permitting authority transmit to the Administrator a copy of each PSD permit application received and does not address FLM notification. In its present location in the regulations, the existing EPA notification requirement could be interpreted to apply only to proposed sources and modifications whose emissions affect a Federal Class I area. The Act provides that the EPA notification requirement apply with respect to all PSD permit applications—not just those affecting Federal Class I areas. See section 165(d)(1) of the Act. In moving the existing provision to the new location in the part 51 regulations, its intended coverage of all PSD permit applications will be better understood. See proposed redesignated § 51.166(q)(1).

(2) Notification to FLM for Sources Locating more than 100 Kilometers from a Federal Class I Area. The EPA recognizes that the FLM will have an interest in reviewing the potential effects associated with emissions from certain sources proposing to locate more than 100 kilometers from a Federal Class I area. It emphatically is not the EPA's intention to enable such sources to be automatically exempted from consideration as to their potential impacts on Class I areas. However, a general requirement to transmit copies of all permit applications to the FLM would be quite burdensome and overly inclusive. Accordingly, the EPA is proposing a different approach for providing notification to the FLM for applications proposing sources more than 100 kilometers from a Federal

[59] The 100-kilometer cutoff being used in this proposal for mandatory notification requirements involving FLM's is consistent with the current EPA policy concerning modeling of Class I impacts. In an October 19, 1992 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards to EPA Regional Offices, the EPA clarified its guidance for modeling Class I area impacts under the PSD program. The policy statement advised Regional Office personnel that it was appropriate to routinely consider the ambient impacts resulting from PSD sources proposing to locate within 100 kilometers of a Class I area. The EPA further stated that such guidance was not to be interpreted so as to preclude the consideration of potential impacts of emissions from large sources locating at distances greater than 100 kilometers if there is reason to believe that such sources could adversely affect the air quality in the Class I area.

Class I area. The EPA is developing a special electronic database and proposing to require that a summary of each PSD permit application be entered into this database.[60]

The proposed informational requirements include the name and type of source, the nature of the project, source location and proximity to Class I areas (i.e., within 250 kilometers), the proposed emission rates (or emissions increases) of air pollutants to be emitted by the source, and key mailing addresses. The FLM, as well as the general public, will have access to this information. The administration of this electronic database is addressed in more detail in section IV.C.6. of this preamble, ''Information Clearinghouse.'' See proposed §§ 51.166(n)(4) and 52.21(n)(4).

Once relevant information pertaining to a proposed major source or major modification is registered in the EPA database, the FLM will be able to check the Bulletin Board, determine whether such source represents a potential concern to air quality or air quality related values in the Class I area (based on the summary information contained therein), and request a copy of the entire permit application. In order to ensure that the FLM is given a reasonable opportunity to request a copy of any specific application (for sources that would locate beyond the 100-kilometer range), the EPA is proposing that the FLM will be afforded at least 7 days from the date of registration of information on the electronic database to review such information and request the entire permit application. See proposed §§ 51.166(p)(4)(ii) and 52.21(p)(4)(ii).

The EPA requests public comments on its proposed requirements to improve the notification procedures which inform the FLM about incoming permit applications. In particular, the EPA requests public comments addressing the proposed requirement to transmit a permit application to the FLM when the proposed source is within 100 kilometers of a Federal Class I area.

c. Coordination of the Completeness Determination. The EPA is also proposing to revise both sets of PSD regulations by adding a requirement that the FLM be given at least 30 days (starting from receipt of the application by the FLM) to review the application prior to any completeness determination issued by the permitting authority. The 30-day review is required only when the FLM is to receive the permit application as provided under this proposal [See e.g., proposed § 51.166(p)(4)] where the proposed source is located within 100 kilometers from a Federal Class I area or where it is located beyond 100 kilometers but the FLM requests the entire application within 7 days from the inclusion of summary information in EPA's electronic data base. See proposed §§ 51.166(p)(5)(ii) and 52.21(p)(5)(ii).[61]

During the proposed 30-day review period, the FLM will have an opportunity to determine whether there is reason to believe that the proposed source may adversely affect a Federal Class I area and request additional information, to be obtained from the applicant, in order for an adequate Class I impact analysis to be completed. The request for additional information by the FLM may be in the form of a notice alleging that emissions from the proposed source may cause or contribute to a change in air quality in the affected Class I area and identifying the potential adverse impacts of such change on AQRV (see section IV.C.1.c. of this preamble). If such notice is given, the permit applicant would be required to perform the Class I impact analysis, discussed previously, to satisfy its obligation for a complete application. The EPA's proposed regulations would also require permitting authorities to consider, in making a completeness determination, any comments provided by the FLM concerning the completeness of the application within the 30-day review period. See proposed §§ 51.166(p)(5)(iii) and 52.21(p)(5)(iii).

The EPA generally anticipates that the permitting authority will respond affirmatively to the FLM's request for additional information and will notify the applicant that the application is incomplete and require such additional information from the applicant. The permitting authority generally should not announce that an application is deemed complete until the FLM's request for additional information has been satisfied by the applicant, and the FLM has had an opportunity to file a notice alleging potential Class I impacts, if such notice has not already been filed. In some cases, however, the permitting authority may question the request made by the FLM or simply disagree with it. When this occurs, the EPA is proposing that the permitting authority must consult with the FLM and try to resolve whatever problems may exist prior to issuing a completeness determination. See proposed §§ 51.166(p)(5)(iv) and 52.21(p)(5)(iv). Nevertheless, while the permitting authority must give reasonable consideration to the FLM's concerns under the proposed changes, the permitting authority is responsible for making the ultimate decision regarding the application's completeness. The proposed provisions allow the permitting authority to issue its completeness determination any time (either before or after the 30-day period has ended) after any comments from the FLM have been received and consultation with the FLM has occurred about any inconsistency between the permitting authority's views and the FLM's recommendations.

The CAAAC recommended that the EPA consider establishing a formal dispute resolution process as a part of the completeness review. The EPA has declined to propose any specific requirements focusing on the resolution of potential problems between the permitting authority and the FLM. Instead, the EPA's proposal contemplates that the permitting authority and the FLM retain discretion to determine the nature of consultation that is appropriate. The EPA believes that most permitting authorities and permit applicants recognize the merits of early consultation with the FLM and that all affected parties will work in a cooperative manner.

d. Coordination of the Preliminary Determination. The Act provides that, if the proposed source or modification will not cause or contribute to a violation of an increment in a Federal Class I area, the FLM has the burden of demonstrating to the satisfaction of the permitting authority that the source will have an adverse impact on AQRV. If so demonstrated, the Act mandates that the permit shall not be issued. Conversely, if a proposed source or modification causes or contributes to an increment violation in a Federal Class I area, the permit may be issued if the owner or operator demonstrates to the satisfaction of the FLM that the proposed source will have no adverse impact on AQRV and the FLM so certifies. See section

[60] Under the part 51 PSD regulations, the proposed requirement does not specify whether the applicant or the permitting authority must enter the data summary. The EPA believes that it is appropriate in this situation to allow permitting authorities to exercise their discretion in determining what specific procedures they will adopt and implement to ensure that the required data is entered into the EPA electronic database.

[61] For proposed sources more than 100 kilometers from a Federal Class I area, the permitting authority may proceed to issue its completeness determination any time after the 7-day period for FLM review if the FLM does not request a copy of the permit application. However, the FLM is not precluded from requesting additional information at any time after the formal 7-day review period. But, such later requests will not trigger the 30-day FLM review period prior to the permitting authority's completeness determination proposed elsewhere in this notice [See, *e.g.*, proposed section 51.166(p)(5)(i)].

165(d)(2)(C)(ii) and (iii) of the Act. In either situation, the FLM has an affirmative responsibility to protect the AQRV associated with the affected Federal Class I area. See section 165(d)(2)(B) of the Act.

The EPA is proposing several revisions to the existing PSD regulations concerning the permitting authority's preliminary determination to issue or not issue the PSD permit where a proposed source will not cause or contribute to a violation of a Class I increment and the FLM has submitted a demonstration that a proposed source will have an adverse impact on AQRV. Specifically, these changes relate to (1) clarifications to existing regulations addressing the scope of the FLM's demonstration of an adverse impact on AQRV, (2) timing for submittal of the FLM's demonstration to the permitting authority for consideration prior to issuing or denying a PSD permit, and (3) criteria which the permitting authority must consider in deciding to nonconcur with the FLM's demonstration.

(1) Scope of the FLM's Demonstration of an Adverse Impact on AQRV. The existing part 52 PSD regulations are inadequate because they only require the Administrator to consider the FLM's demonstration of the visibility impacts of a proposed source, and therefore do not contemplate consideration of other AQRV. See existing § 52.21(p)(3). When the part 52 PSD regulations were originally promulgated, visibility was the only specified AQRV; however, the FLM have identified a variety of AQRV and, as discussed previously, the EPA is proposing a more general definition of AQRV similar to the definition that the FLM have historically been using. See, *e.g.*, proposed § 51.166(b)(40). Thus, the EPA is proposing to delete the existing provision in § 52.21, and, under the proposed revisions described immediately below, provide for consideration of the FLM's demonstration of an adverse impact on AQRV.

(2) Timing for Submittal of the FLM's Demonstration of an Adverse Impact on AQRV. Under the existing part 52 PSD regulations, the FLM is given only 30 days from receipt of a notice (that a PSD application has been submitted) from the Administrator to provide the required demonstration of an adverse impact on AQRV for the Administrator's consideration prior to the Administrator's issuance of a preliminary permit determination. This time constraint places the FLM in a dilemma. The FLM is expected to provide a well-documented, reasoned demonstration of an adverse impact on AQRV that a proposed source will have in a Federal Class I area, but is generally given an abbreviated time to complete this critical task.

In contrast, the part 51 PSD regulations [See existing paragraph (p)(3)] require that the State provide a mechanism whereby the FLM may present a demonstration of an adverse impact on AQRV to the permitting authority after the preliminary determination has been made. This existing requirement does not contemplate that the FLM's demonstration would be best addressed as part of the preliminary determination and then made available for public notice and comment.

The EPA believes that it is important to the permitting process that the FLM's demonstration be submitted before a preliminary determination is made and that sufficient time be allowed to complete the demonstration. Thirty days is generally not a sufficient amount of time for the FLM to complete a demonstration of an adverse impact on AQRV. Instead, the EPA proposes that the FLM be allowed at least 60 days to make the required demonstration. Moreover, the proposed regulations provide that the 60-day period occur prior to a preliminary determination so that any demonstration submitted by the FLM may be adequately considered by the permitting authority and addressed as part of the preliminary determination. See proposed §§ 51.166(p)(6)(i) and 52.21(p)(6)(i).

The EPA also believes that a 60-day period (beginning on the date that the permitting authority formally issues its determination that the application is complete), taken together with the improvements addressed above to facilitate earlier FLM and permitting authority coordination, provides the FLM with a more reasonable period of time. During this period, the FLM may need to conduct a variety of technical analyses or perhaps request (via the permitting authority) that the applicant provide additional analyses to provide sufficient basis for the demonstration to be developed. This will, of course, depend on the amount of information already contained in the application as a result of prior coordination about the potential impacts on AQRV in the Federal Class I area. For example, if the FLM has issued notice pursuant to proposed §§ 51.166(p)(2)(i) or 52.21(p)(2)(i), alleging that the proposed source may impact a Federal Class I area, then the FLM may rely on the ensuing impact analysis performed by the applicant as at least a significant starting point for the FLM's evaluation.

The EPA invites public comments on the adequacy of a 60-day period for completing the demonstration of an adverse impact on AQRV. The EPA will consider a different time period if it can be shown that such different period would allow a more appropriate amount of time for the FLM to complete any necessary analyses without unduly delaying the permit process.

In addition, the EPA requests comments on its own role. Section 165(d)(2)(B) of the Act provides that the FLM and the Federal official charged with direct responsibility for land management have an ''affirmative responsibility'' to ''consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact.'' The EPA is not proposing a specific role, beyond the significant programmatic changes related to Class I area protection proposed today, concerning how it should consult with the FLM. The EPA requests comments on this issue.

(3) Rejection of the FLM's Demonstration of an Adverse Impact on AQRV. The Act and EPA's PSD regulations provide that where the permitting authority determines that a proposed source's emissions will not cause or contribute to a violation of a Class I increment, the FLM must demonstrate ''to the satisfaction of the permitting authority'' that the proposed source will have an adverse impact on AQRV. The permitting authority is thus given the authority to accept or reject the FLM's demonstration. The permitting authority's concurrence with such demonstration means that the permitting authority must propose to deny the PSD permit. See existing §§ 51.166(p)(3) and 52.21(p)(4). [See also proposed §§ 51.166(p)(6)(ii) and 52.21(p)(6)(ii).] If the permitting authority determines that the FLM has not demonstrated to its satisfaction that a proposed source's emissions will have an adverse impact on AQRV, the permitting authority may reject the FLM's demonstration so long as it has a rational basis for doing so.[62]

Recent permit controversies have underscored the need for national guidance addressing the permitting authority's role in evaluating the FLM's demonstration of an adverse impact on AQRV and the rationale for any decision to disagree with the FLM's findings. For example, in a PSD permit appeal proceeding, the EPA's Environmental Appeals Board held that the permitting authority erred in summarily rejecting the demonstrations of the FLM for the

[62] See 50 FR 28544, 28549 (July 12, 1985); see also *Old Dominion Electric Cooperative*, PSD Appeal No. 91–39 at 8 and n. 9 (Jan. 29, 1992).

Shenandoah National Park and James River Face Wilderness that the proposed facility would have an adverse impact on AQRV in those Federal Class I areas.[63]

In an effort to provide clearer guidance and promote more reasoned decision-making, the EPA is proposing to require that certain considerations must be addressed and made public concerning a permitting authority's rejection of the FLM's demonstration of an adverse impact on AQRV. In doing so, the EPA has tried to balance the statutory provisions concerning the affirmative responsibility given to the FLM to protect AQRV and the stipulation that the permitting authority must be satisfied with the FLM's demonstration of adverse impact on AQRV in any particular situation.

The FLM are entrusted with administering the statutes governing the management and preservation of Federal Class I areas, and are expressly entrusted by the Act with an affirmative responsibility to protect AQRV. The FLM have expert knowledge about the unique values associated with Federal lands, and administer ongoing monitoring and research programs to help evaluate the effects that air pollution has on such values. Accordingly, the EPA believes it is appropriate for the permitting authority to recognize the FLM's broad expertise in the identification and evaluation of adverse effects on AQRV. Notwithstanding this expertise, the permitting authority may call upon experts of its own choosing to evaluate the findings in the FLM's demonstration.

Where the permitting authority is not satisfied with the FLM's demonstration of adverse impact on AQRV, the EPA is proposing (1) a general consultation provision necessitating some form of communication and discussion between the permitting authority and the FLM; and (2) a provision requiring the permitting authority to highlight the issues raised by the FLM and explain its reasons for disagreement in the public record. The permitting authority would satisfy this latter requirement by including a brief summary of the Class I area impact issues in the public notice announcing the preliminary permit determination, and explaining in writing, in the public record, its specific reasons for rejecting the FLM's demonstration of adverse impact. See proposed §§ 51.166(p)(6)(iii), 51.166(q)(4)(ii) and (iii), and 52.21(p)(6)(iii). The EPA believes that the requirement to indicate in the public notice that the FLM's demonstration has been rejected will give the public sufficient notice and opportunity to access the permitting authority's reasons for not being satisfied with the FLM's demonstration. Such access will aid the public's ability to comment meaningfully at any public hearing that may be requested. As proposed, the permitting authority's written explanation must address, at a minimum, the following factors:

i. Scientific/Technical Basis. The permitting authority must consider all relevant data and analyses submitted by the FLM and offer a reasoned explanation for its disagreement with such data and the resulting analyses. See proposed §§ 51.166(p)(6)(iii)(A) and 52.21(p)(6)(iii)(A).

ii. Description of the AQRV and Adverse Impact. The permitting authority must address the FLM's findings describing the adverse impact being demonstrated for each affected AQRV, by explaining any conclusions it reaches, about whether the projected impacts of the source's emissions will have an adverse impact on the AQRV, that are inconsistent with the conclusions reached in the demonstration submitted by the FLM. See proposed §§ 51.166(p)(6)(iii)(B) and 52.21(p)(6)(iii)(B).

iii. Mitigative Measures. The permitting authority must describe any efforts that have been undertaken to mitigate the potential impacts of a proposed source on the Federal Class I area of concern, including any estimated emissions reductions, and the effect of such reductions. See proposed §§ 51.166(p)(6)(iii)(C) and 52.21(p)(6)(iii)(C).

Finally, the EPA is proposing to require that, for any permit ultimately issued to a source determined by the FLM to have an adverse impact on AQRV, the permitting authority must address any additional comments or input from the FLM (intended to substantiate or augment its initial demonstration) that may be submitted during the public comment period. See proposed §§ 51.166(p)(6)(iv) and 52.21(p)(6)(iv).

3. Mitigating an Adverse Impact on AQRV

a. Background. In general, a PSD permit shall not be issued when the emissions from a proposed facility would have an adverse impact on AQRV in a Federal Class I area. See section 165(d)(2)(C) of the Act. This specific prohibition on permit issuance applies when the FLM of a Class I area demonstrates to the satisfaction of the permitting authority that emissions from a proposed source will have an adverse impact on AQRV, notwithstanding that the proposed source does not cause or contribute to a violation of a Class I increment. See section 165(d)(2)(C)(ii) of the Act. There have been several instances over the past few years where, in such circumstances, the FLM has submitted a demonstration of an adverse impact on AQRV in a Class I area. In some cases, the FLM's concerns have been addressed through successful negotiations between the FLM and the permit applicant, where the source obtained either emissions reductions (offsets) from an existing source, or adopted more stringent control measures, or did some combination of both.[64] In other instances, similar demonstrations of an adverse impact on AQRV have been the subject of contentious administrative litigation.[65]

b. General Policy for Mitigating Class I Area Impacts. The CAAAC recommended requiring offsets for any proposed source that would have an adverse impact on AQRV. Specifically, the CAAAC recommended that where the emission offset ratio was less than 1:1, a net air quality benefit analysis should be made to support the specific offset ratio proposed. The CAAAC recommended that, where the emission offset ratio is greater than 1:1, a standardized emission/distance adjustment factor for offsets could be used instead of demonstrating that a net air quality benefit results from the offsets.

While the EPA agrees with the CAAAC's overarching concern that the EPA provide guidance on the

[63] *Hadson Power 14—Buena Vista,* PSD Appeal Nos. 92–3, 92–4 & 92–5 (Oct. 5, 1992). The EPA Environmental Appeals Board reasoned that, ''States do not have unfettered discretion to reject an FLM's adverse impact determination. If a State determines that an FLM has not satisfactorily demonstrated an adverse impact on AQRV from the proposed facility, the State must provide a 'rational basis' for such a conclusion, 'given the FLM's affirmative responsibility and expertise regarding the Class I areas within their jurisdiction.' 50 FR 28549 (July 12, 1985). Arbitrary and capricious rejections of adverse impact demonstrations are not sustainable.'' [*Hadson* at p. 21. (citations omitted)]

[64] See, e.g., *Multitrade Limited Partnership,* PSD Appeal Nos. 91–2 *et alia* (January 21, 1992). In *Multitrade* the proposed source agreed to mitigate its impact through a combination of reduced emissions from the new source as originally proposed and emission offsets from a nearby existing source, resulting in an offset ratio substantially greater than one-to-one. Based on these changes, the FLM concluded that the emissions from the proposed source, if modified, would not have an adverse impact on the Shenandoah National Park. *Id.* at 5.

[65] See *Old Dominion Electric Cooperative,* PSD Appeal No. 91–39 (January 29, 1992); *Hadson Power 14—Buena Vista,* PSD Appeal Nos. 92–3, 92–4 & 92–5 (October 5, 1992).

implementation of mitigating offsets, the EPA declines to recommend rigid tests for assessing the adequacy of offsets. Rather, the EPA proposes that general principles already established under the PSD program guide the implementation of offsets. In addition, the EPA is proposing to add a provision to the PSD regulations that explicitly provides what EPA has previously acknowledged—that sources may mitigate an adverse impact on AQRV in order to obtain a PSD permit.[66] See proposed §§ 51.166(p)(7) and 52.21(p)(7).

The proposed provision specifies that PSD programs shall allow for mitigation by a proposed source and specifically provides that the permitting authority may issue a permit for a proposed major source or major modification that would otherwise be denied a permit because of an adverse impact on AQRV, if the permitting authority determines, in consultation with the FLM, that the source has mitigated the adverse impact on AQRV. The EPA believes that sound technical evidence should support a demonstration of mitigation. The demonstration should show that there will be no net adverse impact as a result of the proposed source's emissions. The proposed provision specifically acknowledges offsets as a mitigation option where the owner or operator of a proposed source obtains enforceable and permanent emissions reductions of sufficient amount and in such location that the reductions will offset the change in air quality in the Federal Class I area that would have resulted from the proposed source. See proposed §§ 51.166(p)(7) and 52.21(p)(7). The quantitative amount of the offsetting emissions should, therefore, be shown to be sufficient to in fact mitigate the adverse impact on AQRV that would otherwise be caused by the proposed emissions increase. This will involve consideration of the location of the offsetting source relative to the Class I area, as well as the meteorological and topographical conditions which affect dispersion of the offsetting emissions.

Another possible consideration in evaluating whether any potential emission reductions identified at existing sources can be used to mitigate the adverse impact on any AQRV is whether the reductions are already required by some other Act-mandated program. In nonattainment areas, section 173(c)(2) of the Act plainly prohibits emission reductions otherwise required under the Act from being credited as offsets for new source review purposes.[67]

Unlike the nonattainment NSR program, offsets under the PSD program are not expressly addressed by the Act. The EPA is interested in the public's views about the crediting of those emission reductions already required for other purposes as offsets for mitigating a proposed source's adverse impact on an AQRV.

As an alternative to emissions offsets, a more stringent emission limitation than the limitation that would otherwise be required by BACT may be established to mitigate an adverse impact on an AQRV in a Federal Class I area. Depending upon the remaining emissions released and the sensitivity of the AQRV of a Class I area, an emissions limitation that would otherwise be required by BACT, if an adverse impact on an AQRV was not considered, may be inadequate to entirely mitigate the adverse impact. Thus, emission offsets, a stricter emission limitation, or some combination of both, may be appropriate to mitigate an adverse impact on an AQRV.

The EPA believes that measures such as emission offsets from existing sources represent a reasonable approach which enables the mitigation of an adverse impact on an AQRV. The EPA's mitigation policy provides needed flexibility to the PSD permitting process by allowing a new major source or major modification that mitigates an adverse impact on AQRV to receive a construction permit, even though its proposed emissions increase is otherwise demonstrated by the FLM, and concurred with by the permitting authority, to have an adverse impact on AQRV. The adoption of this policy is also intended to promote dispatch in the PSD permit process by providing a clearly available elective recourse enabling applicants to avoid potentially contentious and protracted permitting disputes where the FLM demonstrates an adverse impact on AQRV and the applicant wishes to mitigate its demonstrated impacts prior to a formal concurrence with the demonstration by the permitting authority.

c. Post-construction Monitoring. The CAAAC recommendations addressing mitigation of an adverse impact on AQRV included consideration of post-construction monitoring for Class I areas. Post-construction monitoring alone would not directly mitigate an adverse impact on AQRV. However, such monitoring may provide critical information about a source's impact on a Class I area.

The EPA is proposing to amend its PSD regulations to clarify that post-construction ambient monitoring may be required for the purpose of determining the effect emissions from a facility may have, or are having, on AQRV in a Federal Class I area. The existing PSD regulations at §§ 51.166(m)(2) and 52.21(m)(2) currently require the owner or operator of a new major source or major modification to conduct such post-construction ambient monitoring, as the permitting authority determines to be necessary, to determine the effect emissions may have, or are having, on air quality in any area. However, the current EPA regulations do not specify that such ambient monitoring may include the monitoring of air quality-related impacts in Federal Class I areas. The EPA is, therefore, proposing to amend the PSD regulations to specifically state that post-construction ambient monitoring may be required in Class I areas. *See* proposed amendatory language for §§ 51.166(m)(2) and 52.21(m)(2). The EPA requests comments on this proposed regulatory change.

4. Class I Significant Impact Levels

Some members of the NSR Reform Subcommittee recommended that the EPA provide criteria indicating the circumstances in which a proposed source's projected contribution to ambient concentrations in a Class I area may be considered de minimis for certain planning requirements. These members recommended that the EPA identify a level of contribution (ambient concentration) that is de minimis, or insignificant, so that a proposed source having a contribution less than that concentration will know with certainty that it will not be subject to the full requirements for an increment analysis in Class I areas. The EPA believes that it is reasonable to extend the use of significant impact levels to the Class I increments. Levels of significant impact are currently used as a matter of policy in the PSD program for determining whether a proposed source may be excluded from certain requirements (e.g., significant emissions rates, and significant monitoring concentrations).[68]

[66] See *Multitrade* at p. 7–8, n.5.

[67] Incidental emission reductions not otherwise required by the Act are to be creditable under section 173(c)(2) of the Act. See also 57 FR 13553 (April 16, 1992) (guidance on creditable reductions under the nonattainment NSR program).

[68] For example, under the PSD regulations, a comprehensive preconstruction review must be conducted for each regulated pollutant that a proposed major source or major modification will have the PTE in ''significant'' amounts, as defined in existing section 51.166(b)(23)(i) and 52.21(b)(23)(i). Under existing section 51.166(i)(8)

Continued

See, also, discussion in section IV.C.5.a. of this preamble, addressing the proposed codification of significant impact levels for NAAQS and Class II and III increments.

Administrative agencies may exempt ''truly de minimis'' situations from a statutory command ''when the burdens of regulation yield a gain of trivial or no value.'' [69] Accordingly, the EPA is proposing to add significant impact levels for Class I increments to both sets of PSD regulations. See proposed §§ 51.166(b)(23)(v) and 52.21(b)(23)(v). The proposed significant impact levels would apply to the existing Class I increments for PM–10, SO_2, and NO_2 in the PSD regulations. The significant impact levels would be used to determine whether a new major source or major modification, due to the predicted ambient concentration from its own emissions, would be required to conduct a comprehensive Class I increment analysis for a given pollutant. A de minimis impact resulting from the emissions from a proposed source would serve as the basis for a determination that such emissions will not contribute to a violation of the applicable Class I increments.

The proposed significant impact levels for Class I increments were derived by taking four percent of the concentration defined for the existing Class I increment for each applicable pollutant and averaging period. The EPA believes that where a proposed source contributes less than four percent to the Class I increment, concentrations are sufficiently low so as not to warrant a costly and detailed analysis of the combined effects of the proposed source and all other increment-consuming emissions. The EPA previously used a similar rationale to establish the significant emissions rates for PSD applicability purposes, concluding in part that emissions rates which resulted in ambient impacts less than four percent of the 24-hour standards for particulate matter and SO_2 were sufficiently small so as to be considered de minimis.[70]

It should be noted that, while the FLM representing the National Park Service and the U.S. Fish and Wildlife Service agree that the general use of significant impact levels for Class I increments may be appropriate, they have indicated that such levels should be adequately conservative. These FLM have, in fact, recommended significant impact levels that are more restrictive than those being proposed today by EPA. Their recommended levels were developed using the ratios derived from a comparison of existing significant impact levels—used by EPA for NAAQS and Class II increment analyses—and the respective NAAQS. For comparative purposes the significant impact levels being proposed today by EPA and the levels recommended by the FLM are shown below.

Pollutant	Averaging time	Levels proposed by EPA (ug/m^3)	Levels Recommended by FLM (ug/m^3)
Sulfur Dioxide	Annual	0.1	0.03
	24-hour	0.2	0.07
	3-hour	1.0	0.48
Particulate Matter	Annual	0.2	0.08
	24-hour	0.3	0.27
Nitrogen Dioxide	Annual	0.1	0.03

The EPA wishes to emphasize that the specific significant impact levels that it is proposing today for the Class I increments are not intended to serve as thresholds for determining the need for an AQRV analysis or whether an adverse impact on AQRV will occur. An adverse impact on AQRV in a Class I area depends upon the sensitivity of the particular AQRV and involves an assessment of potential harm. An ambient pollutant concentration that is deemed to be of relatively insignificant consequence for purposes of increment consumption should not automatically be considered inconsequential relative to the inherently fact-specific demonstration upon which an adverse impact on AQRV is to be based. Thus, a notice may be filed (as described in section IV.C.1.c. of this preamble) alleging that a proposed source's emissions may cause or contribute to a change in the air quality in a Federal Class I area and identifying the potential adverse impact of such change. The fact that such source's predicted ambient impact is less than the applicable significant impact level for Class I increments would neither relieve the applicant from having to complete an analysis of impacts on AQRV nor automatically allow the permitting authority to reject the FLM's demonstration of adverse impact on AQRV. The EPA requests comments on its proposal to establish significant impact levels for Class I increments in general, and the proposed levels in particular.

The EPA is declining to propose specific significance levels for determining whether the emissions from a proposed source may have an adverse impact on AQRV. The FLM is specifically entrusted by the Act with protecting AQRV and the decision to establish any appropriate significance levels for AQRV should be made primarily by the FLM. Conceptually, such significance levels would represent ambient air pollutant concentrations or deposition rates below which only de minimis effects on AQRV will occur. Accordingly, emissions increases not resulting in ambient concentrations or deposition rates exceeding the prescribed significance levels would therefore be excluded from a review of AQRV impacts.

The EPA generally recognizes the administrative benefits of categorically eliminating certain pollutant-emitting activities from regulatory review and has employed significance levels in other contexts in the NSR program, including the significance levels proposed above for Class I increments. However, there are many obstacles to formulating reasonable significance levels in the AQRV context. For example, there are numerous AQRV and there is a wide variance in sensitivity to emissions increases for particular AQRV.

The FLM have been working with other air pollution effects scientists to develop lists of sensitive resources (e.g., species of plants and invertebrates, and particular streams and lakes) and sensitivity thresholds that could help

and section 52.21(i)(8), the permitting authority may exempt a proposed source from having to include ambient monitoring data in its permit application for a particular pollutant if the applicant's air quality impact for such pollutant is less than the ''significant'' concentration prescribed in the regulations.

[69] *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979).

[70] See 45 FR 52676, 52707–52708 (August 7, 1980).

establish significant impact levels for individual AQRV in the future. However, many studies conducted to date have not yielded the information needed to establish a critical threshold level from which a significance level could be derived. The EPA encourages the FLM to continue pursuing research on AQRV effects, and anticipates an evolving process by which research and information may eventually support the establishment of site specific significance levels for individual AQRV. Any significant impact levels for AQRV may necessarily be site specific since each AQRV and its associated critical pollutant loadings may be different from one area to another and even within individual Federal Class I areas. In any event, EPA encourages the establishment of an electronic database about Class I area resources, described elsewhere in this preamble, that will make information about available research on AQRV effects more accessible.

The EPA requests public comment on the issue of significance levels for AQRV. In particular, EPA is interested in suggestions regarding alternative approaches that promote regulatory certainty by excluding from consideration proposed sources that have truly de minimis impacts on Class I resources while still ensuring that AQRV are adequately protected in the PSD permitting process. Commenters should fully consider the legal standards that govern the establishment of de minimis regulatory exemptions. See *e.g.*, *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979).

5. Clarification of Miscellaneous Issues

The discussion which follows addresses several relatively discrete issues. The EPA is clarifying current policy in areas where there is potential for significant confusion or uncertainty and, in some instances, is proposing conforming changes to the implementing regulations. The EPA is also proposing changes that largely codify existing policy.

a. Significant Impact Levels for NAAQS and Class II and III Increments. The EPA is proposing several changes to the PSD regulations at both §§ 51.166 and 52.21 to make the rules consistent with current practice. First, the EPA is proposing to revise the provisions of existing §§ 51.166(k) and 52.21(k) to clarify that a source's own emissions must make a ''significant contribution'' to a violation of any NAAQS or PSD Class II or III increment before that source would be denied a PSD permit. See proposed amendatory language for §§ 51.166(k) and 52.21(k). Second, the EPA is proposing to incorporate into the PSD regulations the significant impact levels currently set forth at § 51.165(b)(2)—which are being used to determine whether major new source or major modification contributes to a violation of a NAAQS—so that they may be directly applied to the ''significant contribution'' test in the PSD regulations. See proposed §§ 51.166(b)(23)(iv) and 52.21(b)(23)(iv). The EPA has long interpreted the ''significant contribution'' test set forth in existing § 51.165(b)(2) to apply to PSD sources, as well, since the provision applies to major new sources and major modifications located in attainment and unclassifiable areas.

Finally, the EPA is proposing to add significant impact levels for the Class II and Class III increments. See proposed §§ 51.166(b)(23)(v) and 52.21(b)(23)(v). The proposed levels are the same as those levels at existing § 51.165(b)(2), which define a significant contribution to a violation of the NAAQS, and simply codify current EPA policy which allows the significant impact levels from § 51.165(b)(2) to be directly applied to the PSD program to determine a significant contribution to either the NAAQS or PSD increments. The EPA requests comment on the need to include these significant impact levels in the PSD regulations and the need for significant impact levels for Class II and Class III increments. Furthermore, the EPA requests comment on the proposed significant impact levels for the Class II and Class III increments, specifically whether they should be lower than the levels used for NAAQS compliance.

b. Analysis of Impacts on Federal Class II Areas. This proposal also clarifies the requirement for the ''additional impact analysis'' under § 51.166 and 52.21. In addition to the central requirements that each PSD source must demonstrate that its allowable emissions will not cause or contribute to a violation of any NAAQS or PSD increment, each such source is generally required to prepare further analyses for the pollutants that it will emit. Such ''additional impact analysis'' is consistent with the statutory provisions under section 165(e)(3)(B) of the Act, and includes an assessment of the impairment of visibility, soils, and vegetation within the proposed source's impact area, including Federal Class I and II areas. See proposed amendatory language for §§ 51.166(o)(1) and 52.21(o)(1). In addition, the EPA is proposing more specific provisions for Federal Class I areas that require similar analysis where a FLM alleges that an adverse impact on AQRV may occur in Federal Class I area lands located beyond the area normally considered to be within the proposed source's impact area. See proposed §§ 51.166(p)(2)(i)(A)(*2*) and 52.21(p)(2)(i)(A)(*2*), and related discussion in section IV.C.1.c. of this preamble.

The FLM have expressed concern that the existing provisions, see, e.g., existing § 51.166(o)(1), which enable the applicant to exclude from analysis any impact on vegetation ''having no significant commercial or recreational value,'' could exclude the analysis of certain vegetation with ecological significance in the lands under their jurisdiction, i.e., Federal Class I and II areas. The EPA is proposing a change in the existing provisions so that applicants may not presume that soils and vegetation in Federal Class I and II areas are of no significant commercial or recreational value, except where the FLM indicates that such analysis is not needed. See proposed amendatory language for §§ 51.166(o)(1) and 52.21(o)(1).

c. Clarification of PSD Requirements Applicable to Non-Federal Lands Redesignated as Class I Areas. Individual CAAAC members and Tribal representatives have asked the EPA to provide guidance on the PSD provisions that apply to ''non-Federal'' reservation lands that are redesignated as Class I areas.[71] In particular, guidance has been requested concerning whether AQRV may be established for such lands and how these values are to be protected under the PSD program. The discussion below is intended to clarify the EPA's views on these issues and to describe the accompanying, largely technical, regulatory revisions that the EPA is today proposing. The policies described in the following discussion would also apply to non-Federal State lands redesignated as Class I areas.

(1) Redesignation of Class I Areas. Section 164(c) of the Act gives federally-recognized Indian Tribes[72] broad authority to request redesignation of lands within the exterior boundaries of

[71] Lands within reservation boundaries may be Federal lands under Federal Indian law and may or may not be ''Federal lands'' within the specific meaning of the PSD program. ''Federal lands'' under the PSD program include: national wilderness areas, national memorial parks, national parks, national monuments, national reserves, national seashores and other similar national public land areas. See, *e.g.*, sections 160(2), 162(a) and 164(d) of the Act. The term ''non-Federal'' is used here to refer to State lands or lands within the boundaries of an Indian reservation that are not Federal lands within the meaning of the Act's PSD program.

[72] See section 302(r) of the Act. The Department of the Interior periodically publishes a list of Tribes officially recognized by the Federal government. See 58 FR 54364 (Oct. 21, 1993).

their reservations as Class I areas. Several Indian Tribes have already had lands within reservation boundaries redesignated as Class I areas. The EPA has approved redesignation of the Northern Cheyenne Indian Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation and the Spokane Indian Reservation on the basis of tribal requests. See 40 CFR 52.1382(c) and 52.2497. States also have broad authority under section 164(a) to request redesignation of lands as Class I areas. To date, the EPA has not received such a State PSD redesignation request.

(2) Status of AQRV Protection for Non-Federal Lands Redesignated as Class I Areas. Any State or federally-recognized Tribe may establish AQRV for non-Federal lands within its jurisdiction which have been redesignated as Class I areas. The mechanism identified in the Act, by which a State or Tribe may seek protection of such AQRV when a proposed or modified major source in another jurisdiction will affect any AQRV which have been established, is contained in section 164(e) of the Act. See also § 52.21(t). Section 164(e) of the Act is a special dispute resolution provision involving intervention by the EPA Administrator. If the governing body of an affected Indian Tribe or Governor of an affected State determines that a proposed PSD source ''will cause or contribute to a cumulative change in air quality in excess of that allowed in this part [i.e., part C, title I of the Act, containing the PSD program]'' the Tribe or State may request that the Administrator enter into negotiations with the parties involved to resolve the dispute.[73] If requested by the Tribe or State, the Administrator must make a recommendation ''to resolve the dispute and protect the air quality related values of the lands involved.'' See section 164(e) of the Act.

The EPA proposes to interpret these provisions to direct EPA intervention, at the request of a State or Tribe, when a State or Tribe determines that a proposed source will cause or contribute to a violation of a NAAQS or PSD increment or will harm AQRV established by a State or Tribe. In accordance with section 164(e), the PSD provisions prohibit ''changes in air quality'' that exceed these requirements. See proposed § 51.166(t) and existing § 52.21(t). Further, as to AQRV, their protection is a stated purpose of the EPA's involvement in the dispute—'' the Administrator shall make a recommendation to resolve the dispute and protect the AQRV of the lands involved.'' See section 164(e) of the Act.[74] Accordingly, AQRV may be identified by States and Tribes for redesignated non-Federal Class I areas and these areas may be protected by a State's or Tribe's request for the EPA to resolve an intergovernmental dispute over a proposed PSD facility pursuant to section 164(e). The EPA requests comments on its proposed interpretation of the circumstances that authorize a State or Tribe to involve the EPA in resolving interjurisdictional permitting disputes pursuant to section 164(e).

The EPA, in the preceding discussion, is drawing a key distinction between the authority bestowed solely on FLM under section 165(d) of the Act to protect the AQRV of Federal Class I areas and the authority States and Tribes have under section 164(e) to protect the AQRV of non-Federal lands through the dispute resolution mechanism. The EPA intends to clearly distinguish between provisions that apply to the protection of AQRV of non-Federal class I areas and the provisions that apply to FLM under paragraph (p) of the existing and proposed PSD regulations in parts 51 and 52 by proposing a definition for ''Federal Class I areas.'' The EPA proposes to define ''Federal Class I areas'' as those areas owned by the United States and either (1) designated by Congress as mandatory Class I areas, unable to be redesignated, pursuant to section 162(a) of the Act, or (2) redesignated as Class I pursuant to paragraph (g) of the existing PSD regulations. See proposed §§ 51.166(b)(38) and 52.21(b)(39).

The existing part 52 PSD regulations already contain a dispute resolution provision based on section 164(e) of the Act. However, the existing provision at § 52.21(t) of the PSD regulations requires that, when the parties involved in a dispute do not reach agreement, the Administrator's determination (or the results of agreements reached through some other means) is to become part of the applicable ''State implementation plan.'' To avoid confusion, the EPA is proposing to revise the language to conform with the statutory language, which refers instead to the ''applicable plan.'' The EPA believes that the more general reference to the ''applicable plan'' used in the statutory language will avoid potential confusion because, in disputes involving a State and an Indian Tribe, the Administrator's determination should be made part of the applicable State implementation plan or Federal implementation plan, whichever is appropriate for the affected State, or the applicable Tribal implementation plan or Federal implementation plan, whichever is appropriate for the affected Indian Tribe. Therefore, the EPA is proposing to amend the existing regulatory provision by changing the words ''State implementation plan'' to read ''applicable plan'' consistent with the language in the Act. See proposed amendatory language for § 52.21(t).

The same wording problem is found in existing §§ 51.166(g) and 52.21(g), concerning area redesignation proposed by States or Indian Tribes. In that particular case, the regulatory provisions provide that the redesignation is subject to approval as a revision to the ''applicable State implementation plan.'' Accordingly, for the same reasons, the EPA is proposing clarifying revisions to §§ 51.166(g) and 52.21(g) by changing ''applicable State implementation plan'' to read ''applicable plan.'' See proposed amendatory language for §§ 51.166(g)(1) and 52.21(g)(1). The proposed addition of the dispute resolution provision in the part 51 PSD regulations will similarly use the statutory language, the ''applicable plan.'' See proposed § 51.166(t).

The EPA is also proposing to revise superseded definitions of ''Indian Reservation'' in existing §§ 51.166(b)(27) and 52.21(b)(27). The 1990 Amendments to the Act added several provisions relating to the authority of Indian Tribes to administer Act programs in the same manner as States. See sections 301(d) and 110(o) of the Act. Section 110(o) provides that implementation plans for Tribes are to be effective ''within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.'' On August 25, 1994, the EPA published proposed rules implementing the general Act Tribal authority added in the 1990 amendments and proposed to define reservation under those rules as ''all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.'' See 59 FR 43956 at 43980 (proposed 40 CFR 49.2). In the accompanying preamble, the EPA explained:

> Based on recent Supreme Court case law, EPA has construed the term 'reservation' to

[73] Section 164(e) also provides that a State or Tribe may request EPA to enter into negotiations to resolve interjurisdictional disputes about PSD air quality redesignation.

[74] Note also that the dispute resolution provisions are not limited to class I areas.

incorporate trust land that has been validly set apart for use by a Tribe, even though that land has not been formally designated as a 'reservation.' See 56 FR at 64,881 (Dec. 12, 1991); see also *Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 111 S.Ct. 905, 910 (1991). The EPA will be guided by relevant case law in interpreting the scope of 'reservation' under the Act.

See 59 FR at 43,960. Accordingly, the EPA adopts this interpretation of reservation for the PSD program and proposes to make conforming changes to the definition of ''Indian Reservation.'' See proposed §§ 51.166(b)(27) and 52.21(b)(27).

6. Information Clearinghouse (Federal Class I areas)

The CAAAC recommended that the EPA establish a clearinghouse of information about Federal Class I areas. The EPA has been working on a clearinghouse project that was originally planned to be incorporated into the EPA's public NSR BB which is hosted by the OAQPS TTN.[75] The advent of the ''Internet©'' system and new budgetary constraints are causing EPA to consider new strategies for transferring information. Nevertheless, the EPA plans to address the CAAAC's recommendations in two respects.

First, consistent with the proposed requirement to improve permitting authority and FLM coordination, described in section IV.C.2., above, the EPA is planning to create a publicly accessible, electronic bulletin board for posting notice of major NSR permit applications by permitting authorities and/or permit applicants. On this bulletin board will be logged very basic source information, such as the name and type of source, a brief description of its location in terms of the State and county in which it will construct and operate (including UTM coordinates), the distance between the proposed source and all Federal Class I areas within 250 kilometers, and the proposed emission rate or net emissions increase of each air pollutant associated with the project. It also will allow permit applicants and permitting authorities to present questions to the FLM regarding air quality issues relative to any Federal lands potentially affected by the proposed new or increased emissions, and, conversely, provide a contact to whom the FLM may direct inquiries and information. See proposed §§ 51.166(n)(4) and 52.21(n)(4).

Second, EPA will pursue the development of a FLM Clearinghouse in which the FLM and the EPA will post the following information as it becomes available:

—Boundaries and size of existing Federal Class I areas
—Area-specific AQRV information, including sensitive receptors, critical loadings, current source inventory, current loadings from sources in the source inventory, and existing adverse conditions;
—Source-specific information on increment consumption and impacts on AQRV in specific Federal Class I areas;
—Reports of research and investigations about the impacts of air pollution on natural resources in Federal Class I areas, and contact persons for further information;
—Comment letters and any findings of an adverse impact on AQRV issued relative to specific draft PSD permits;
—Adjudicative appeals and corresponding orders from the EPA Environmental Appeals Board and court decisions relative to issues involving Federal Class I areas.

All users of the NSR BB will be able to download all the documents posted in this clearinghouse. As suggested earlier, the host mechanism, the schedule for completion and the degree of sophistication of this clearinghouse will depend greatly on available resources, the dynamics of the electronic communications industry, and the cooperation of the FLM Agencies.

7. Visibility New Source Review

If adopted, these proposed revisions to the PSD rules related to the protection of air quality related values (including visibility) in Federal Class I areas may necessitate revisions to EPA's existing visibility new source review rules (the ''visibility NSR'' rules), which are codified separately from the PSD rules. See, *e.g.*, existing 40 CFR 51.307, 52.27 and 52.28. Section 169A(a)(1) of the Act established as a national goal the prevention of any future, and the remedying of any existing, manmade impairment of visibility in mandatory Federal Class I areas. Section 169A also called for EPA to promulgate regulations to assure reasonable progress toward meeting the national goal. See section 169A(a)(4) of the Act. Accordingly, EPA has promulgated visibility regulations to address prospective visibility impairment in mandatory Federal Class I areas from certain new or modified major stationary sources.

The visibility NSR rules establish independent visibility protection requirements that apply in areas designated attainment and unclassifiable (PSD areas) and in areas designated nonattainment. For efficiency, these requirements generally are implemented in conjunction with PSD and nonattainment NSR permitting. The current visibility NSR rules contain FLM coordination procedures. In some instances, the visibility NSR rules also adopt, by cross reference, some of the provisions of the PSD rules EPA is proposing to revise today.

The EPA may therefore need to revise its current visibility NSR rules, depending upon the outcome of the rules proposed today. The EPA would want to ensure that the different sets of rules are appropriately harmonized in light of the permit streamlining goals embodied in this proposal and the potential for overall improvement in FLM, State and permit applicant coordination reflected in the rules proposed today.

V. Prevention of Significant Deterioration Preconstruction Monitoring

Applicants for PSD permits often must provide continuous air quality monitoring data as part of the air quality analysis requirements set forth in §§ 51.166(m) and 52.21(m) of the PSD regulations. In both sets of regulations the air quality data provision generally requires that an applicant for a new major source or major modification submit with the permit application continuous air quality monitoring data representing the 12-month period preceding application submittal.[76] Historically, this data requirement has been satisfied largely through the use of monitoring data collected from existing State or local agency air quality monitoring networks. However, in the absence of existing data, it is the applicant's responsibility to establish, operate and maintain sufficient air monitoring stations to collect the necessary ambient data to satisfy the data requirement.

The prospect of having to operate their own monitoring networks and

[75] Historically, users of the NSR BB have been able to retrieve, then read and/or download full text of recent policy and guidance material. The users may also solicit from or provide to other parties in the NSR permitting community, information pertaining to areas of interest within NSR.

[76] The PSD regulations currently provide that the permitting authority has discretion to exempt an applicant from the requirement to collect continuous air quality monitoring data if (1) the predicted ambient impact caused by the proposed source, or (2) the ambient pollutant concentrations that the proposed source would affect, are less than prescribed significant monitoring concentrations for the pollutants listed in the PSD regulations (or if the pollutant emitted from the proposed source is not among those listed). If, however, both the predicted impacts and the existing ambient concentrations exceed the significant monitoring concentrations, then the applicant must provide the required monitoring data. See existing sections 51.166(i)(8) and 52.21(i)(8).

collect ambient data for 1 year prior to the submittal of a complete PSD application has long been a concern of industry, particularly in cases where there is no practical need for the data in the air quality analysis. This monitoring responsibility obligates a considerable amount of an applicant's resources and often interposes significant time prior to permit application submittal. Permitting authorities frequently have agreed that the monitoring requirement imposes an unnecessary burden on industry where the data is not needed for the air quality analysis but is required by regulation nevertheless.

The air quality data requirement originates in the Act at section 165(e) (1) and (2). Section 165(e)(1) requires, for each PSD source, a preconstruction analysis ''of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under [the Act] which will be emitted from such facility.''

Section 165(e)(2) of the Act requires that the air quality analysis ''shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or maximum allowable concentrations permitted under [the PSD provisions].'' Further, section 165(e)(2) provides that data for the analysis shall be gathered over a period of 1 calendar year preceding the permit application or for a shorter period if a State determines that a complete and adequate analysis may be accomplished, according to the EPA regulations.[77]

On June 19, 1978, the EPA promulgated regulations which required a source to submit an air quality analysis that included continuous air quality monitoring data only for those pollutants, emitted by the source, which would impact an existing NAAQS. See 43 FR 26380. Monitoring data was not required to determine whether the source would cause or contribute to a violation of a PSD increment. In *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 371–372 (D.C. Cir. 1979), the reviewing court found the June 19, 1978 regulation to be deficient in that it did not provide for continuous preconstruction monitoring for purpose of determining impacts on both NAAQS and increments. On August 7, 1980, the EPA corrected the deficiency by promulgating the current PSD regulations covering preconstruction monitoring requirements. See 45 FR 52676.

[77] See, *e.g.*, existing section 51.166(m)(1)(iv).

The EPA had argued in the *Alabama Power* case that monitoring air quality concentrations was technologically infeasible for all but a small number of pollutants and that the available monitoring techniques were at best of questionable accuracy even for the relatively straightforward measurement of whether an applicable NAAQS has been exceeded. The Court rejected the EPA's arguments, reasoning that the statute clearly required monitoring for determining whether PSD increments would be exceeded. The Court discerned from the Act that Congress had a technology forcing intent in requiring such monitoring. The Court indicated that Congress intended that the development of monitoring techniques and the resulting data impose discipline on the use of modeling. The Court explained that Congress intended ''that the employment of modeling techniques [the principal device relied on for predicting source impacts] be held to earth by a continual process of confirmation and reassessment, a process that enhances confidence in modeling, as a means for realistic projection of air quality.'' See *Alabama Power*, 636 F.2d at 372. However, the Court added, ''[o]f course even a congressional mandate, such as a technology-forcing requirement based on a congressional projection of emergence of technology for the future, is subject to a justified excuse from compliance where good-faith effort to comply has not been fruitful of results.'' Id. The Court found that such a legitimate ''excuse'' had not been presented in the case, in which the EPA exempted sources from preconstruction monitoring for PSD increments based upon current technological infeasibility.

The Court's opinion thus contemplates that the EPA, after an additional 15 years of experience under the PSD program since *Alabama Power*, may excuse strict compliance with the requirements of section 165(e)(2) where a good-faith effort in preconstruction monitoring has failed in producing fruitful results. Elsewhere in the *Alabama Power* decision the court also indicated that there is a basis for a statutory exemption ''when the burdens of regulation yield a gain of trivial or no value.'' Id. at 360–61.

In the years since the court's decision, questions have continued concerning the provisions requiring the submittal of air quality monitoring data in cases where such data is not deemed necessary or useful as part of the air quality analysis. Modeled estimates of air quality are often sufficient to make the required demonstrations of source compliance with NAAQS and PSD increments. Yet some sources still are confronted with the requirement to provide air quality monitoring data as part of a complete application.

Further, the use of air quality data has been used only to a limited extent in the past to calibrate models for specific SIP-related applications; however, such calibration of air quality models has not been a common practice. Moreover, the EPA's Guideline on Air Quality Models describes the uncertainty associated with comparing short-term model estimates with ambient measurements and concludes that ''short term model calibration is unacceptable.'' See 58 FR 38816 at 38835, July 20, 1993. In addition, ambient monitoring techniques that could be used to measure increment consumption are still not available because of the inability of ambient monitors to separate the pollutant concentrations attributable to increment-consuming and non-increment consuming source emissions. Available ambient monitoring methods cannot make such distinctions.

The EPA believes that it is appropriate to reassess the regulatory requirement for preconstruction monitoring data for proposed PSD construction to address situations where the collection of such air quality data serves no practical purpose in the required air quality analysis. A more reasonable approach is to give the permitting authority discretion not to require the submittal of air quality monitoring data—including the installation and operation of monitoring stations by the applicant—where the permitting authority determines such data to be unnecessary to assess the air quality in the area affected by the proposed source.

However, before the EPA decides whether to propose specific changes to the existing requirements, it is seeking public input concerning the benefits and disadvantages of the current air quality monitoring requirements. The EPA is also seeking information concerning those specific situations where air quality monitoring data was required as part of a complete application, and whether the data was considered to serve a necessary or useful purpose in the required air quality analysis. Based on the resulting comments and information, the EPA will determine whether it is appropriate to subsequently propose changes to the current air quality monitoring requirements at §§ 51.166(m)(1) and 52.21(m)(1).

VI. Changes Resulting From the 1990 Clean Air Act (1990) Amendments

A. NSR Provisions for Nonattainment Area Permitting

1. Provisions for Ozone Nonattainment Areas

New sections 182 through 185 (part D, title I) of the Act contain new NSR requirements specifically for ozone nonattainment areas that supplement the basic requirements in section 173 of the Act. In general, Congress intended that these new requirements vary in stringency according to the severity of the ozone nonattainment problem. The severity of the ozone nonattainment problem is as expressed through a series of area classifications.

a. Area Classifications. Section 181(a) defines five area classifications for ozone based on ambient ozone concentrations (ozone design values).[78] These five classifications (in ascending order of severity) are marginal, moderate, serious, severe, and extreme.

Some ozone nonattainment areas do not fit under the section 181 classifications. Therefore, the EPA has classified these ''nonclassifiable'' nonattainment areas into three additional groupings referred to as transitional, submarginal, and incomplete/no data areas. The nonclassifiable ozone nonattainment areas should all be considered of equal classification for purposes of implementing the applicable NSR requirements, and are subject to the NSR requirements under section 173 (the basic requirements). However, when such area is located within an OTR, the area will be treated as a moderate area for NSR purposes.

b. Major Stationary Sources. Congress retained the 100 tpy major source threshold for stationary sources of VOC in the less severely polluted ozone nonattainment areas. For those more severely polluted areas, including ozone transport areas, Congress specified progressively lower thresholds. The existing threshold of 100 tpy continues to apply generally to sources of VOC in areas classified as marginal, moderate, or any category of nonclassifiable ozone nonattainment areas. However, when any of the above areas is in an ozone transport area, the major source threshold is 50 tpy of VOC pursuant to section 184(b)(2). New section 182 establishes new major source thresholds of 50 tpy, 25 tpy, and 10 tpy for sources of VOC in areas classified as serious, severe, and extreme, respectively.

Section 182(f) sets forth the presumption that NO_X is an ozone precursor unless the Administrator makes a finding of nonapplicability or grants a waiver pursuant to criteria contained in that subsection.[79] Specifically, section 182(f) provides that requirements applicable for major stationary sources of VOC shall apply to major stationary sources of NO_X, unless otherwise determined by the Administrator. Pursuant to section 182(f), EPA is proposing that in cases where NO_X is considered an ozone precursor, major stationary sources of NO_X are also subject to the part D NSR requirements applicable for VOC in ozone nonattainment areas and OTR's. See proposed § 51.165(a)(12). The major stationary source thresholds for NO_X and VOC are the same except in the OTR for marginal, moderate, or unclassified ozone nonattainment areas and attainment (or nonclassifiable) ozone areas. For these latter areas, the major stationary source threshold for VOC is 50 tpy while the major source threshold for NO_X is 100 tpy. In serious, severe, and extreme ozone nonattainment areas, the applicable major stationary source threshold for NO_X is 50 tpy, 25 tpy, and 10 tpy, respectively. Note that NO_X is not considered an ozone precursor in nonclassifiable ozone nonattainment areas unless the area is in the OTR.

In this proposal, the EPA is changing the existing definition of ''major stationary source'' to add the new statutory major source thresholds for both VOC and NO_X emissions, as applicable. See proposed §§ 51.165(a)(1)(iv)(A) (*1*) and (*2*).

c. Major Modifications. The 1990 Amendments change the requirements applicable to modifications of stationary sources in serious, severe, and extreme ozone nonattainment areas to determine whether such a modification is a major modification subject to nonattainment NSR. The 1990 Amendments do not mandate a change in approach for marginal, moderate, and nonclassifiable ozone nonattainment areas.

(1) The Current Regulations. The EPA's current regulations for determining a major modification are set out at 40 CFR 51.165. These regulations define a ''major modification'' as:

> * * *any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act* * *

See existing § 51.165(a)(1)(v)(A). Under these regulations, the ''net emissions increase'' is calculated taking into account all contemporaneous, creditable, actual emissions increases and decreases on a plant-wide basis. See existing § 51.165(a)(1)(vi). Emissions increases and decreases are ''contemporaneous'' with the increase from the proposed project only if they occur before the date that the increase from the proposed project occurs, and no earlier than the reasonable contemporaneous time period specified by the reviewing authority. *Id.* ''Significant'' is defined for ozone to mean, in reference to a ''net emissions increase,'' a rate of emissions equal to or exceeding 40 tpy of VOC. See existing § 51.165(a)(1)(x). Thus, a net emissions increase of VOC that is less than 40 tpy is considered de minimis.

The EPA's policy under its existing NSR regulations has been that a proposed modification resulting in a *de minimis* increase (standing alone without considering any decreases associated with the proposed modification), is not major, regardless of previous contemporaneous emissions increases and decreases. This policy was discussed in detail in an EPA memorandum dated June 3, 1983 entitled ''Net Emission Increase Under PSD'' from Sheldon Myers, Director, OAQPS. This has been called a ''non-aggregation policy'' because netting contemporaneous increases and decreases would not be necessary unless the proposed modification standing alone would result in a significant emissions increase.

(2) Modifications in Marginal, Moderate, and Nonclassifiable Ozone Nonattainment Areas. As noted above, the 1990 Amendments do not mandate a change in the current regulatory approach for major stationary sources of VOC emissions in marginal, moderate, and nonclassifiable ozone nonattainment areas,[80] or major stationary sources in the ozone attainment areas in the OTR under section 184(b)(2). Therefore the

[78] A detailed description of the individual area classifications for ozone nonattainment areas is contained in the EPA's General Preamble for the Implementation of Title I of the 1990 Amendments, 57 FR 13498 (April 16, 1992). The reader who is not already familiar with these classifications, as well as the general new SIP requirements for ozone, should refer to the General Preamble for background information.

[79] The EPA policy on the applicability of NO_X requirements under section 182(f) of the Act is in the document ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)'', December 1993, U.S. EPA, OAQPS, and two memoranda, dated May 27, 1994 and February 8, 1995, both entitled, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria,'' from John Seitz, Director of the OAQPS, to EPA's Regional Air Directors.

[80] Nonclassifiable nonattainment areas include transitional, submarginal, and incomplete or ''no data'' areas, as defined in the General Preamble, 57 FR 13524 (April 16, 1992).

approach for determining whether modifications at major stationary sources of VOC emissions are major (hence subject to nonattainment NSR) in these areas will default to that which emerges from the proposed NSR reforms described in section II of this preamble. Because Congress did not specify a different significance level for these areas, the EPA is not proposing to change the current significance threshold level for VOC emissions of 40 tpy for modifications at major VOC sources in these areas.

For the entire OTR, section 184(b)(2) requires that at a minimum the nonattainment NSR provisions applicable to moderate ozone nonattainment areas also apply to major stationary sources of VOC. Again, section 182(f) makes requirements for proposed modification applicable to major stationary sources of NO_X in an OTR, as well. This means that, within an OTR, the NO_X requirements of section 182(f) apply to classified and nonclassifiable ozone nonattainment areas and to ozone attainment (or unclassifiable) areas.

The EPA is also proposing that the approach retained for determining whether a modification at an existing stationary source of VOC emissions is major will also apply to modifications at major source of NO_X in these areas. See proposed § 51.165(a)(12). In addition, in areas where the VOC significance threshold for modifications is 40 tpy, the EPA is also proposing that the significance threshold level for NO_X emissions for modifications at major NO_X sources be 40 tpy. See proposed § 51.165(a)(1)(x)(C). Since Congress generally intended to treat major NO_X sources in a manner similar to major VOC sources and did not specify a NO_X significance threshold different from the current VOC level, the EPA believes it is appropriate to propose a NO_X significance level for modifications that parallels the 40 tpy VOC significance level.

(3) Special Modification Provisions in Serious and Severe Areas. Sections 182(c)(6), (7), and (8) of the Act change the procedures for determining the applicability of the nonattainment NSR requirements to a major stationary source of ozone [and in some areas NO_X under section 182(f) of the Act] which undergoes a modification in a serious or severe ozone nonattainment area.[81] The States have requested EPA's interpretation of the new special provisions to help States change their NSR rules to implement these new provisions of the Act. In addition, sources are awaiting EPA's proposed interpretation so that sources may use internal offsets to minimize the NSR requirements as allowed under the Act. In response to these requests EPA is proposing to amend the nonattainment NSR regulations to include the new special provisions for modifications in serious and severe ozone nonattainment areas as discussed below. See proposed § 51.165(a)(1)(v)(D).

In sum, for serious and severe ozone nonattainment areas the EPA is proposing the following changes to the current method for determining whether proposed modifications emitting VOC at major stationary sources of VOC are subject to nonattainment NSR:

- The new significance level for modifications would change from 40 tpy or more to greater than 25 tpy;
- The provisions for determining the net emissions increase (netting) during the 5-year contemporaneous period would apply to emissions increases from the proposed modifications, including such increases that are less than ''significant'' standing alone;
- The contemporaneous time period for netting would be the 5-year period that includes the calendar year in which the proposed modification will begin emitting and the 4 previous calendar years; and
- As a source option, creditable internal offsets at a ratio of at least 1.3:1 could be used for the proposed modification (or for any discrete unit, operation, or pollution-emitting activity that is part of the proposed modification) to either: (a) avoid nonattainment NSR at existing major sources that emit, or have the potential to emit, less than 100 tpy of VOC; or (b) avoid LAER at existing major sources that emit, or have the PTE, 100 tpy or more of VOC.

Section 182(f) of the Act generally requires new or modified sources of NO_X located in ozone nonattainment areas classified as serious or severe to meet permit requirements consistent with those applicable to major sources of VOC. Accordingly, the EPA is proposing to require, in addition to the proposed special provisions described below, that such provisions also apply to NO_X emissions at modifications of major sources of NO_X. See proposed § 51.165(a)(11). The proposed regulatory language also provides that such requirements shall not apply to sources of NO_X in areas where the Administrator has determined that the provisions of section 182(f) do not apply.

i. The De Minimis Rule. The new section 182(c)(6) of the Act specifies a new approach for determining whether proposed modifications are subject to nonattainment NSR. It states that increased emissions of VOC resulting from any modification of a major stationary source:

> * * * shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred * * *

In short, this provision changes the current significance level for VOC emissions (in serious and severe ozone nonatttainment areas) from 40 tpy to ''greater than 25 tpy,'' i.e., 25 tpy or less is de minimis. See proposed § 51.165(a)(1)(x)(B). As explained below, the EPA does not believe that this provision necessarily changes the approach to ''netting'' increases and decreases. It does, however, specify a ''contemporaneous'' period slightly different than that currently used, and departs from the ''nonaggregation'' policy to require netting over the contemporaneous period in all instances where there is an increase in net emissions from the proposed modification standing alone.

The EPA is proposing that the first step in applying section 182(c)(6) is to determine the ''increase in net emissions'' from the proposed modification for which NSR applicability is in question.[82] The net emissions from the proposed modification (referred to here as the ''project net'') is the sum of all proposed creditable emissions increases and decreases proposed at the source between the date of application for the modification and the date the modification begins emitting.[83] See proposed § 51.165(a)(1)(v)(D)(1). If the project net is an emissions increase, then the next step is to aggregate the project net emissions increase with all

[81] The 1990 Amendments do not mandate a change in approach for modifications in marginal, moderate, and nonclassifiable ozone nonattainment areas.

[82] Note that it is only the project net emissions increase from the proposed modification that could potentially trigger the netting under section 182(c)(6). Therefore, it is only the proposed modification that may possibly have to meet the new source requirements, not all of the previous projects that are aggregated in the determination of contemporaneous ''net emissions increase'' under section 182(c)(6). There is no requirement, for example, to retroactively apply LAER to prior changes within the 5 year contemporaneous period.

[83] States have the flexibility to be more stringent than the EPA in their rules. For example, States may opt to not allow emissions decreases when determining the project net.

other ''net increases in emissions from the source'' over the 5-year contemporaneous period. This aggregation is referred to as the contemporaneous net. Note that this is a change from the current regulatory approach, in which proposed de minimis modifications are not subject to nonattainment NSR and there is no aggregation over a contemporaneous period for them.

Two associated issues must be addressed in interpreting the new provisions of section 182(c)(6) of the Act: the first, is to what extent creditable decreases in emissions may be aggregated together with creditable increases in emissions; the second, is the precise 5-year period over which the emissions are to be aggregated. In implementing these special modification provisions, note that increases and decreases are creditable for netting only to the extent the creditability criteria under existing § 51.165(a)(1)(vi) are met. This netting criterion requires that the emissions reductions are consistent with the area's attainment demonstration and plan for reasonable further progress (RFP).

(a) Netting Increases and Decreases. The EPA believes that this new provision is most reasonably understood to change the significance threshold emissions level for serious and severe ozone nonattainment areas, and to continue to allow both creditable increases and creditable decreases occurring during the contemporaneous period to be ''netted'' together. The language of section 182(c)(6) is ambiguous. It refers to aggregating ''net increases in emissions from the source.'' While the language omits any reference to ''decreases,'' the word ''net'' indicates that decreases may be deducted from the increases. The EPA believes that Congress intended for the EPA and the States to use the current netting criteria to determine what emission reductions are creditable. The rationale for this position is outlined below.

The statutory provision does not address how increases and decreases are to be ''netted'' to calculate the ''net increases'' that are to be aggregated. The use of the plural ''net increases'' arguably contradicts a single netting calculation of increases and decreases over the 5-year period. Under this view, increases and decreases over the 5 years would have to be grouped to result in a series of ''net increases.'' The reference to increases in emissions ''from the source,'' does not seem to limit netting of increases and decreases that occur from changes at a ''discrete operation, unit, or other pollutant emitting activity.'' Compare with subsections 182(c) (7) and (8). Another alternative might be to calculate a ''net increase'' for changes that are made at the same time, as part of a single project in a single application. But there does not seem to be a significant reason Congress would have wanted to provide an incentive for sources to plan decreases at the particular time increases would occur within the 5-year period. Thus, the EPA believes that Congress did not intend to exclude permanent, quantifiable, enforceable, and otherwise creditable decreases from the netting calculation. The Agency believes that Congress emphasized increases simply because it is those that are necessary to exceed the 25-ton threshold, and, by this action, Congress did not thereby intend to exclude otherwise creditable decreases from the netting calculations.

The Agency believes the legislative history supports the above conclusion. The House Report summarized the treatment of ''netting'' in H.R. 3030 (containing the same language as the statute as enacted) as follows:

> In addition, the graduated control requirements include continued use of ''netting'' in other than extreme areas subject to increasingly stringent limitations for higher classifications. The netting process allows sources making modifications that would otherwise be subject to the new source review requirements of the Act to escape such requirements upon a showing that the emissions increase associated with the modification is ''netted out'' to a de minimis overall level by emission decreases from elsewhere within the source. The netting concept has in many cases allowed sources to modernize and expand without application of new source review provisions intended to assure that modernization and expansions bring about continued air quality improvement. It is the Committee's view that new source review should reconcile economic growth with clean air. It is an important concept for modifications that affect ongoing operations of existing facilities and related existing jobs. Limitations on netting in serious and severe areas include a lowered de minimis level from today's level of 40 tons per transaction, to a 5-year total of no more than 25 tons.

See H. Rep. No. 490, part 1, 101st Cong., 2d Sess., at 234–35 1990. This discussion highlights the important netting changes involving the threshold level mandatory aggregation,[84] but omits any discussion of a change in eligibility of decreases in the netting calculation. Had Congress intended such an important change, it would be surprising that it is not mentioned in this discussion. Nor do other places in the legislative history clearly specify such a change. See *id.* at 241–42; Cong. Rec. at H12870 (Oct. 26, 1990) (statement of Rep. Oxley). The EPA requests comment on this interpretation. The EPA specifically requests comments on whether emissions reductions should be credited when determining the ''project net'' and the ''contemporaneous net.''

For these special modification provisions, the quantity of emissions that must be offset to meet the nonattainment NSR general offset provisions is the project net emissions increase for proposed major modifications. This means that the project net emissions increase from the proposed modification, and not the contemporaneous net emissions increase calculation over the contemporaneous period, determines the quantity of emissions from the proposed modification that must be offset. While only the project net emissions increase need be offset, States are required to reconcile their emissions inventory by accounting for all increases in emissions in order to demonstrate RFP and attainment. For cases where discrete emissions limits are offset internally at a 1.3:1 offset ratio under section 182(c) (7) or (8) of the Act, the amount to be offset is the emissions increase from the units within the proposed project. However, if such units replace existing units, the emissions reduction from the replaced units may be credited towards reducing the quantity of emissions that must be internally offset.

(b) The 5-Year Contemporaneous Period. A remaining issue is the time period over which other net increases from the source are to be aggregated. Section 182(c)(6) of the Act specifies ''any period of 5 calendar years which includes the calendar year in which such increase occurred.'' From this plain language, the period must include the full calendar year in which the increase occurred, including the rest of the calendar year beyond the actual time of the increase. This differs from the EPA's current regulations that allow the reviewing authority to specify a longer period extending before construction of the particular change and through the date that the increase from the particular change occurs. See existing § 51.165(a)(1)(vi)(B).

An ambiguity arises from the provision's reference to ''any'' 5-year period. The EPA's current regulations specify a single period. *Id.* The reference to ''any'' in section 182(c)(6) raises an issue whether the contemporaneous period may include other combinations

[84] Section 182(c)(6) of the Act also changes the bounds of the contemporaneous period from the pre-existing regulations. But this is not a major change, and it is not surprising that it is not raised in the legislative history discussions.

of 5 consecutive years including the year of the particular increase. Other combinations would, of course, include future years beyond the year of the particular increase. The EPA does not believe Congress intended that the contemporaneous period include such future years. This is because the NSR program has always been limited to addressing the emissions impact of new growth when it occurs, including both ''offset'' and LAER technology requirements. If NSR applicability is based on future actions, the need for offsets and LAER could not be finally determined at the time a particular modification is made. Instead, the EPA believes that the reference to ''any'' was included simply in recognition of the fact that the particular span of calendar years will change over time. In short, Congress simply recognized that the period of 5 calendar years, from, for example, 1992 to 1996 is different than the period from 1993 to 1997.

Therefore, for these special modification provisions the EPA is proposing that the 5-year contemporaneous period is the period of 5 consecutive calendar years ending with the full calendar year when the increase in emissions from the proposed modification is to occur. See proposed § 51.165(a)(1)(vi)(C)(*1*). In any case, the EPA believes consideration of future years in the de minimis calculation beyond the calendar year when the increase occurs would raise serious implementation problems, because increases in future years must be projected and may not be certain. The permitting authority might impose permit conditions to ensure that a source limits increases in future years consistent with a projection on which a current de minimis calculation is based.[85] The EPA solicits comments on whether the 5-year period may extend beyond the calendar year when the increase in emissions from the proposed modification is to occur.

The EPA also requests comment on whether a State may propose a different contemporaneous period, so long as the State can demonstrate that any such period is as stringent as the EPA's. To the extent increases may be netted with decreases over the contemporaneous period, the EPA is concerned there may be no way to tell in a particular case whether a longer or different contemporaneous period is more stringent than the EPA's proposed approach.

(c) Trivial Increases. Some States have inquired whether every single increase that is a modification must be tracked under the new de minimis rule or whether States may adopt sub-de minimis levels and exclude increases (and, presumably, decreases) below these levels. The EPA is not now proposing a particular level of sub-de minimis increases and decreases, but the EPA may consider whether such levels are acceptable in States' NSR SIP submissions. The EPA requests comment on the following discussion of this issue, and on what type of sub-de minimis level, if any, might be acceptable.

This issue turns on the EPA's legal authority to exclude emissions increases (and decreases) from a rule that, on its face, seemingly applies to every emission increase—no matter how small the increase may be. In *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 357 (D.C. Cir. 1979), the court discussed two bases for categorical regulatory exemptions that could apply here. Where these grounds exist, the availability of a categorical regulatory exemption may be presumed ''save in the face of the most unambiguous demonstration of congressional intent to foreclose them.'' 636 F.2d at 357. However, the EPA lacks the power to revise legislative directives in a manner ''inconsistent with the clear intent of the relevant statute.'' *Id.* at 358 [quoting *NRDC* v. *Costle,* 568 F.2d 1369, 1377 (D.C. Cir. 1977)].

First, the Agency may create a categorical regulatory exemption out of administrative necessity, where compliance with the explicit instructions of a statute may be infeasible, impractical, or impossible. See *Alabama Power,* 636 F.2d at 358–59. However, there is a ''heavy'' burden where, as here, the Agency seeks to create a ''prospective exemption of certain categories from a statutory command based upon the Agency's prediction of the difficulties of undertaking regulation.'' *Id.* at 359. The EPA believes that, since very small increases resulting from modifications (physical changes or changes in the method of operation) are routinely tracked today as part of State construction programs, a showing of administrative necessity may be difficult for all but the smallest increases and decreases.

Second, under *Alabama Power* categorical exemptions may also be permissible as an exercise of an Agency's powers to recognize inconsequential situations. *Id.* at 360. In general, an Agency can create this exemption where the application of a regulation across all classes will ''yield a gain of trivial or no value.'' *Id.* The exemption is not available where the regulatory scheme ''does provide benefits, in the sense of furthering the regulatory objectives, but the Agency concludes that the acknowledged benefits are exceeded by the costs.'' *Id.* A determination of when a matter can be classified as de minimis turns ''on the assessment of particular circumstances'' of the individual case. *Id.* The EPA believes that a State's demonstration that a particular increase is trivial and of no consequence in furthering the statutory purpose must take account of the size of the applicable threshold and major source thresholds applicable in the various areas. For example, a 5-ton increase is 20 percent of the de minimis threshold for serious and severe areas and half the major source threshold in extreme areas. It is not at all clear that an increase of that size could be characterized as trivial. On the other hand, a level of less than one ton might conceivably be more reasonable. Any such showing by a State would surely have to be supported by solid scientific evidence and analysis.

In any case, the EPA emphasizes that States must track and quantify all emissions increases to the extent necessary to ensure progress toward attainment. Small measurable increases from any stationary source should be addressed in States' stationary source permitting programs consistent with section 110(a)(2)(C) of the Act to assure that NAAQS are achieved. In addition, small measurable increases should be counted as minor source growth under section 173(a)(1)(A) of the Act. These provisions suggest a very high hurdle to show that tracking such small increases is either trifling or will administratively frustrate the NSR program.

ii. Special Modification Rules. If a particular physical or operational change at a major stationary source in a serious or severe ozone nonattainment area is not considered de minimis under section 182(c)(6), then the provisions of sections 182(c) (7) and (8) of the Act apply. Those provisions establish special rules for major modifications at sources that emit, or have the potential to emit, less than 100 tpy, or 100 tpy or more, respectively of VOC [or NO_x,

[85] Congressman Waxman, in a law review article, suggests that section 182(c)(6) requires that the sum of net emissions increases be below the *de minimis* level over *all* 5-year periods, including the year of the particular increase. Under this approach, no emissions increase could be determined to be *de minimis* ''until 5 years after it has occurred.'' See Waxman, Wetstone, and Barnett, ''Roadmap to Title I of the Clean Air Act Amendments of 1990,'' 21 *Northwest Univ. Envir. L. Rev.* 1843, 1874 (1991). The EPA believes this interpretation, while conceivable on its face, conflicts with the structure of NSR as a preconstruction permitting program. Under Waxman's approach, projects that have been reviewed, approved, and completed could be subject to retroactive NSR.

consistent with section 182(f)]. These subsections offer sources options that may be more desirable than would otherwise apply. Specifically, sections 182(c) (7) and (8) offer sources the option of obtaining 1.3:1 internal offsets in order to avoid NSR entirely (for sources emitting less than 100 tpy), or to avoid LAER (for sources emitting 100 tpy or more). These special provisions are discussed below.

(a) *Modifications at Sources Emitting Less Than 100 TPY.* Section 182(c)(7) of the Act specifies a special rule for modifications at existing major stationary sources of VOC that emit, or have the PTE, less than 100 tpy. This rule applies to any change [as described in section 111(a)(4)] at the source:

* * * that results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source * * *

Thus, while the determination of de minimis under section 182(c)(6) requires that all changes within the 5-year contemporaneous period at the source be considered, sections 182(c) (7) and (8) apply to the particular change at the discrete unit, operation or activity at issue. Sections 182(c)(7) and (8) do not apply to other previous increases within the 5-year period that are unrelated to the change at issue. Of course, if the contemporaneous net emissions increase for the proposed modification is a de minimis increase [as defined in section 182(c)(6)], then the nonattainment NSR provisions need not apply at all.

The special rule for sources of less than 100 tpy is that the particular increase at issue:

* * * shall not be considered a modification for [purposes of sections 172(c)(5) and 173] if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3:1 * * *

A question may arise as to what sources would choose to utilize the 1.3:1 offset ratio where the source could possibly avoid NSR entirely by applying creditable decreases at a ''1:1 ratio'' such that the aggregated increase remains at 25 tons or less under section 182(c)(6). The EPA believes that sources may not have enough emissions decreases to internally ''net'' the entire proposed modification to 25 tons or less. However, where the proposed modification results in increases at more than one discrete unit, the source may have sufficient creditable internal emissions decreases to apply a 1.3:1 offset ratio and avoid review for that particular unit. While some sources may be able to plan modifications at various units over time so that each could avoid review through netting under section 182(c)(6), the EPA believes that not all sources will be able to do so, and will have reason to utilize the 1.3:1 internal offset ratio option. See proposed § 51.165(a)(1)(v)(D)(*2*). Once an internal offset has been used to exempt a particular increase from NSR, the particular increase and decrease(s) would not be creditable for future netting and offset transactions. See proposed § 51.165(a)(10)(iii).

If the source does not avoid NSR under the internal offset option, the change is a modification subject to nonattainment NSR. When applying the nonattainment NSR requirements, note that the special rule in section 182(c)(7) of the Act provides that BACT is to be substituted for LAER for sources of less than 100 tpy. See proposed § 51.165(a)(10)(ii).

(b) Modifications of Sources Emitting 100 TPY or More. Section 182(c)(8) of the Act provides a special rule for modifications at major stationary sources of VOC that emit, or have the PTE, 100 tpy or more. This special rule applies to any change at the source according to the same terms as the special rule in section 182(c)(7).

The special rule for sources of 100 tpy or more is that:

* * * if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 173(a)(2) of this title [concerning the LAER (LAER)], shall not apply * * *

This option to avoid LAER could be utilized in the same circumstances as described in section 182(c)(7), above. While a source could avoid NSR entirely for the proposed modification by netting creditable emissions reductions at any internal operations, units, or activities at a 1:1 ratio under section 182(c)(6), it may nevertheless have the ability to arrange proposed modifications over time in order to avoid review under section 182(c)(7), or the LAER requirement under section 182(c)(8). In such circumstances under section 182(c)(8), the source would have reason to use creditable internal decreases that were insufficient to avoid nonattainment NSR for the entire project to avoid LAER for discrete units at a 1.3:1 internal offset ratio. See proposed § 51.165(a)(10)(i).

An additional issue under section 182(c)(8) is whether sources satisfying the internal offset ratio of 1.3:1 to avoid LAER must secure additional offsets to separately satisfy the general offset ratio requirements of sections 182(c)(10) (1.2:1 ratio for serious areas) and 182(d)(2) (1.3:1 ratio for severe areas, or 1.2:1 if all major sources use BACT). The EPA believes section 182(c)(8) of the Act may reasonably be interpreted to provide that the 1.3:1 internal offset ratio is in lieu of the general offset ratio. The EPA recognizes that the only remaining NSR requirements of section 182(c)(8) would be less geared toward emissions control at the source, such as the alternative siting analysis of section 173(a)(5) and the compliance demonstration of section 173(a)(3) of the Act. But the EPA believes it is reasonable to believe Congress intended to provide an incentive to obtain offsets internally, where the actual impact of the new emissions may be most precisely counteracted. Also, the 1.3:1 internal offset ratio would generally offset minor source growth and contribute to RFP as specified in section 173(a)(1)(A). Of course, if more reductions are needed to offset minor source growth and contribute to RFP under section 173(a)(1)(A), the State may need to require offsets beyond the 1.3:1 internal offset requirement. The EPA requests comment on this interpretation.

iii. Examples. Examples of the EPA's proposed approach for the special modification provisions follow. Note that the examples also apply to NO_X emissions consistent with section 182(f) of the Act.

(a) Example A.

An existing major stationary source of VOC has the PTE 285 tpy of VOC and is located in a serious ozone nonattainment area. The source proposes a modification (a physical change or change in the method of operation) that includes the following changes in VOC emissions:

+40 tpy from addition of new unit A
−30 tpy from shutdown of existing unit B
−60 tpy from the addition of control equipment on existing unit C

The shutdown of unit B and the addition of controls to unit C are proposed by the source as federally enforceable permit conditions to occur during the period between the date of permit application for the proposed modification and the date the proposed modification will begin emitting. Both emissions reductions meet all criteria for netting. As a result, the resultant project net of VOC from the proposed modification is −50 tpy (+40 −30 −60), which is not an increase. Therefore, since the special provisions may only apply to proposed modifications that result in a net project emissions increase, nonattainment NSR does not apply to this proposed modification.

(b) Example B.

An existing major stationary source of VOC has the potential to emit 90 tpy of VOC and

is located in a severe ozone nonattainment area. The source proposes a modification (a physical change or change in the method of operation) with the following VOC emissions changes:

+110 tpy from addition of new unit A
−20 tpy from shutdown of existing unit B
+10 tpy from the addition of new unit C

The shutdown of unit B is proposed by the source as a federally enforceable permit condition. The shutdown is to occur during the period between the date of permit application for the proposed modification and the date the proposed modification will begin emitting. As a result, the project net is +100 tpy of VOC, which is a VOC emissions increase subject to netting over the 5-year contemporaneous period.

The proposed modification is to begin emitting in 1997, so the contemporaneous period for netting is the calendar years 1993 through 1997. Creditable VOC emissions increases and decreases at the source during the contemporaneous period are +80 tpy in 1994, −60 tpy in 1996, and +100 tpy from the proposed modification. The contemporaneous net emissions increase of +120 tpy is significant (>25 tpy). Therefore, the proposed modification is major and subject to the special modification provisions for existing major stationary sources of VOC with a PTE less than 100 tpy of VOC. The major modification is subject to nonattainment NSR, including a requirement to provide at least 130 tpy (100×1.3) of emissions offsets. However, nonattainment NSR may be avoided if the source elects to use the internal offsets alternative. Under this option, the entire proposed modification is not subject to NSR if an internal offset of at least 130 tpy (100×1.3) is provided by the source. However, it is not likely that this option is viable for this source of the size given. Another option is to avoid NSR for new unit C by providing at least 13 tpy (10×1.3) of internal offsets for that unit. Consequently, only unit A would be subject to NSR.

If in this example the existing major stationary source has the PTE 100 tpy or greater, then nonattainment NSR applies to the major modification, except that the LAER provision will not apply if the source elects to provide internal offsets at a ratio of at least 1.3:1. The remaining part D nonattainment NSR provisions still apply. Alternatively, the source may elect either to avoid LAER for the entire modification if at least 130 tpy of internal offsets is secured or to avoid LAER for new unit C if at least 13 tpy of internal offsets is provided. Note than an emissions reduction at the source occurring prior to the 5-year contemporaneous period may be used as an internal offset to the extent it meets all otherwise applicable criteria for a creditable offset.

iv. Transition. For purposes of permitting in the absence of State NSR SIP revisions, the EPA does not intend to apply the interpretations proposed here for the special modification provisions of sections 182(c) (6), (7), and (8) of the Act, except that the lower significance threshold of greater than 25 tpy for applicability is in effect. The EPA believes that the remainder of these special modification provisions are sufficiently complicated that it is appropriate to defer implementation until State NSR rules implementing the provisions are in place or when the EPA takes final action on this proposal, whichever comes first. Upon promulgation of the final rule, the EPA expects to review each State's NSR SIP and issue a call for any necessary additional SIP revisions under section 110(k)(5) of the Act to ensure that States' NSR SIP's are ultimately consistent with the provisions of the final rule.

(4) Modifications in Extreme Areas. For modifications of major stationary sources of VOC [and NO_X consistent with section 182(f)] located in extreme ozone nonattainment areas, the 1990 Amendments eliminate the concept of de minimis altogether for purposes of determining a major modification. New section 182(e)(2) provides that any physical change or change in the method of operation at the source that results in any increase in emissions from any discrete operation, unit, or other pollutant-emitting activity at the source generally must be considered a modification subject to the part D NSR permit requirements, regardless of any decreases elsewhere at the source. Thus, the EPA is proposing to amend the both the definition of ''major modification and the definition of ''significant'' to specifically address proposed modifications of major stationary sources of VOC (and presumptively NO_X) in extreme areas for ozone. The proposed change would reflect the statutory requirement by requiring that any increase in emissions from any discrete operation, unit, or permit emitting activity at a source locating in an extreme ozone nonattainment area is considered ''significant'' and, thereby, a major modification. See proposed §§ 51.165(a)(1)(v)(E) and 51.165(a)(1)(x)(F)].

d. Emissions Offset Ratios. The 1990 Amendments clarified the existing statutory offset requirements under part D of title I of the Act by stipulating that:

* * *the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal *or greater reduction, as applicable,* in the actual emissions of such air pollutant from the same or other sources in the [nonattainment] area * * *. [Emphasis added.]

See section 173(c)(1) of the Act. Elsewhere in the 1990 Amendments, Congress prescribed a set of emissions offset ratios, calling for greater than one-for-one emissions reductions, to be applied to stationary sources of VOC according to the severity of the ozone nonattainment problem. Wherever NO_X emissions are considered an ozone precursor under section 182(f), the emissions offset ratios for VOC also apply to NO_X emissions. For purposes of satisfying the section 173 emissions offset provisions, new section 182 established five separate minimum emission offset ratios, each corresponding to one of five area classifications for ozone nonattainment areas, as follows: (1) 1.1:1 in marginal areas; (2) 1.15:1 in moderate areas; (3) 1.2:1 in serious areas; (4) 1.3:1 in severe areas; and (5) 1.5:1 in extreme areas. The minimum offset ratio in the OTR is 1.15:1. For ozone nonattainment areas outside the OTR that the EPA has categorized as nonclassifiable (transitional, submarginal, or incomplete/no data), the emissions offset ratio must be at least 1:1. Consistent with section 173(c)(1), the EPA interprets that the offset ratio, in each case, is the ratio of total actual emissions reductions of VOC (or NO_X, where applicable) to the total allowable emissions increase of such pollutant from the new or modified stationary source.

In the case of severe and extreme areas, section 182(c)(10) provides that the emissions offset ratio is reduced to a ratio of at least 1.2:1 if the applicable SIP contains the requirement that all existing major sources in such nonattainment areas must use BACT for the control of VOC emissions. Because BACT changes over time as technologies advance, some methodology must be adopted for States to demonstrate that all existing sources in a given nonattainment area have met the BACT requirement in section 182(d)(2). In the PSD program, BACT applies to new sources at the time of permitting. In the context of existing sources, this requirement could conceivably apply at a fixed point in time, or might apply continuously so that existing sources must be using technology that constitutes BACT at particular intervals. The EPA believes that it may be most appropriate to require BACT as of the time the attainment demonstration is due, so that the technology and offsets

requirements will be consistent with the overall attainment plan. Alternatively, it may be appropriate to require BACT as of the time the permitting program that would switch the offset ratio to 1.2:1 is adopted. The EPA requests comment on the appropriate methodology for applying the BACT requirement in section 182(d)(2) to existing sources. The EPA is proposing the minimum offset ratios in ozone nonattainment areas and in the OTR in accordance with the 1990 Amendments. See proposed § 51.165(a)(14).

For extreme ozone nonattainment areas section 182(e)(2) also provides for an exemption from the section 173(a)(1) offset requirements if the owner or operator of the major stationary source agrees to offset any proposed increase by a greater reduction in onsite emissions from other discrete operations, units, or activities at an internal offset ratio of 1.3:1. EPA is proposing this exemption for extreme ozone nonattainment areas at proposed § 51.165(a)(15). The remaining part D NSR provisions still apply. In addition, this new section stipulates that the offset requirements do not apply in extreme areas if the modification consists of installing equipment required to comply with the applicable implementation plan, permit, or the Act itself. The EPA notes with respect to this offsets exemption in extreme areas that the State must nonetheless account for collateral increases in emissions associated with installation of equipment required to comply with another legal mandate. For example, where a source incinerates VOC in order to limit VOC emissions, NO_X emissions may increase. The State may still require offsets as an approach more stringent than that the Act provides, or must otherwise ensure that such increases in emissions are counteracted by other SIP measures so as to comply with sections 110(a)(2)(C) and 173(a)(1)(A) of the Act. Of course, any increase is still subject to the LAER technology requirement, even where offsets are not applicable. The EPA encourages States to require alternatives for compliance with legal mandates that minimize collateral emissions increases, so that the State's obligation to counteract such increases will also be minimized. Finally, pursuant to section 182(e)(2) of the Act, EPA is also proposing that, in extreme ozone nonattainment areas, sources need not offset emissions increases of VOC resulting from modifications consisting of equipment that is needed to comply with a SIP, permit, or Act requirement. See proposed § 51.165(a)(15)

2. Provisions for Carbon $MoNO_X$ide (CO) Nonattainment Areas

New subpart 3 of part D of the Act contains new NSR requirements for CO nonattainment areas as determined by the area's CO design value. The 1990 Amendments established an area classification system for the CO nonattainment air quality problem based on the area's CO design value. Only two types of area classifications are defined in section 186 for CO nonattainment areas— moderate and serious.

The major stationary source threshold for moderate areas is 100 tpy. Pursuant to section 187(c), the EPA is proposing to amend the definition of ''major stationary source'' to incorporate a lower emissions threshold of 50 tpy for serious areas in which stationary sources are significant contributors to CO levels as determined by the Administrator. See proposed § 51.165(a)(1)(iv)(A)(*1*)(*vi*). Also, for such CO moderate areas, EPA is proposing a significance threshold of 50 tpy for defining a major modification at an existing major stationary source of CO. See proposed § 51.165(a)(1)(x)(E).

In addition to the two classifications for CO nonattainment areas, some nonattainment areas do not fit into the classification scheme and are considered ''nonclassifiable'' CO nonattainment areas. The following discussion describes the EPA's proposed NSR requirements for all CO nonattainment areas (moderate, serious and nonclassifiable). Like those for ozone, the NSR requirements for CO are additive (i.e., a serious area has to meet all moderate requirements in addition to all serious requirements, etc.). Requirements discussed for moderate areas will be repeated for serious areas only if the requirements are different.

a. Moderate Areas with a Design Value of 12.7 Parts Per Million and Below. The part D NSR requirements of section 173 apply in CO nonattainment areas. All States with moderate CO nonattainment areas with a design value of 12.7 parts per million (ppm) or less must submit proposed part D NSR programs no later than November 15, 1993. The provisions of these plans must be developed in accordance with the requirements of sections 172(c)(5) and 173 of the Act.

b. Moderate Areas with a Design Value Greater than 12.7 Parts Per Million. In the General Preamble (57 FR 13533), the EPA interpreted sections 187(a)(7) to require that all CO nonattainment areas with a design value greater than 12.7 ppm submit part D NSR programs meeting section 172(c)(5) and 173 requirements not later than November 15, 1992. Unless otherwise noted, all moderate areas above 12.7 ppm are also to meet those requirements applicable to moderate areas below 12.7 ppm.

c. Serious Areas. As specified in section 187(c)(1), for serious CO nonattainment areas in which stationary sources contribute significantly to CO levels (as determined according to rules issued by the Administrator), a SIP shall be submitted by November 15, 1992, that provides that ''major stationary source'' includes any stationary source that emits or has the PTE 50 tpy or more of CO. If stationary sources do not contribute significantly to CO levels under section 187(c)(1), then ''major stationary source'' includes any stationary source that emits or has the potential to emit 100 tpy or more of CO.

d. Nonclassifiable Areas. The ''nonclassifiable'' category of CO nonattainment areas is comprised of two subcategories—''not classified'' and ''incomplete/no-data.'' The EPA describes an area as ''not classified'' if the area was designated nonattainment both prior to enactment and (pursuant to section 107(d)(1)(C) of the Act) at enactment and if it did not violate the primary NAAQS for CO in either year for the 2-year period 1988 through 1989. The EPA defines an ''incomplete/no-data'' area as an area that retained its nonattainment designation at enactment [under section 107(d)(1)(C)] but for which data are not available to indicate whether or not violations of the standard have occurred. For a more detailed discussion of nonclassifiable CO nonattainment areas, see the General Preamble (57 FR 13535). The specific requirements of subpart 3 of part D of the Act do not apply to CO ''not classified'' and ''incomplete/no data'' areas. However, because these areas are designated nonattainment, the requirements of section 172(c)(5) apply. Therefore, States with CO nonattainment areas classified as ''not classified'' or ''incomplete/no data'' areas, are required to adopt part D NSR programs meeting the requirements of section 173, as amended. As required by section 172(b), States' changes to NSR SIP's for such areas were due to the EPA no later than 3 years (November 15, 1993) from designation under section 107(d)(4)(A)(ii).

3. Provisions for PM–10 Nonattainment Areas

This proposal also adds certain new requirements pertaining to PM–10 to the nonattainment NSR permit regulations at 40 CFR 51.165. These particular changes are being made in accordance

with new statutory provisions contained in new subpart 4 of part D of the Act.

Prior to the 1990 Amendments, designations identifying the attainment status of an area pursuant to section 107(d) did not exist for PM–10. Consequently, new and modified stationary sources were not required to undergo preconstruction review under NSR nonattainment permit requirements based on the amount of PM–10 which they could emit. The 1990 Amendments established an area classification system under section 188 to define the severity of the air quality problem in designated nonattainment areas for PM–10. Only two types of area classifications for PM–10 nonattainment areas were defined—moderate and serious. A detailed discussion of the nonattainment designation process for PM–10 is contained in the General Preamble (see 57 FR 13537).

a. Moderate Areas. Section 189(a)(1)(A) of the Act provides that each State with a PM–10 nonattainment area classified as moderate is to submit an implementation plan [as required by section 172(c)(5)] containing a permit program meeting the requirements of section 173 for the construction of new and modified major stationary sources of PM–10 (and in some cases PM–10 precursors). In moderate areas for PM–10, new stationary sources are determined to be ''major'' in accordance with section 302(j) (also existing § 51.165(a)(1)(iv)(A)). Major stationary sources of PM–10 will be subject to preconstruction review under the NSR nonattainment permit regulations if they emit, or have the potential to emit, 100 tpy or more of PM–10 emissions (or in some cases PM–10 precursors). No changes to the applicability requirements are needed under the current Federal NSR regulations to cause major new sources of PM–10 to undergo the necessary preconstruction review.

The regulations currently require that any modification to an existing stationary source that is major for the same pollutant is subject to the part D NSR requirements if the net emissions increase of the applicable nonattainment pollutant is significant. The EPA is today proposing for nonattainment purposes a significance threshold of 15 tpy for PM–10 emissions. See proposed § 51.165(a)(1)(x)(A). This threshold is the same emissions rate currently used to define ''significant'' for PM–10 emissions under the PSD regulations at §§ 51.166 and 52.21. See, e.g., existing § 51.166(b)(23)(i).

b. Serious Areas. For nonattainment areas classified as serious for PM–10, Congress determined that stationary sources emitting 70 tpy or more of PM–10 emissions must be considered major stationary sources. See section 189(b)(3) of the Act. Therefore, the EPA is proposing to amend the current definition of ''major stationary source'' to add a 70 tpy major source threshold for any stationary source of PM–10 located in a serious area for PM–10. See proposed § 51.165(a)(1)(iv)(A)(*1*)(*i*) This new emissions threshold would apply to new stationary sources of PM–10, as well as existing major sources proposing a modification resulting in an increase in PM–10 emissions. An existing major stationary source of PM–10 would be considered a major modification when it proposes a change that will result in a significant net emissions increase. The EPA is also proposing that the proposed significance threshold of 15 tpy, as described above, apply to any major modification of PM–10 in a serious PM–10 nonattainment.

c. PM–10 precursors. Section 189(e) provides that the part D NSR requirements applicable to major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors (SO_2, NO_X, and VOC). As described earlier, the EPA is proposing regulatory language which calls for each plan to subject major stationary sources of specific PM–10 precursors to the same part D permit requirements applicable to major stationary sources of PM–10. See proposed § 51.165(a)(13). States will not be required to implement this particular requirement in PM–10 nonattainment areas where the Administrator determines that PM–10 precursors (i.e., SO_2, NO_X, and VOC) are not significant contributors of ambient PM–10.

To implement the new applicability requirement for PM–10 precursors in serious PM–10 nonattainment areas, the EPA is proposing a major source threshold of 70 tpy or more of any individual PM–10 precursor. See proposed § 51.165(a)(1)(iv)(A)(*1*)(*i*). For stationary sources of PM–10 precursors located in moderate PM–10 nonattainment areas, the EPA does not intend to propose an emissions threshold different from the existing general threshold of 100 tpy or more of any pollutant. Thus, under this proposal the existing threshold of 100 tpy would also apply to such sources of PM–10 precursors.

The EPA is also proposing that any modification of a source emitting a PM–10 precursor meet the same part D permit requirements that apply to modifications at major stationary sources of PM–10. See proposed § 51.165(a)(1)(v)(G). For purposes of defining a significant increase in emissions of any PM–10 precursor, the EPA is proposing a 40 tpy threshold. See proposed § 51.165(a)(1)(x)(D). This proposed threshold is the same emissions rate used to define significant emissions increases individually for SO_2, NO_X, and VOC. Thus, the 40 tpy threshold would be used to determine whether a major modification would occur under the part D NSR requirements with respect to each proposed net emissions increase of a PM–10 precursor from a major stationary source of that PM–10 precursor, except in areas where the Administrator determines that the sources of PM–10 precursors do not contribute significantly to the PM–10 nonattainment problem in the area.

The EPA considered several approaches before deciding on the use of a level equal to the original significance threshold in each case. One approach involved the EPA's procedures for defining the significant emissions rate for each criteria pollutant under the current PSD and part D NSR programs. In selecting those existing rates for the criteria pollutants, the EPA used four percent of the short-term primary standard for each pollutant as a design value. The design values were then converted to emissions rates in accordance with EPA's modeling procedures.[86] The difficulty in using this approach to select a significance level for PM–10 precursors is the uncertainty concerning the PM–10 conversion rate for each of the affected pollutants. Such conversion rates depend on the specific chemistry of the pollutant emissions, as well as a number of meteorological factors which are area-specific. Thus, a standard conversion rate has not been developed that would apply to all sources emitting a particular PM–10 precursor.

Another approach for PM–10 precursors involved the use of the 15 tpy significance level already used for PM–10 emissions under the PSD regulations, and being proposed today for PM–10 emissions under the part D NSR regulations. The EPA rejected this approach, however, because of its overly conservative nature. The EPA does not believe that it would be reasonable to assume a 100 percent conversion rate for each of the PM–10 precursors.

Careful consideration should be given before approving offsets between PM–10 and PM–10 precursors. An increase in PM–10 emissions should not be offset by an equivalent decrease in emissions of a PM–10 precursor. This is because a reduction of a PM–10 precursor

[86] See 50 FR 13145, April 2, 1985.

ordinarily will not negate an equivalent increase in PM–10, as not all of a PM–10 precursor will ordinarily convert to the same mass of PM–10. The conversion process may depend on several variables, including the availability of chemical reactants in the atmosphere for the conversion process, and the difference in mass between the PM–10 precursor molecule and the PM–10 particle that the precursor reacts to become. Another concern is that the rate of conversion of the precursor to PM–10 may be so long that the precursor may not entirely convert to PM–10 within the same nonattainment area. Thus, there would be less counteracting effect and no net improvement to air quality in the area.

Under the EPA's proposal, a source of a PM–10 precursor may offset its increased emissions with the same precursor type or PM–10 (or a combination of the two). In this situation, a net improvement in air quality would be assured. At this point, however, the EPA is not proposing to allow offsetting among different types of PM–10 precursors, or offsetting PM–10 increases with reductions in PM–10 precursors, because the Agency does not now have a scientific basis to propose conversion factors. However, the Agency does not intend through this rulemaking to preclude trading between PM–10 precursors at such time as technical data supporting such a scheme is developed. The Agency expects that the approvability of a scheme allowing trading between precursors will be addressed in subsequent guidance or in the context of individual SIP reviews, though the Agency is considering resolving certain policy and legal issues in this rulemaking.

The EPA believes that nothing in subpart 4 of part D of the Act would prohibit trading between PM–10 and PM–10 precursors, or among PM–10 precursors. The Agency recognizes that section 173(c)(1) of the Act may be relevant to whether Congress intended to allow offsets trading among PM–10 precursors or between PM–10 and PM–10 precursors, and requests comment on the legal, technical, and policy aspects of this issue.

Also, the EPA believes that trading among PM–10 and PM–10 precursors raises significant issues, including the issue of scientific uncertainty. The EPA requests comment on this issue and on whether or how trading should be allowed for netting in determining NSR applicability. The scientific basis supporting offsets conversions and trading conceptually should apply with equal force to netting. But allowing such trading may improperly allow what would have otherwise been major modifications to escape review. Finally, the Agency requests comment on whether allowing trading among PM–10 and PM–10 precursors for offsets and netting purposes should affect the treatment of these emissions for major source threshold applicability purposes. The EPA requests comment on the policy, technical and legal considerations regarding all of these issues.

4. Statutory Restrictions for New Sources

The EPA is also proposing to amend its regulations at 40 CFR 52.24 which contain restrictions on the construction or modification of new major stationary sources (the construction ban). The changes made by the 1990 Amendments that alter the applicability of the construction ban provisions are reflected and clarified in this proposal. The EPA is also proposing that the definitions contained in proposed § 51.165 also apply in § 52.24.

Under the 1977 Amendments, section 110(a)(2)(I) of the Act required the EPA to place certain areas under a federally imposed construction moratorium (ban) that prohibited the construction of new or modified major stationary sources in nonattainment areas where the State failed to have an implementation plan meeting all of the requirements of part D. The 1990 amendments removed the provision under section 110(a)(2)(I) requiring this prohibition of construction. However, in section 110(n)(3) of the Act (Savings Clause), the 1990 Amendments retained the prohibition in cases where it was applied prior to the 1990 Amendments based upon a finding that the area (1) lacked an adequate NSR permitting program (as required by section 172(b)(6) of the 1977 Act), or (2) the State plan failed to achieve the timely attainment of the NAAQS for sulfur dioxide by December 31, 1982. All other construction bans pursuant to section 110(a)(2)(I) are lifted as a result of the new statutory provision. This includes previously imposed construction bans based upon a finding that the plan for the area did not demonstrate timely attainment and maintenance of the ozone or CO NAAQS. In accordance with the amended section 110(n)(3) of the Act, any construction ban retained remains in effect until the EPA determines that the SIP meets either the amended part D permit requirements, or the requirements under subpart 5 of part D for attainment of the NAAQS for sulfur dioxide, as applicable.

Section 173 and the various subparts of title I of the Act contain the requirements for the issuance of NSR permits to new or modified major stationary sources in nonattainment areas or ozone transport regions. To issue such permits, the permit authority must first find per section 173(a)(4) that the ''Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area'' in accordance with the requirements of part D. If the Administrator determines that the SIP for meeting the part D requirements is not being adequately implemented for the nonattainment area where the new source or modification wants to locate, permits that would otherwise meet the requirements of section 173 cannot be issued. The Administrator intends to make the determination by letter to the permit authority, with a follow-up notice to be published in the Federal Register and need not undertake notice-and-comment procedures before taking final action. The EPA solicits comments on this method of communicating the determination. Specifically, the EPA requests comments on the need for an opportunity for public notice and comment prior to making the determination effective.

While the EPA policy is generally to impose a FIP where States fail to adopt adequate NSR provisions, section 113(a)(5) of the Act provides that the EPA may issue an order prohibiting the construction or modification of any major stationary source in any area, including an attainment area, where the Administrator finds that the State is out of compliance with the NSR requirements. Specifically, the EPA may issue an order under section 113(a)(5) banning construction in an area whenever the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the Act relating to construction of new sources or the modification of existing sources.

This proposal does not include the transition provisions under existing § 52.24 (c) and (g). These paragraphs were removed because they were originally designed to clarify the applicable requirements for permits issued prior to the initial SIP revisions required by the 1977 Amendments. The EPA solicits comments on the removal of these paragraphs. Specifically, comments are requested on the possible need to maintain these paragraphs for enforcement purposes for sources that constructed prior to the initial SIP revisions required by the 1977 Amendments.

In addition to the significant changes already discussed, the proposed changes to § 52.24 include several minor

changes. These minor changes include: (1) The addition of requirements applicable to transport regions, (2) the inclusion of requirements applicable to criteria pollutant precursors, (3) incorporation of the definitions proposed in § 51.165(a), (4) revisions to the language at § 52.24 (h) (2), and (5) revisions to § 52.24(j).

In §§ 52.24 (b), (d), (e), and (i), the EPA proposes that all the requirements of § 52.24 applicable to nonattainment areas are now also applicable to transport regions. The proposed revised regulations also incorporate requirements for criteria pollutant precursors. Where previously only criteria pollutants were covered under §§ 52.24 (d) and (e), the EPA proposes that the construction ban provisions of proposed § 52.24 now extend to major stationary sources of precursors of pollutants for which the area is in nonattainment or for which it is in a transport region.

The EPA believes that the proposed definitions at § 51.165(a) should also apply when implementing the provisions of proposed § 52.24. Instead of listing each definition from § 51.165(a) in the amended § 52.24, the EPA proposes that the definitions at proposed § 51.165(a) apply under § 52.24(f). Also, by referring to the definitions in § 51.165(a), the fugitive emissions language at existing § 52.24(h) is not needed, since the applicable definition is contained in the definitions under § 51.165(a) which the EPA is today proposing to incorporate into § 52.24(f). The proposed changes to existing NSR definitions and the rationale for these changes is discussed in the appropriate sections of this preamble which discuss proposed changes to regulations at § 51.165.

At § 52.24(g)(2), the EPA is proposing to add that, under certain conditions when an enforceable limitation is relaxed, the requirements of § 51.165(a) apply.

5. Applicability of Nonattainment NSR to Internal Combustion Engines

Using new and revised definitions contained in the 1990 Amendments Congress drew a distinction between emissions resulting from stationary internal combustion engines and newly-defined ''nonroad engines'' (for purposes of regulating internal combustion engines under titles I and II of the Act). Section 216(10) of the Act defines ''nonroad engine'' as ''an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under sections 111 or 202.'' Congress also added a definition of ''nonroad engine'' in section 216(10), a definition of ''nonroad vehicle'' in section 216(11), a new definition of ''stationary source'' in section 302(z), and revised the existing definition of ''stationary source'' in section 111(a)(3). Both definitions of ''stationary source'' include the distinction between stationary and nonroad internal combustion engines.

Under the amended Act, emissions from a ''stationary internal combustion engine'' are generally considered part of a stationary source and subject to control under title I State NSR permit programs. On the other hand, emissions resulting directly from internal combustion engines considered to be nonroad engines, or from nonroad vehicles, are generally subject to separate regulation under title II of the Act. On June 17, 1994, the EPA published regulations at 40 CFR part 89 regarding new nonroad engines and nonroad vehicles, which included definitions of the two terms. See 59 FR 31306.

In today's document, the EPA is proposing to amend the various NSR regulations by revising the definition of ''stationary source'' to include emissions from stationary internal combustion engines, and to exclude emissions from nonroad engines and nonroad vehicles, as well as from emissions resulting directly from an internal combustion engine used for transportation purposes. See proposed § 51.165(a)(1)(i). The EPA is also proposing to complement the definition of ''stationary source'' with new definitions addressing the terms ''stationary internal combustion engine,'' ''nonroad engine,'' and ''nonroad vehicle.'' [87] See proposed §§ 51.165 (a)(1)(xxxii) through (a)(1)(xxxiv), respectively. It should be noted that the proposed definitions of ''nonroad engine'' and ''nonroad vehicle'' are the same definitions that EPA promulgated under 40 CFR part 89 on June 17, 1994 (59 FR 31337). As proposed, a ''stationary internal combustion engine'' refers to any internal combustion engine that is regulated by a Federal NSPS promulgated under section 111 of the Act, or an internal combustion engine that is none of the following: a nonroad engine, an engine used to propel a motor vehicle or a vehicle used solely for competition, or an engine subject to standards promulgated under section 202 of the Act. See proposed § 51.165(a)(1)(xxxii).

It is the EPA's intent to continue to regulate internal combustion engines that function in a stationary manner as stationary internal combustion engines. Apart from engines regulated under section 111 and engines used to propel a motor vehicle or a vehicle used solely for competition, the proposed definitions distinguish nonroad engines from stationary internal combustion engines primarily on the basis of engine mobility and residence time. Engines that are permanently affixed or are otherwise non-portable and non-transportable are clearly stationary internal combustion engines. In addition, the definition of nonroad engine provides that while portable and transportable internal combustion are generally to be regulated as nonroad engines, those internal combustion engines that remain in a particular location for over 12 months (or a shorter period of time for engines operating at sources with seasonal operating schedules) are to be treated as stationary internal combustion engines (this excludes engines in self-propelled equipment and equipment intended to be propelled while performing its intended function).

Typical stationary internal combustion engines generally include, but are not limited to, engines associated with pipeline pump and compressor drives, electric power generation, and certain well-drilling operations. Examples of internal combustion engines which, for the most part, would be considered nonroad engines (and nonroad vehicles) include diesel locomotives, farm and construction equipment, utility engines (such as lawn and garden equipment), forklifts, mobile cranes, and airport service vehicles. Some internal combustion engines perform both mobile and stationary activities—i.e., they are used both to propel a vehicle and to operate some equipment or device when the vehicle is stationary. The EPA is proposing that such engines would be considered nonroad engines, and not subject to review as stationary internal combustion engines.

The EPA notes that as part of the rulemaking on nonroad engines on June 17, 1994 (59 FR 31311), it is a prohibited act to attempt to circumvent the exclusion based on the residence time of a portable or transportable engine by means of removing the engine from its location for a period and then returning it to that same location. In such cases, the time between removal of

[87] The proposed revisions to the definition of ''stationary source,'' as well as the addition of new definitions for ''stationary internal combustion engine,'' ''nonroad engine,'' and ''nonroad vehicle'' are also being proposed for inclusion in the PSD regulations as discussed in section VI.B.3 of this preamble.

the engine and its return to service (or replacement) would be counted toward the time period specified in paragraph (2)(iii). An example of the final sentence of paragraph (2)(iii) of the definition of nonroad engine is when a portable generator engine that functions as a permanent backup generator is replaced by a different engine (or engines) that performs the same function. In that case, the cumulative residence time of both generators, including the time between removal of the original engine and installation of the replacement, would be counted toward the consecutive residence time period.

The definition of nonroad engine includes a provision that if an engine is replaced by another engine within the 12-month period, that the replacement engine should be considered in calculating the consecutive time period. This provision is designed to ensure that where an internal combustion engine is necessary for the operation of a stationary facility, the replacement of one particular engine with another would not prevent the engines from being included as part of the stationary facility. The EPA solicits comment on the appropriateness of the proposed definition of stationary internal combustion engine and of the appropriateness of incorporating the same definition of nonroad engine as was promulgated in part 89.

The EPA published on June 17, 1994 (59 FR 31339) an interpretative rule as an appendix to 40 CFR part 89 explaining the EPA's views concerning the ability of States to regulate internal combustion engines manufactured prior to the effective date of part 89, as well as the ability to impose in-use restrictions on nonroad engines. Paragraphs 1 and 2 of the Appendix relating to engines manufactured prior to the effective date of part 89 have been remanded to EPA and ordered to be vacated pursuant to a voluntary motion by EPA to the Court of Appeals for the District of Columbia Circuit. The EPA expects to give further consideration to the interpretations in these paragraphs in a separate action. The full text of the remaining paragraph (paragraph 3) of the appendix is repeated here:

> 3. Moreover, EPA believes that States are not precluded under section 209 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded once the engine is placed into service or once the equitable or legal title to the engine or vehicle is transferred to an ultimate purchaser, as long as no certification, inspection or other approval related to the control of emissions is required as a condition precedent to the initial retail sale, titling, or registration of the engine or equipment. The EPA believes that States are not prevented by section 209 from requiring retrofitting of nonroad engines in certain circumstances once a reasonable time has passed after the engine is no longer new, as long as the requirements do not amount to a standard relating back to the original manufacturer. Therefore, EPA believes that modest retrofit requirements may be required after a reasonable amount of time (e.g., at the time of reregistration or rebuilding) and more significant retrofit requirements may be required after a more significant period of time (e.g. after the end of the useful life of the engine).

B. NSR Provisions for Prevention of Significant Deterioration

As discussed below EPA is proposing several changes pursuant to the 1990 Amendments to the PSD rules at 40 CFR 51.166 and 40 CFR 52.21 to codify some of revised preconstruction permit requirements of part C of title I of the Act. These changes include (1) the applicability of PSD to ozone depleting substances (ODS) regulated under title VI of the Act, and (2) the exemption of the HAP listed under section 112 of the Act from Federal PSD applicability. The EPA is considering future rulemaking to propose other changes to EPA's PSD program in light of the 1990 Amendments.

1. Stratospheric Ozone-Depleting Substances

New title VI of the Act, entitled ''Stratospheric Ozone Protection,'' regulates the production and consumption of substances that deplete the stratospheric ozone layer. These substances are typically used as refrigerants for both household and commercial purposes, and for other common uses such as fire suppression, solvents, and foam blowing. Methyl bromide is also a listed ozone depleting substance that is used as a broad spectrum biocidal agricultural fumigant. Pursuant to section 165(a)(4)[88], the PSD regulations apply to all pollutants regulated under the Act.[89] See also, *e.g.*, existing § 51.166(b)(23)(ii).

Section 602 of title VI of the Act lists ODS for regulation and classifies the substances as either Class I or Class II. The Class I list includes the substances previously regulated to implement the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).[90] The Class I substances list contains specific chlorofluorocarbons (CFC), specific halons, carbon tetrachloride, and methyl chloroform, methyl bromide, and the hydrochlorofluorocarbons (HCFC); the Class II substances list contains specific HCFC. These Class I and Class II lists also include the isomers of the listed substances, except for 1,1,2-trichloroethane, which is an isomer of methyl chloroform. Pursuant to the listing criteria of section 602, the Administrator may by rule add new substances to the lists of Class I and Class II substances. The EPA added methyl bromide and the hydrobromofluorocarbons (HBFC) to the Class I list pursuant to Section 602. See 58 FR 65018, 65028 (December 10, 1993).

As ODS are regulated under title VI of the Act, they are pollutants ''subject to regulation'' under the Act for PSD applicability purposes. The EPA is therefore proposing that new major stationary sources and major modifications of sources of these pollutants are subject to BACT for ODS. Under section 169(1), a stationary source is major if it is one of 28 listed source categories and it emits, or has the PTE, 100 tpy or more of any air pollutant. Likewise, for other source categories, the major stationary source threshold is 250 tpy. Absent an EPA determination of a ''significance level'' for a particular pollutant, a modification at a major stationary source resulting in any net increase in emissions of the pollutant is subject to the PSD requirements. See existing § 52.21(b)(23)(ii).

The EPA is proposing that the ODS listed under section 602 be aggregated as a single pollutant for PSD applicability purposes. See proposed §§ 51.166(b)(23)(i) and 52.21(b)(23)(i). Since these substances are in many cases used for the same purposes and can be substituted for each other, and because the nature of their environmental impact is the same, the EPA believes it is appropriate to aggregate them as a single pollutant for purposes of PSD applicability. Also, treating ODS as a single pollutant is similar to treatment of VOC for PSD purposes. Like VOC, ODS have varying levels of environmental impacts (or reactivity), but PSD applicability for VOC is nevertheless based on a total

[88] Section 165(a)(4) of the Act provides that, in order to obtain a PSD permit, a source must be ''subject to the BACT for each pollutant subject to regulation under this Act emitted from, or which results from, such facility.'' (Emphasis Supplied.)

[89] Note that new section 112(b)(6) of the Act exempts the HAP listed under section 112 from the PSD provisions of part C of title I.

[90] Prior to enactment of the new title VI, on August 12, 1988 (53 FR 30566) the EPA published rules implementing the Montreal Protocol. These rules regulate CFC 11, 12, 113, 114, 115 and halons 1211, 1301 and 2402 as ODS. The PSD regulations applied to the ODS regulated under the Montreal Protocol.

mass of emissions without adjustment for reactivity.

As part of the same proposed change, the EPA is proposing a significance level of 100 tpy for determining PSD applicability to modifications at major stationary sources that result in a net increase in emissions of aggregate ODS. The EPA has determined significance levels for all other pollutants based on the local ambient impact associated with that particular amount of emissions. Since emissions causing stratospheric ozone depletion is strictly a global problem, no appreciable local ambient impact will result from emissions from a particular source. Among regulated pollutants, ODS are unique in this regard. Also, the global stratospheric ozone impact from a particular source is far below an amount that would have a measurable local ambient impact. In addition, the EPA believes that title VI constitutes a fairly comprehensive approach to addressing ODS emissions, including a program to recycle and reduce emissions under section 608 of the Act.

On the other hand, the Act provides that a new source emitting 100 tpy of ODS (and for some source categories 250 tpy) should be subject to PSD review, including the BACT requirement. The EPA believes that PSD should apply to any modification at a major stationary source that would result in a net emissions increase in ODS of at least 100 tpy, which is the lower major source threshold. This is consistent with the purposes of Congress in enacting the PSD provisions to identify facilities which are responsible for deleterious pollution and which, due to their size, are financially able to bear the costs imposed by PSD. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 353 (D.C. Cir. 1979) (discussing Congress's intent in enacting PSD provisions). However, for the reasons discussed above, the Agency believes that the global ambient impact of emissions below that threshold are de minimis. The EPA requests comment on its proposed 100 tpy significance level for ODS. Commenters should specify the basis for any other suggested significance level.

The EPA is also considering an alternative whereby groups of ODS that may be used for the same purposes would be aggregated, but that those that are used for different purposes and cannot be substituted for each other would be treated separately for PSD applicability. The current groupings under section 602 may represent such use groups. The EPA recognizes, however, that these groups may not sufficiently represent chemicals that can be substituted for each other because some within the same group may not be substitutes, and because substitutes may exist across groups. (Of course, as discussed below, HCFC may be substituted for CFC.) Under this alternative, the major source thresholds and the significance level would apply independently for each group of substitutable ODS. The EPA requests comment on this option, and on the appropriate groupings of ODS under such an approach.

The EPA notes that the termination date for production and consumption [91] of halons passed with the end of 1993, and that the termination date for production and consumption of the CFC was the end of 1995. Therefore, significant increases in emissions of halons and CFC are not likely to occur after final promulgation of this rule. Rather, the EPA understands that it intends that the termination of production and consumption of the more potent ODS will force users to substitute less potent ODS. The most common switch is the substitution of the lower ozone-depleting potential HCFC for the higher ozone-depleting potential CFC. Much of this will have been accomplished by the time of final promulgation of this rule.

Currently, the EPA's regulations would appear to require that any increase in the mass of emissions from a non-routine change involving substitution of HCFC for CFC would trigger PSD review. Existing equipment in many cases may have to be altered or replaced to accommodate the substitute ODS. Since the EPA's title VI program is geared toward forcing such changes because they are environmentally beneficial, the EPA has indicated that it will consider treating such substitutions as pollution control projects. The EPA issued policy concerning pollution control projects in a July 1, 1994 memorandum from John S. Seitz, Director, OAQPS, entitled ''Pollution Control Projects and New Source Review (NSR) Applicability.'' The EPA also took the position that the proposed substitution of HCFC–141b for CFC–11 at Whirlpool Corporation's Forth Smith, Arkansas facility would qualify for a case-by-case exclusion from PSD review as a pollution control project.[92] See 57 FR 32314, 32320 (July 21, 1992) (explaining that the EPA will consider pollution control projects on a case-by-case basis). This may be appropriate at least where the switch will not increase emissions of any other pollutant which would impact a NAAQS, PSD increment, or air quality-related value, will not cause any cross-media concerns, and will not increase any risk associated with toxic or HAP.

The EPA is proposing this approach as a regulatory exclusion. The title VI program is designed to force such substitution in order to reduce the harmful effect of ODS on the stratospheric ozone layer, and the Agency encourages voluntary or early substitution. Because substitution of less potent ODS for more potent ODS is a primary goal of the EPA's ODS regulatory program, the Agency believes that an existing major stationary source that emits ODS should be able to make a change to use other ODS with less ozone-depleting potential without triggering PSD review. So long as the modifications needed to accomplish such substitution do not result in an increase of the production capacity of the ODS-emitting equipment, the EPA believes that applying PSD and the BACT requirement would not be within the intended scope of the PSD program. However, if the physical change or change in the method of operation is other than what is needed to accommodate the switch in ODS, and if there is a significant net emissions increase of 100 tpy or greater of ODS, then the change is a major modification subject to PSD and the BACT requirement. Accordingly, to implement this policy regarding ODS substitution, the EPA is proposing to provide that such substitutions would not be considered a physical change or change in the method of operation, and therefore would not be a major modification for PSD purposes. See proposed §§ 51.166(b)(2)(iii)(N) and 40 CFR 52.21(b)(2)(iii)(N).

The EPA recognizes that the very specific assessment of ozone-depleting potential for all listed substances under section 602 of the Act also may support a broader incorporation of relative ozone-depleting potential into PSD applicability for all ODS-related modifications. In short, as noted above, EPA is considering an alternative whereby all modifications would be assessed on a weighted basis relative to their ozone-depleting potential. Under this alternative approach, any increase in amount of ODS emitted as a result of a change to a substance with lower ozone-depleting potential would be discounted by the relative ODP of the new substance. For example, if a facility using 500 tpy of CFC–11 (with an ozone-depleting potential of 1.0) switched to use 1000 tpy of an HCFC

[91] Consumption equals production plus imports minus exports.

[92] Letter from A. Stanley Meiburg, U.S. EPA Region VI, to Randall Mathis, Arkansas Department of Pollution Control and Ecology (February 1, 1994).

with an ODP of 0.1, there would actually be a decrease in total ozone-depleting potential, and PSD review would not apply. This approach is arguably consistent with the purpose of PSD to prevent deterioration in air quality. To the extent a switch in ODS actually reduces overall ozone-depleting potential, no deterioration in air quality would result. Were the EPA to adopt this alternative approach, it would be consistent for purposes of the PSD netting calculation to adjust the mass of each ODS involved based on its ozone-depleting potential to determine if a modification results in a significant net emissions increase.

The EPA recognizes that the significant variation in ozone-depleting potential could allow substantial plant expansions contemporaneous with the elimination of a substance having a higher ozone-depleting potential. This approach would thus allow a source that builds new units contemporaneously with a substitution to avoid PSD (and the pollution minimization opportunity it affords), whereas a ''green field'' source simply building the new units would be subject to PSD. Nevertheless, from an environmental impact standpoint, this is arguably no different than an existing utility replacing an uncontrolled NO_X-emitting boiler contemporaneously with the construction of several well-controlled new boilers.

Still, section 165 of the Act specifies preconstruction review requirements for construction of ''major emitting facilities,'' defined in section 302(j) in terms of tons of pollutant emitted per year. These provisions do not specifically consider the relative reactivity of pollutants in determining whether PSD applies. The general rule is that physical or operational changes that do not increase emissions on a plant-wide basis are excluded from the PSD program because Congress intended this program to prevent significant increases in air pollution and, hence, deterioration in air quality. *Alabama Power,* 636 F.2d at 401. The EPA recognizes that, based on our knowledge of the reactivity of ODS, air quality deterioration can be prevented despite certain increases in the tpy of ODS emissions.

But the Agency does not believe it is obligated to adjust the increases in the mass of pollution on a reactivity basis in order to ensure that PSD apply only where an increase in the mass of pollution would actually deteriorate air quality. This is particularly so where title VI of the Act represents a Congressional determination that existing levels of ODS are unacceptable and must be reduced (and ultimately eliminated), and where PSD review may constitute a tool for reducing ODS emissions associated with major new construction. The EPA therefore believes that it has discretion to apply PSD in a straight-forward manner under section 165 to unadjusted mass increases where sources are expanding capacity in order to ensure BACT is applied to such modifications.

The EPA believes this alternative could promote early substitution of less potent ODS to support expansion in capacity. The EPA is also sensitive to any incentive it might provide to delay substitution until the source is ready for plant expansion or other physical or operational changes that may result in a significant net increase in ODS. Since sources could utilize credit from substitution throughout the 5-year contemporaneous period for netting, the incentive to delay substitution may be limited to unusual situations where a source has flexibility to delay substitution for 5 years and is aware of construction it intends to commence long in the future.[93] The Agency expects that the extra incentive for substitution this approach will provide should outweigh any risk of an incentive to delay substitution. The EPA requests comment on this alternative approach. The EPA specifically requests that commenters address the incentives this alternative would create, the legal basis for adjusting mass emissions in light of the ozone-depleting potential and the costs and benefits of applying BACT and other PSD requirements to the variety of ODS-emitting sources.

Finally, the Agency is again aware that the phaseout schedule for the CFC and halons is likely to prompt the bulk of substitution to HCFC even before the Agency takes final action on this rule. As noted above, the Agency has already taken the position for one such facility that substitution of HCFC–141b for CFC–11 would qualify for a case-by-case exclusion from PSD review as a pollution control project, where the project would not increase production capacity at the plant or result in increased utilization of existing capacity. The Agency may need to address whether modifications involving increases in plant capacity or utilization and overall reduction in total ozone-depleting potential should qualify as a pollution control project based on an overall decrease in emissions, weighted on the basis of ozone-depleting potential, from the project. The Agency requests comment on whether a project involving expansion in plant capacity or utilization may reasonably be considered part of a pollution control project. In any case, even if the Agency does not allow such projects to qualify as a pollution control project, if the Agency adopts the ozone depletion weighting alternative for all modifications, substitutions that occur before the final rule may still generate credit to support expansions later in the 5-year contemporaneous period after promulgation of the final rule. The EPA requests comment on this view.

[93] Nevertheless, a hypothetical source in 1997 might delay substitution until 2003 because it wishes to preserve the credit it would get from the substitution for use to avoid PSD applicability for new construction at the plant in 2008.

2. Listed Hazardous Air Pollutants (HAP)

Under the 1977 Act Amendments and regulations issued thereunder, the PSD requirements of the Act apply to all ''major'' new sources and ''major modifications,'' i.e., those sources exceeding certain annual tonnage thresholds. See, *e.g.*, existing §§ 51.166(b)(2)(i) and (b)(23)(i). Typically, new sources and modifications become subject to PSD because their potential emissions exceed the specified tonnage threshold for a criteria pollutant (i.e., a pollutant for which a NAAQS has been established under section 109 of the Act). For a major new source, the PSD requirements apply to every pollutant subject to regulation under the Act that is emitted in ''significant'' quantities or, in the case of a modification to an existing major source, for which there is a significant net emissions increase. See, *e.g.*, existing § 52.21(b)(23)(i). Under the 1977 Act Amendments, BACT and other PSD requirements applied not only to emissions of criteria pollutants but also to emissions of pollutants regulated under other provisions of the Act, such as section 111 or section 112. This regulatory structure was altered by the 1990 Amendments.

Section 112(b)(6) of Act generally excludes the HAP listed in section 112 (as well as any pollutants that may be added to the list) from the PSD provisions of part C. Some of the chemical compounds listed in (b)(1) are arsenic compounds, beryllium compounds, lead (Pb) compounds, and mercury compounds. These compounds are defined as including any unique chemical substance that contains the named chemical (i.e., arsenic, beryllium, etc.) as part of the chemical's infrastructure. These named chemicals are not independently listed on the section 112(b)(1) list; however, with the exception of Pb, the EPA is proposing that the named chemicals (i.e., arsenic,

beryllium, etc.) that are components of the compounds listed under section 112(b)(1) are, like their compounds, exempt from the Federal PSD requirements. Regarding Pb, section 112(b)(7) states that elemental Pb (the named chemical) may not be listed by the Administrator as a HAP under section 112(b)(1); therefore, elemental Pb emissions are not exempt from the Federal PSD requirements because section 112(b)(6) exempts only the pollutants listed in section 112. Elemental Pb continues to be a criteria pollutant subject to the Pb NAAQS and other requirements of the Act.

The regulations specifying a significance level refer to ''Pb'' and do not specify whether the Pb covered is ''elemental'' or ''Pb compounds.'' As noted in the EPA's transition guidance,[94] the elemental Pb portion of Pb compounds (as tested for in 40 CFR part 60, appendix A, Method 12) is still considered a criteria pollutant subject to the Pb NAAQS and regulated under PSD. Thus, the EPA intends that the reference to ''Pb'' in the proposed regulations covers the Pb portion of Pb compounds. The Agency requests comment on this position. The EPA also requests comment on whether references in the regulations should specify ''elemental'' Pb, or whether the word ''elemental'' might mislead the public to believe that only Pb that is not part of a Pb compound is covered.

Pollutants regulated under the Act and not on the list of HAP, such as fluorides (except for hydrogen fluoride), total reduced sulfur compounds, and sulfuric acid mist, continue to be regulated under PSD.[95] Because they are on the initial HAP list of section 112(b)(1), the following pollutants, which had been regulated under PSD because they were covered by the section 112 NESHAP, are now exempt from Federal PSD applicability:

- Arsenic;
- Asbestos;
- Benzene (including benzene from gasoline);
- Beryllium;
- Mercury;
- Radionuclides (including radon and polonium);
- Vinyl chloride.

Pursuant to section 116 and the preservation clause in section 112(d)(7), States with an approved PSD program may continue to regulate the HAP now exempted from Federal PSD by section 112(b)(6) if the State PSD regulations provide an independent basis to do so. These State rules remain in effect unless a State revised them to provide similar exemptions. Such provisions that are part of the SIP are federally enforceable. Additionally, the listed HAP continue to be subject to any other applicable State and Federal rules; the exclusion is only for the part C rules for PSD.

The EPA is proposing that any HAP listed in section 112(b)(1) which are regulated as constituents or precursors of a more general pollutant listed under section 108 are still subject to PSD as part of the more general pollutant, despite the exemption in section 112(b)(6). For example, VOC (a term which includes benzene, vinyl chloride, methanol, toluene, methyl ethyl ketone, and numerous other compounds) are still regulated as VOC (but not as individual pollutants such as benzene, etc.) under the PSD regulations because these pollutants are ozone precursors, not because they are HAP. Also, particulates (including Pb compounds and asbestos) are still regulated as particulates (both PM–10 and PM) under the PSD regulations.

Section 112(b)(6) provides: ''The provisions of part C (PSD) shall not apply to pollutants listed under this section.'' Under the plain terms of section 112(b)(6), PSD does not apply to substances by virtue of their inclusion on the list of substances that the Administrator is to promulgate under section 112(r), Prevention of Accidental Releases. Subsection (r) establishes a program to prevent and minimize the consequences of an accidental release of the listed HAP. Section 112(r) is not intended to address emissions of these pollutants outside of an accident, and certain regulated sources may have no emissions at all outside of accidental releases. It thus makes sense that the PSD program, which is designed to limit and control emissions that occur in the ordinary course of a source's operations, does not apply to substances by virtue of their listing under section 112(r).

But, like substances listed under section 112(b)(1), substances regulated under section 112(r) may still be subject to PSD if they are regulated under other provisions of the Act. For example, the EPA believes that even though H2S is listed under section 112(r), hydrogen sulfide is still regulated under the Federal PSD provisions because it is regulated under the NSPS program in section 111. This means that the listing of a substance under section 112(r) does not exclude the substance from the Federal PSD provisions; the PSD provisions apply if the substance is otherwise regulated under the Act.

In summary, the following pollutants currently regulated under the Act as of January 1, 1996, are still subject to Federal PSD review and permitting requirements:

- CO;
- NO_X;
- SO_2;
- PM and PM–10;
- Ozone (VOC);
- Pb (elemental);
- Fluorides (excluding hydrogen fluoride);
- Sulfuric acid mist;
- H_2S;
- Total reduced sulfur compounds (including H_2S);
- Reduced sulfur compounds (including H_2S);
- CFC's 11, 12, 112, 114, 115;
- Halons 1211, 1301, 2402;
- Municipal waste combustor (MWC) acid gases, MWC metals and MWC organics.
- ODS regulated under title VI.

The PSD program will also automatically apply to newly regulated pollutants, for example, upon final promulgation of an NSPS applicable to a previously unregulated pollutant.

Based on the remand decision on June 3, 1986 by the EPA Administrator in *North County Resource Recovery Associates* (PSD Appeal No. 85–2), the impact on emissions of other pollutants, including unregulated pollutants, must be taken into account in determining BACT for a regulated pollutant. When evaluating control technologies and their associated emissions limits, combustion practices, and related permit terms and conditions in a BACT proposal, the applicant must consider the environmental impacts of all pollutants, including those not regulated by PSD. Once a project is subject to BACT due to the emission of nonexempted pollutants, the EPA believes that the BACT analysis should therefore consider the impact of the various control options under consideration on all pollutants, including the section 112(b)(1) listed HAP previously subject to PSD, in determining which control strategy is best. Likewise, consideration of alternatives to a proposed PSD source, as discussed in Section IV.D.7 of this preamble, may include impacts from listed HAP and other pollutants not directly regulated under the PSD program.

In addition, section 112(q) retains existing NESHAP regulations by

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[94] Memorandum from John S. Seitz, Director, OAQPS, ''New Source Review (NSR) Program Transitional Guidance,'' (March 11, 1991).

[95] The compound hydrogen sulfide (H_2S) was inadvertently on the section 112(b)(1) list of HAP's in the 1990 Amendments. To correct this clerical error, H_2S was removed from the section 112(b)(1) list by a joint resolution of Congress. The resolution by the Senate was on August 1, 1991, while the House resolution was on November 25, 1991. This means that the PSD provisions of the Act continue to apply to H_2S, which is still regulated under section 111 of the Act. The compound H_2S is still on the section 112(r) list.

specifying that any standard under section 112 in effect prior to the date of enactment of the 1990 Amendments shall remain in force and effect after such date unless modified as provided in the amended section. Therefore, the requirements of 40 CFR 61.05 to 61.08, including preconstruction permitting requirements, for new and modified sources subject to existing NESHAP regulations, are still applicable.

To implement the new requirements of section 112 in the NSR program rules, the EPA today proposes to exempt the HAP listed under statutory section 112, including any HAP that may be added to the lists, from the Federal PSD permitting requirements. See proposed § 52.21(i)(14). Should a listed pollutant be removed from the list under the provisions of section 112(b)(3) or 112(r)(3) of the Act, such pollutant would be subject to the applicable PSD requirements of part C to the extent it is otherwise regulated under the Act. The EPA also proposes to eliminate the applicability of the PSD requirements to individual HAP by deleting from the existing regulations those HAP listed under section 112, including beryllium, mercury, vinyl chloride and asbestos. See proposed §§ 52.21(b)(23)(i) and 52.21(i)(8)(i).

The PSD regulations at 40 CFR 51.166, which list the minimum criteria for State SIP conformance, are also being amended to reflect the changes mentioned above. Accordingly, the EPA proposes to allow States to exempt from PSD the section 112(b)(1) list of HAP. See proposed § 51.166(i)(13). The EPA also proposes to revise the current pollutant listings by deleting the HAP which are now exempt from Federal PSD applicability. See proposed §§ 51.166(b)(23)(i) and 51.166(i)(8)(i).

3. Applicability of PSD Requirements to Internal Combustion Engines

In accordance with the provisions of the amended Act, the EPA today proposes to revise the definition of ''stationary source'' in the PSD regulations to include ''stationary internal combustion engines,'' and to exclude ''nonroad engines'' and ''nonroad vehicles.'' See proposed §§ 51.166(b)(5) and 52.21(b)(5). Accordingly, the EPA is also proposing to add new definitions to address the terms ''stationary internal combustion engine,'' ''nonroad engine,'' and ''nonroad vehicle.'' See proposed §§ 51.166(b) (46) through (48) and §§ 52.21(b) (47) through (49). The rationale and background for these changes are the same as those provided in section VI.A.5. of this preamble, which describe similar changes to the definition of ''stationary source'' under the nonattainment NSR regulations.

C. Control Technology Information

Section 108(h) of the Act requires the EPA to maintain a central database of information regarding emissions control technology, such as the RACT/BACT/LAER Clearinghouse. Section 108(h) also requires this information to be disseminated by the EPA to the States and to the general public. Today, the EPA is proposing to require that permitting authorities submit to EPA's RACT/BACT/LAER Clearinghouse, within 60 days of issuance of either a nonattainment NSR or PSD permit, all requisite information on emission control technology contained in any such permit. See proposed §§ 51.165(a)(16), 51.166(j)(5), and 52.21(j)(5)].

Section 173(d) of the Act specifically requires such control technology information from States for permitted sources located in nonattainment areas. This proposal extends that requirement to apply to permits for PSD sources as well. The EPA also solicits comment on the availability of information in the RACT/BACT/LAER Clearinghouse.

VII. Other Proposed Changes

A. Emissions Credits Resulting From Source Shutdowns and Curtailments

The EPA's current regulations limit the use as offsets of emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels. See existing § 51.165(a)(3)(ii)(C). These regulations provide that such emissions reductions cannot be used as new source offsets if the State lacks an approved attainment demonstration, unless the shutdown or curtailment occurs on or after the date the new source permit application is filed or the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source. Such shutdown or curtailment credits may be generally credited if the reductions are permanent, quantifiable, and federally enforceable, if the area has an EPA-approved attainment demonstration.

In 1989, when EPA adopted the current regulations regarding crediting of shutdowns, it focused on the large degree of discretion granted to it under the Act to shape implementing regulations, as well as the need to exercise that discretion in a manner consistent with the statutory directive that offsets insure that new source growth is consistent with reasonable further progress (RFP) toward attainment of the NAAQS, and on the presence of an adequate nexus between the new source and the shutdown source. See 54 FR 27292. At that time, EPA believed that adequate safeguards to assure RFP were present when an area had an approved attainment demonstration, and so relaxed the 1980 regulations by allowing the crediting, for offset purposes, of shutdowns that occur after an application for a new or modified major source is filed. *Id.* The EPA also believed that the necessary assurances of RFP were lacking, and that the transactional ''match'' between the new source and the shutdown source was inadequate, when an area was lacking an approved attainment demonstration, and so the Agency retained the restrictions on pre-application shutdowns in such cases. *Id.* at 27292–94.

Passage of the 1990 Amendments has significantly altered the landscape that confronted EPA at the time of the 1989 rulemaking. Congress significantly reworked the attainment planning requirements of part D of title I of the Act, such that EPA now believes it is appropriate to delete the restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In particular, Congress enhanced the importance of the requirement in section 172(c)(3) that States prepare a ''comprehensive, accurate, current inventory of actual emissions from all sources'' in a nonattainment area as the fundamental tool for air quality planning. This was done by restating the inventory requirement as the first requirement in several pollutant-specific planning provisions, most notably for ozone nonattainment areas. See section 182(a)(1) of the Act, requiring submission of an inventory of ozone precursor emissions within 2 years of enactment of the amendments. Congress also required submission of a revised ozone precursor inventory every 3 years thereafter. See section 182(a)(3)(A) of the Act.

In addition, Congress added several new provisions in 1990 that are keyed to the inventory requirements. Ozone nonattainment areas must adopt a series of planning requirements including specific reduction strategies and ''milestones'' that enable areas to demonstrate that specific progress toward attainment has been made. This progress is measured from the 1990 ozone precursor inventory, or subsequent revised inventories, and must take any source shutdown or curtailment into account. See General Preamble, 57 FR 13498, 13507–13509 (April 16, 1992).

Moreover, the 1990 Amendments mandate several adverse consequences for States that fail to meet the planning or emissions reductions requirements of the amended Act that are tied to the emissions inventories. For example, the Act contains mandatory increased new source offset sanctions for States that fail to submit a required attainment demonstration. The Act's sanction for failure to submit a required demonstration is 2:1 offsets. The 1990 Amendments also contain provisions to require that when an area fails to attain the air quality standard by its statutory attainment date, EPA must bump the area up to the next higher classification or the classification based on its design value, whichever is higher. Additional regulatory requirements are imposed as a result of the higher classification. Also, sections 181(b)(4) and 185 of the Act contain fee provisions applicable to severe ozone nonattainment areas that do not attain the standard by their statutory attainment date.

Thus, there is now a host of negative impacts that flow from a State's failure to plan for and make reductions in the amount of pollution set forth in the emissions inventories. The EPA has tentatively concluded that, taken together, these statutory changes justify a shift away from the focus of the current regulations on individual offset transactions between a specific new source and a specific source that will be shut down, and towards a systemic approach. The EPA believes that a benefit from easing the shutdown restrictions is that emissions reductions from the closing of some military installations may be available as offsets for new sources to build.

In this proposal, the EPA is proposing to revise the existing provisions for crediting emissions reductions by restructuring existing §§ (a)(3)(ii)(C)(*1*) and (*2*) for clarity without changing the current requirements therein. See proposed §§ (a)(3)(ii)(C)(*1*) through (*4*). In addition, EPA is proposing two alternatives which would ease, under certain circumstances, the current restrictions on the use of emissions reductions as offsets from source shutdowns and curtailments.

Under Alternative 1, EPA is proposing for ozone nonattainment areas to lift the current offset restriction applicable to emissions reductions from source shutdowns and curtailments in such areas without EPA-approved attainment demonstrations, so long as the emissions reductions occur after November 15, 1990 and the area is current with part D ozone nonattainment planning requirements. See proposed §§ 51.165(a)(3)(ii)(C)(*5*) and (*6*)[*Alternative 1*]. Proposed Alternative 2 generally lifts the current offset restriction applicable to emissions reductions from source shutdowns and source curtailments for all nonattainment areas and all pollutants where such reductions occur after the baseyear of the emissions inventory used (or to be used) to meet the applicable provisions of part D of the Act. See proposed § 51.165(a)(3)(ii)(C)(*5*)[*Alternative 2*]. Neither alternative changes the current offset restrictions with respect to their application to emissions reductions that occur prior to the base-year of the emissions inventory in nonattainment areas without EPA-approved attainment demonstrations. Moreover, both alternatives allow States, if they so choose, to retain the current restrictions on the use of shutdown and curtailment credits for offset purposes. The EPA is seeking comments on these proposed alternatives. Discussion of the two proposed alternatives follows.

1. Shutdown Alternative 1

In a July 21, 1993 policy statement, the EPA reconsidered the applicability of these regulatory requirements for ozone nonattainment areas and ozone attainment and unclassifiable areas in the OTR in light of the 1990 Amendments.[96] The EPA explained that States should be able to allow shutdown or curtailment credits to be used under conditions applicable to areas with approved attainment demonstrations until the EPA action to approve or disapprove a timely submitted attainment demonstration. The EPA also explained that, if the State is delinquent in submitting specified SIP revisions or if the State's attainment demonstration is disapproved, the use of shutdown credits would again be restricted to those occurring on or after the filing date of the new source permit application (unless the applicant can establish that the proposed new source is a replacement for the one that was shutdown or curtailed). The EPA also took the position that areas not required to submit an attainment demonstration should be allowed to follow the less restrictive shutdown policies applicable to areas in compliance with the attainment demonstration requirements under the current regulations.

The EPA also specified that creditable shutdowns or curtailments must (1) have occurred on or after November 15, 1990, (2) have reduced emissions that are included in the emissions inventory for attainment demonstration and RFP milestone purposes, and (3) generate an amount of credit equal to the lower of actual or allowable emissions for the source. Consistent with the current regulations, the EPA noted that all shutdown or curtailment reductions must be permanent, quantifiable, and federally enforceable in order to be creditable.

The EPA clearly explained in the July 21, 1993 policy statement that it did not supersede existing Federal or State regulations or approved SIP, but intended solely to provide guidance during the interim period prior to submission and approval of attainment demonstrations under the 1990 Amendments. The EPA also explained that it would address matters relating to shutdown credits in the rulemaking regarding regulatory changes mandated by the 1990 Amendments and would take comment on its policy at that time. The EPA chose to address this issue through a policy statement rather than through binding regulatory changes because there was a need for immediate guidance during the interim period. The EPA therefore is proposing regulatory changes in light of the 1990 Amendments to address the creditability of shutdown and curtailment reductions.

The EPA's proposal regarding the treatment of shutdown and curtailment credits will affect a number of different circumstances. First, the EPA believes the interim period prior to approval or disapproval of attainment demonstrations for ozone nonattainment areas will continue after the promulgation of this final rule. The attainment demonstration for serious and above ozone nonattainment areas was not due until November 15, 1994, and the EPA action to approve or disapprove these submissions may not occur until some time after that. Second, areas may be designated as new ozone nonattainment areas in the future that will have future attainment dates, and if designated moderate or above will have future dates for submission of an attainment demonstration. Third, ozone nonattainment areas not reaching attainment by the applicable dates may be ''bumped up'' to the next higher nonattainment classification, and may be given new future dates for submission of an attainment demonstration and for reaching attainment.

The EPA's rationale for its July 21, 1993 policy statement was rooted in the belief that the 1990 Amendments new schedules for submitting attainment demonstrations rendered the restrictions on the use of so-called ''prior shutdown credits'' as unnecessarily hindering a

[96] See Memorandum from John Seitz, Director of EPA's OAQPS (July 21, 1993).

State's ability to establish a viable offset banking program. For those ozone nonattainment areas (and areas in the OTR), the EPA explained that the purposes of the prior shutdown credits restrictions would not be served if these areas were treated as if they had failed to make such a demonstration.

As explained in the July 21, 1993 policy statement, the EPA's concern in its final action establishing the current regulatory approach to shutdown credits in 40 CFR 51.165 was that unrestricted use of prior shutdown credits would lead to offset transactions without any nexus between the decision to shut down or curtail operations at the existing source and the decision to construct new capacity. Thus, shutdowns or curtailments that would have occurred in any case (not prompted by a new source seeking offsets) would not be applied to RFP, but would instead be used to accommodate additional emissions growth in the nonattainment area.

The EPA explained in the July 21, 1993 policy statement that the 1990 Amendments merit a less restrictive approach to the use of prior shutdown and curtailment credits in ozone nonattainment areas. The EPA took the position that such credits may be used as offsets until the EPA acts to approve or disapprove an attainment demonstration that is due. The 1990 Amendments established new attainment deadlines for all nonattainment areas. Ozone nonattainment areas classified as moderate and above must submit new attainment demonstrations. (Marginal and unclassifiable areas, as well as attainment areas in the OTR, are not obligated to submit an attainment demonstration.) These ozone nonattainment areas must adopt a series of planning requirements including specific reduction strategies and ''milestone'' requirements that areas demonstrate that specific progress toward attainment has been made. This progress is measured from a specific 1990 ozone inventory, for which any prior shutdown or curtailment reductions must be taken into account. See General Preamble, 57 FR 13498, 13507–13509 (April 16, 1992). For pollutants other than ozone, the EPA stated that it would consider requests for relaxation of the shutdown and curtailment credits policy on a case-by-case basis.

As Alternative 1, for ozone nonattainment areas in general, the EPA is proposing to adopt the policies reflected in the July 21, 1993 policy statement as regulatory changes. See proposed §§ 51.165(a)(3)(ii)(C)(*5*) and (*6*) [*Alternative 1*]. The EPA continues to adhere to its view in the July 21, 1993 policy statement that the 1990 Amendments' provisions for ozone nonattainment areas justify use of prior shutdown and curtailment credits as offsets in the interim period before the EPA approves or disapproves any required attainment demonstration. The EPA believes that the safeguards in the new requirements of the 1990 Amendments provide adequate assurance of progress toward attainment so that restrictions on the use of prior shutdown or curtailment credits is not necessary. Thus, the EPA is proposing that prior shutdown and curtailment credits may be used as offsets in ozone nonattainment areas (as well as areas in the OTR, to the extent applicable), as long as when they come due the State (1) submits a complete emissions inventory for the area under section 182(a)(1), (2) submits complete revisions to its NSR program under section 182(a)(2)(C), (3) submits the 15 percent plan for the area under section 182(b)(1)(A) for moderate and above areas, (4) submits the attainment demonstration for the area under section 182(b)(1)(A) (for moderate areas) or section 182(c)(2) (for serious and above areas), (5) submits the 3 percent reduction plan under section 182(C)(2)(B) for serious and above areas, and (6) submits milestone demonstrations under section 182(g)(2) for serious and above areas. To the extent ozone nonattainment areas are classified marginal (or lower), States are not required by the Act to submit an attainment demonstration, and may rely on shutdown and curtailment credits for offsets.

The EPA also continues to adhere to the limitations explained in the July 21, 1993 policy statement. The EPA is therefore proposing in Alternative 1 that the restrictions on the use of prior shutdown and curtailment credits will again apply as soon as a State fails to make any of these submissions, or if such a submission is deemed incomplete or is disapproved. These limitations address the concern underlying the initial imposition of these restrictions that use of prior shutdown and curtailment credits in such circumstances would be inconsistent with the RFP requirement. Also, if a State is late in making any of these submissions, once the submission is made to the EPA, the State is allowed to implement the less restrictive shutdown credits policy. The EPA is also proposing that, if a State becomes delinquent during review of a permit application that relies on emissions reductions from prior shutdowns or curtailments, the State may allow offsets to remain creditable if the application was complete before the State became delinquent.

Areas currently designated attainment or unclassifiable for ozone under section 107(d)(4) of the Act may be redesignated under section 107(d)(3) to nonattainment, and at the time of redesignation will be classified by operation of law under section 181(b). The EPA is proposing that shutdown and curtailment credits be available as offsets in these new areas under the same conditions applicable to those areas now designated as nonattainment. Just as the ozone nonattainment provisions of the 1990 Amendments provide assurance that currently designated areas will achieve RFP and attainment, so, too, do those provisions provide assurance that new ozone nonattainment areas will achieve RFP and attainment.

Pursuant to section 181(b)(2), ozone nonattainment areas that fail to reach attainment by the applicable date are to be reclassified (bumped up) by operation of law to the higher of the next higher classification or the classification applicable to the area's design value at the time (except no area is to be reclassified as extreme). Pursuant to section 182(i), areas that are reclassified on failure to attain are to meet the requirements applicable to the new classification, according to the prescribed schedules, except that the Administrator may adjust deadlines other than the attainment dates to the extent necessary or appropriate to assure consistency among the required submissions.

Thus, moderate areas failing to attain by November 15, 1996, will be reclassified as serious and the Administrator may revise submission dates including the date for submission of a new attainment demonstration. The EPA does not believe that prior shutdown and curtailment credits should be used as offsets in such areas where the date for a new attainment demonstration has been extended. Having failed to reach attainment by the date specified in the 1990 Amendments, the EPA does not believe it may continue to regard the new statutory provisions as providing an ''independent assurance of RFP.'' Rather, the EPA believes that it should regard failure to attain by the applicable date as a delinquency rendering prior shutdown and curtailment credits unavailable as offsets.

Section 181(b)(3) of the Act provides that the Administrator shall grant the request of any State to reclassify a

nonattainment area in that State to a higher classification. Upon voluntary reclassification, the fixed deadlines applicable for the higher classified area may well be later than those otherwise applicable to the original classification. For example, the attainment demonstration submission date applicable for a serious area is later than such date for a moderate area.

Under alternative 1, the EPA is proposing that shutdown and curtailment credits be available as offsets for voluntarily reclassified areas under the same conditions applicable if the area were originally classified in the higher category. The EPA does not believe voluntary reclassification constitutes a delinquency, and believes the provisions applicable to the higher classification will provide the necessary assurance that the area will achieve RFP and attainment. The EPA requests comment on this approach.

2. Shutdown Alternative 2

Under this alternative the EPA is proposing for all nonattainment areas and all pollutants that the current offset restrictions on crediting of emissions reductions from source shutdowns and curtailments be lifted where the reductions occur after the baseyear of the emissions inventory used (or to be used) to meet the applicable part D requirements of the Act.

In light of the NSR requirements in the 1990 Amendments, EPA believes that the Act now contains sufficient procedures, air quality tests, penalties, and assurances to address air quality concerns in nonattainment areas lacking EPA-approved attainment demonstrations. Specifically, the Act requires a mandatory 2:1 offset sanction for new or modified major sources in States that fail to submit a required attainment demonstration. Consequently, the EPA is proposing that continuing a prohibition on the use of source shutdown and curtailment credits generated after the baseline year of the most recent inventory is not warranted.

Under alternative 2, the EPA believes that emissions reductions from the shutdown or curtailment of emissions which occur after the baseyear of the most recent emissions inventory may be fully creditable for offset purposes, and that no additional nexus between source shutdowns or curtailments and the new source is necessary to insure that construction of the new source will result in reasonable further progress towards attainment. From an air quality planning perspective, such emissions actually impacted the measurements of air quality used in determining the nonattainment status of an area. Subsequently, reductions in these emissions from source shutdowns or curtailments are reductions in actual emissions, and their use as emission offsets at the statutorily-required greater than 1:1 ratio constitutes progress towards improved air quality. Also, for all classified ozone nonattainment areas, the Act now requires emission offsets at ratios ranging from 1.15:1 to 1.5:1 be obtained from either the same nonattainment area or an area of equal or greater classification.

For nonattainment areas for pollutants other than ozone, the NSR regulations also require each applicant to perform modeling analyses to demonstrate that the major new source or modification will not interfere with reasonable further progress and the State's ability to produce an attainment plan. The applicant must not only secure actual emission reductions sufficient to meet the numerically calculated amount necessary under the Act to offset the associated allowable emissions increase for the new source or modification, but enough offsets such that the modeling demonstrates no significant adverse air quality impact from the proposed major new source or modification.

B. Judicial Review of NSR Permits

The EPA is clarifying that the Act and the EPA's implementing regulations require SIP to provide applicants and affected members of the public with an opportunity for State judicial review of PSD and nonattainment NSR permit actions under approved NSR SIP to ensure an adequate and meaningful opportunity for public review and comment on all issues within the scope of the permitting decision as required under parts C and D of title I. The PSD provisions of the Act emphasize the importance of public participation in permitting decisions. See section 160(5) of the Act. In addition, section 165(a)(2) of the Act provides that no PSD permit shall be issued unless ''a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of the source, alternatives thereto, control technology requirements, and other appropriate considerations.'' Further, § 51.166(a)(1) provides that ''[i]n accordance with the policy of section 101(b)(1) of the Act and the purposes of section 160 of the Act, each applicable State implementation plan shall contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality.'' See also section 161 of the Act.

The EPA interprets existing law and regulations to require an opportunity for State judicial review of PSD and nonattainment NSR permit actions under approved NSR SIP by permit applicants and affected members of the public in order to ensure an adequate and meaningful opportunity for public review and comment on all issues within the scope of the permitting decision. The EPA believes that the opportunity for public review and comment, as provided in the statute and regulations, is seriously compromised where an affected member of the public is unable to obtain judicial review of an alleged failure of the State to abide by its NSR SIP permitting rules. Accordingly, all such persons, as well as the applicant, must be able to challenge NSR permitting actions in a judicial forum.

In section 307(b) of the Act, Congress expressly provided an opportunity for judicial review of NSR permitting decisions when the EPA is the permitting authority. There is no indication that Congress intended that citizens' rights would be diminished upon the EPA approval of a State's NSR program. Similarly, Congress has provided citizens the ability to challenge the failure of a major source to obtain the NSR permit required under part C or D or the violation of such permit in Federal district court under the citizen suit provisions of section 304(a)(3), regardless of whether the permitting authority is the EPA or a State.

The operative language of section 304(a)(3) could be read as equivalent to the Federal NSR enforcement provisions of sections 113(a)(5) and 167, which enables EPA to challenge in Federal court both construction without any permit and construction without a permit that satisfies applicable NSR requirements. The EPA believes that the better view is that expressed in the legislative history of the 1977 Amendments, which provided Federal court jurisdiction under section 304 for citizen suits directed at the failure to obtain any major NSR permit, but directed citizen challenges to the terms of major NSR permits to State court: ''[i]n order to challenge the legality of a permit which a State has actually issued, or proposes to issue, under [the PSD provisions of the Act] however, a citizen must seek administrative remedies under the State permit consideration process, or judicial review of the permit in State court.'' Staff of the Subcomm. on Environmental Pollution of the Senate Comm. on Environment

and Public Works, 95th Cong., 1st Sess., A Section-by-section Analysis of S. 252 and S. 253, Clean Air Act Amendments 36 (1977), reprinted in five *Legislative History of the Clean Air Act Amendments of 1977* (*1977 Legislative History*) 3892 (1977). (Section 304(a)(3) originated in S. 252; the House bill had no such provision; the conference committee expanded the coverage of the provision to apply to nonattainment major new source review as well. See H.R. Conf. Rep. No. 564, 95th Cong., 1st Sess., reprinted in three *1977 Legislative History* at 553). This reading is supported by the limited case law on the subject. See *Ogden Projects, Inc.* v. *New Morgan Landfill Co., Inc.*, No. 94–CV–3048 (E.D. Pa.), Jan. 10, 1996 (slip op. at 5–9); see also *League to Save Lake Tahoe, Inc.* v. *Trounday*, 598 F.2d 1164, 1173 (9th Cir.), *cert. denied*, 444 U.S. 943 (1979). The EPA believes that Congress intended such opportunity for State judicial review of PSD and nonattainment NSR permit actions to be available to permit applicants and at least those members of the public who can satisfy threshold standing requirements under Article III of the Constitution. The EPA also solicits comment on whether the statute should instead be interpreted as providing for citizen challenges to State-issued permits in Federal court under section 304(a)(3), on whether citizens should be given the option of proceeding in State or Federal court, and on whether citizens should be allowed to proceed in Federal court only if a State court remedy is not provided.

The EPA seeks to codify its interpretation by proposing in this action expressly to require that a SIP provide for judicial review by private parties in State court of PSD and nonattainment NSR permit actions. Such review must be available to the applicant and any person who participated in the public participation process (unless that person can demonstrate that it was impracticable to raise an objection during the comment period, e.g., because the permit term complained of was one added to the final permit without prior notice) and who can satisfy threshold Article III standing requirements. The EPA also solicits comment on whether to require States, either instead of such a SIP revision requirement or in addition to such a SIP revision requirement, to submit a legal opinion from the Attorney General for the State, or the chief attorney for an air pollution control agency that has independent legal counsel, demonstrating that the State has adequate legal authority to provide for and implement the opportunity for State judicial review of a PSD or nonattainment NSR permit action by the applicant and members of the public who participated in the public participation process and who can satisfy threshold Article III standing requirements.

The SIP may also provide that this opportunity for judicial review is the exclusive means by which citizens may obtain judicial review of the permit, and that all such actions for judicial review must be filed within a reasonable period of time specified in the SIP. If the SIP includes such a time limit, it must also provide that if new grounds for challenge arise after the review period has ended, a person may challenge the permit on such new grounds within a reasonable period specified in the SIP after the new grounds arise. Such new grounds may be limited to new information which was not available during the review period.

Finally, EPA also solicits comment on the extent to which judicial review of the provisions of PSD and nonattainment NSR permits through the provisions of title V of the Act may substitute for judicial review under the terms of the SIP. In August 1995 EPA issued a supplemental rulemaking notice proposing changes to the requirements of 40 CFR Part 70 governing State operating permit programs under title V of the Act. 60 FR 45529 (Aug. 31, 1995). In that document, EPA proposed to require that certain activities governed by a State review program, including the issuance of a PSD or nonattainment NSR permit under parts C or D of title I of the Act, meet the procedural requirements of title V, such that there would only be a single round of public process and EPA review, as opposed to possibly duplicative permit issuance procedures under title I and title V. EPA solicited comment, however, on whether EPA review and, ultimately, judicial review under title V should address all or only some of the requirements of PSD and nonattainment NSR permits. Thus, it is not clear at this juncture whether EPA and judicial review under part 70 will extend to all PSD and nonattainment NSR requirements, and hence, whether adoption of the proposed changes to part 70 would obviate the need for a separate judicial review requirement under title I. The EPA will coordinate final action under both proposals, and will take care to ensure that final action under this proposal and under the proposed revisions to part 70 are consistent and do not result in duplicative or unnecessary requirements.

For the reasons discussed above, the EPA is proposing that SIP provide for judicial review in State court for PSD and nonattainment NSR permits issued under parts C and D of title I, respectively. See proposed §§ 51.165(a)(5)(iii) and 51.166(q)(6). The EPA seeks comment on this proposal.

C. Department of Defense (DOD) Concerns

The DOD has raised the question of whether the NSR rules should provide to military sources temporary exclusions from the requirement for preconstruction review of major modifications in the event of a ''national security emergency.'' The DOD defines ''national security emergency'' as a situation where rapid response is required on the part of a Military Department or a DOD Component (i.e., the Army, the Navy, the Air Force, the Marines, the Coast Guard when in the naval service, the National Guard, and the Reserves) to respond to emergency situations that make it impractical to meet the procedural requirements for obtaining a major NSR permit in advance of a major modification and the associated increase in emissions. ''National security emergencies'' would include situations where United States forces are introduced into hostilities or peacekeeping operations, other situations where involvement in hostilities is indicated, and situations where U.S. forces are called upon to provide emergency humanitarian relief or protect the public health or welfare, such as responding to civil disturbances and natural disasters such as hurricanes, earthquakes, and wildfires. Under a temporary national security emergency exclusion, in lieu of the normal preconstruction review process, the military facility would apply for and obtain an NSR permit, if necessary, after the emergency has ended. A temporary national security emergency exclusion, if provided, would be invoked only in emergencies that require physical or operational changes to military sources that are significant enough to trigger the NSR permitting requirements for a major modification.

The DOD believes that regulatory provisions to address ''national security emergencies'' are necessary to enable the DOD to immediately and dramatically respond to support specifically designated national security missions or civilian emergencies. The absence of such emergency provisions could hinder the ability of local commanders to comply with Presidential directives in a timely manner because of the time periods and

public notice requirements involved in obtaining NSR permits.

The EPA is requesting comment on the need for an explicit regulatory exclusion in the NSR rules for ''national security emergencies.'' In particular, the EPA is soliciting comment on the legal authority and necessity for such an exclusion in light of Act section 118, whether such an exclusion should be mandatory or voluntary for States with approved NSR SIP, and whether such an exclusion should be limited to the DOD, or whether it should be made available to other public agencies that may be called on to protect the public health or welfare in response to unforeseen natural or civilian emergencies. In addition, the EPA is requesting comment on the specific form that any such provisions should take, including how to structure a definition for ''national security emergency'' that is sufficiently descriptive to be implemented as intended.

The August 31, 1995 supplemental proposal concerning the EPA's regulations at 40 CFR parts 70 and 71, that address requirements for title V operating permit programs, raised the issue of whether similar exclusion provisions should be added to parts 70 and 71 to authorize local governments (and other sources) to make changes without revising the source's title V permit under specified circumstances to respond to emergencies such as natural disasters and severe weather conditions. (See 60 FR 45560–45561) The EPA requested comments on this topic in response to preproposal comments submitted by State and local air pollution control agencies that already have authority to grant temporary exclusions as a matter of State or local law. In that document, the Agency solicited comment on the proper scope and terms of any such authorization provision that might be added to parts 70 and 71, including appropriate procedural safeguards for exercising such authority considering the scope of the authorization. Examples of procedural safeguards include prior notification of a change by the source requesting emergency authorization, unless prior notification is not possible, and authorization for the permitting authority to attach conditions to the authorization, as it deems appropriate, to ensure that the change is being made in a manner that will cause the least change, modification, or adverse impact to life, health, property, or natural resources. The EPA believes that similar considerations are appropriate in the context of a temporary national security emergency exclusion that might be added to the NSR rules in parts 51 and 52. Furthermore, in the context of responding to comments on the August 31, 1995 supplemental proposal and on this proposal, the EPA will consider whether temporary national security emergency exclusion provisions that specifically address DOD sources should be added to parts 70 and 71 as well as to the NSR regulations. Although the EPA is not reopening the public comment period for the August 31, 1995 supplemental proposal, the EPA solicits comments in this document on whether such temporary national security emergency exclusion provisions for the DOD should be added to parts 70 and 71 and on how such provisions should differ from those that may be incorporated in the NSR regulations, should such provisions be adopted for either program.

The DOD has suggested the following approach for including ''national security emergency'' provisions in the NSR regulations. Sections 51.165(a), 51.166, 52.21 and 52.24 would be amended to add a definition for ''national security emergency'' that is based on the description of that term above. A new, stand-alone paragraph would be added in §§ 51.165(a), 51.166, 52.21 and 52.24, entitled ''Temporary exclusions for national security emergencies,'' which would read as follows:

Each plan shall provide that actions on the part of a military facility to respond to a national security emergency that otherwise would constitute a major modification shall not constitute a major modification for the purposes of this section for the duration of the temporary exclusion provided by this paragraph, provided that the Commanding Officer of the military facility complies with the following conditions. For the purposes of this section, ''military facility'' shall mean the major stationary source that is owned or operated by a United States Department of Defense Component and that is engaged in national security or related activities.

(1) As soon as practicable, but no later than seven calendar days after the military facility begins to use the national security emergency exclusion, the Commanding Officer of the military facility shall notify in writing all affected State permitting authorities and EPA Regional Offices, and the appropriate Secretary of the Military Department or Head of the Department of Defense Component, that the military facility is responding to a national security emergency and is using the exclusion. During the 7-day notice period and the 30 calendar days after the date of the document, the Commanding Officer of the military facility shall be authorized to determine when the exclusion under this section applies. Such determination shall be made only after the Commanding Officer has made all reasonable efforts to accommodate the emissions increase without deviating from otherwise applicable permitting requirements.

(2) If the military facility seeks to rely on the temporary national security emergency exclusion for longer than 30 calendar days from the date of the notice in paragraph (1), the continued use of the exclusion must be reviewed and approved by the appropriate Secretary of the Military Department or Head of the Department of Defense Component taking into account any public health, welfare, or environmental concerns raised in consultation with all affected permitting authorities. The authorization to continue use of the temporary national security exclusion shall be required for each consecutive 30-day period following the date of the notice required in paragraph (1).

(3) During the national security emergency, the Commanding Officer of the military facility shall take all reasonable measures, where practicable, to ensure that any physical or operational changes to the source that would result in an emissions increase that otherwise would constitute a major modification are made in a manner that will minimize the emissions increase or otherwise minimize any potential for adverse impact to public health and welfare or the environment. Such measures may include the use of emission controls and proper operation and maintenance practices and/or choosing materials or operating scenarios that minimize deviations from existing permit terms and conditions. In addition, the Commanding Officer of the military facility shall make a reasonable effort, where practicable, to monitor emissions during the emergency in order to quantify the emissions resulting from the physical or operational changes.

(4) As soon as practicable, but no later than 7 calendar days after the use of this exclusion is no longer needed, the Commanding Officer of the military facility shall notify in writing all affected State permitting authorities and EPA Regional Offices, and the appropriate Secretary of the Military Department or Head of the Department of Defense Component, that the military facility has ceased responding to a national security emergency for the purposes of this section.

(5) As soon as practicable, but no later than 45 calendar days after the date of the notification in paragraph (4), the

Commanding Officer of the military facility shall provide a written report to all affected State permitting authorities and EPA Regional Offices, and to the appropriate Secretary of the Military Department or Head of the DOD Component, that describes the reasons for relying on the exclusion, the emissions units affected, the amount of increased emissions, and other information needed to determine the nature and extent to which the source deviated from otherwise applicable permitting requirements.

(6)(i) The Commanding Officer of the military facility need not submit an application to the permitting authority for a permit under this section if the physical or operational changes to the source resulted only in a temporary modification, that is, a modification that lasts no longer than the period of the national security emergency and that does not expand the capacity of the source to emit at an increased level after the cessation of the emergency.

(ii) As soon as practicable, but no later than 45 calendar days after the date of the notification required in paragraph (4), the Commanding Officer of the military facility shall submit an application for a permit under this section in the event that the physical or operational changes made at the source in response to the national security emergency are not temporary. For example, a permit shall be required if the military facility is physically changed or has capacity added in ways that are not later reverted or otherwise actually returned to the pre-modification conditions.

(7) The permit application under paragraph (6)(ii) and the permitting authority's actions on that application shall comply with the requirements of this section as though construction had not yet commenced on the modification.

The DOD has provided some examples of actions that military installations could be called on to take during national security emergencies that would result in ''temporary'' and ''nontemporary'' modifications that otherwise would be subject to major NSR. In the event of a national security emergency involving hostilities, the DOD may have to make physical changes to a source to be able to paint tactical equipment at that location. These changes could involve the construction of new painting facilities. If these changes would result in emissions increases but, after the cessation of the emergency they are returned to their pre-modification condition, under the DOD's suggested language, the changes would be considered ''temporary'' and would not be required to undergo post-modification NSR permitting. However, if the changes are not returned to their pre-modification condition after the cessation of the emergency, the changes would be considered a ''nontemporary'' modification and they would be required to undergo post-modification NSR permitting.

The EPA is requesting comments on the appropriateness and sufficiency of the preceding suggested language for inclusion in parts 51 and 52. In particular, the EPA is soliciting comments on whether any type of authorization by the permitting authority should be required before a military installation may use the temporary national security emergency exclusion, if one is adopted. In extraordinary circumstances, the permitting authority may have concerns about the public health, welfare, or environmental impacts that would result from an emissions increase or other changes made at a military source to respond to a national security emergency. In such circumstances, the EPA believes it may be appropriate for the permitting authority to work with the DOD to mitigate such adverse impacts before the DOD facility continues to rely on the national security emergency exclusion provision. The EPA expects that the permitting authority's assessment in such circumstances would be made rapidly and would take into account the urgency with which the DOD must respond to the particular emergency. Under any version of the exclusion, where the permitting authority is a State or local agency, the EPA is requesting comment on whether the Agency should have a formal role in the process for determining whether the DOD can extend use of a national security emergency exclusion beyond the initial 30-day period.

In addition, the EPA seeks comment on the open-ended nature of the DOD's proposed national security emergency exclusion and whether there should be some limit on the total duration of the exclusion, especially where an excluded activity may have the potential for an adverse impact on public health and welfare or the environment. Furthermore, when a national security emergency is expected to last for an extended period (such as longer than 30 days), the EPA requests comment on whether a military facility acting under such an exclusion should be required to apply for and obtain an NSR permit, if necessary, at some point after the emergency response has commenced, rather than waiting until the national security emergency has ended. The EPA also seeks comment on whether a national security emergency exclusion should apply to the construction of a new major source where the existing military facility is not an existing major source.

Finally, the EPA is interested in knowing commenters' opinions and concerns about any additional requirements that should or could be included, such as additional elements that could be included in the report on emissions increases resulting from physical or operational changes made to respond to a national security emergency, and about the implications of providing for a national security emergency exclusion if such provisions are not mandatory for all states.

The DOD also requested that the rules at 40 CFR 51.161 and 51.166 be revised to provide an exclusion from public availability requirements for classified information. The EPA agrees with the DOD that information properly classified under applicable laws, including Executive Orders 12958 and 12968, is not required to be made publicly available, and the Agency proposes to codify this view in the minor and major NSR rules. As suggested by the DOD, the EPA proposes that ''classified information'' be defined in the NSR rules as it is defined in the Classified Procedures Act, 18 U.S.C. App. 3, section 1(a), as ''any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.'' The EPA notes that criminal penalties exist for the unauthorized disclosure of classified information, defined as ''information, which at the time of a violation of this section, is, for reasons of national security, specifically designated by a U. S. Government Agency for limited or restricted dissemination or distribution.'' 18 U.S.C. 798(b). The DOD and the EPA believe that these laws must be read in congruence with the Act and the need for public availability of permitting information. The Act cannot be reasonably interpreted to require a violation of criminal law by making classified information publicly available. As recommended by the DOD, the EPA proposes that the public availability provisions be revised as follows. Existing § 51.161(b)(1) would be revised to read:

Availability for public inspection in at least one location in the area affected of the information, except for classified information, submitted by the owner or operator and of the State or local

agency's analysis of the effect on air quality. Classified information provided by the Department of Defense or other Federal agencies or contractors for such agencies and designated as such will be controlled by applicable law concerning the release of classified information. Existing § 51.166(q)(2)(ii) would be revised to read:

Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials, except for classified information, the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination. Classified information provided by the Department of Defense or other Federal agencies or contractors for such agencies and designated as such will be controlled by applicable law concerning the release of classified information.''

The EPA is proposing to adopt this exclusion from public availability requirements for classified information not only in §§ 51.161 and 51.166 but also in §§ 51.165 and 52.21. The EPA solicits comment on all aspects of this proposed provision.

VIII. Additional Information

A. Public Docket

This rulemaking action is subject to section 307(d) of the Act. The aspects of the rulemaking action related to PSD are subject to section 307(d), in accordance with section 307(d)(1)(J) of the Act. Pursuant to section 307(d)(1)(V), the Administrator hereby determines that the other aspects of this rulemaking action are subject to section 307(d). Accordingly, section 307(d) applies to this entire rulemaking action.

The public docket for this rulemaking action is A–90–37. The docket is a file of the information relied upon by the EPA in the development of this proposed rule (as well as interagency review materials related to the proposed rule). The EPA will also place the following materials in the docket: (1) Written comments EPA receives during the public comment period; (2) the transcript of the public hearing, if any; (3) any documents that EPA determines are of central relevance to the rulemaking; (4) EPA's response to significant comments; (5) any additional information the final rule is based on; and (6) interagency materials related to the final rule. The docket, excluding interagency review materials, will represent the record for judicial review. See section 307(d)(7)(A) of the Act. The docket is available for public review and copying at EPA's Air Docket, as indicated in the **ADDRESSES** section at the beginning of this document.

B. Public Comments and Public Hearing

The EPA requests public comment on all aspects of this proposed action. All public comments must be addressed to the Docket for this rulemaking and received no later than October 21, 1996, at the address indicated in the **ADDRESSES** section at the beginning of this document.

The EPA plans to convene a meeting of the NSR Reform FACA Subcommittee in conjunction with the public comment period. In this meeting the Subcommittee will review today's proposed rulemaking. A transcript of the Subcommittee's meeting, will be available for public inspection in EPA Air Docket No. A–90–37. The NSR Reform Subcommittee meeting will be open to the public although seating may be limited. Further information regarding the specific dates, location and starting time will be published in the Federal Register prior to the meeting.

The EPA plans to hold a public hearing on this proposed action. A public hearing is scheduled for 10:00 a.m. to 4:00 p.m. in Research Triangle Park, North Carolina on September 23,1996. A notice announcing additional information about the public hearing, including the specific location, will be published in the Federal Register.

Persons wishing to make oral presentations at the public hearing should contact the EPA as indicated in the DATES section at the beginning of this preamble. The order of presentation will be based on the order in which EPA receives requests to speak. Written statements in lieu of, or in addition to, oral testimony are encouraged and may be any length. If necessary, oral presentations will be time limited. The hearing may be canceled if no requests to speak have been received 15 days prior to the scheduled hearing date.

C. Executive Order 12866

Section 3(f) of Executive Order 12866 (E.O. 12866) defines ''significant regulatory action'' for purposes of centralized regulatory review by the Office of Management and Budget (OMB) to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Drafts of this proposed rule and associated materials were reviewed by the OMB because of the novel policy issues presented and anticipated public interest in this action. Interagency review materials have been placed in the public docket in accordance with section 307(d)(4)(B)(ii) of the Act and section 6(a)(3)(E) of E.O. 12866 (including documents identifying the substantive changes made between the draft submitted to OMB for review and the action proposed, and the changes that were made at the suggestion or recommendation of OMB).

The EPA has prepared a draft Regulatory Impact Analysis (RIA) for these proposed rules and it is included in the docket for this rulemaking. The EPA projects that as a result of the rule changes being proposed today, the overall costs and burdens for the major NSR program to decrease. As shown in the draft RIA for this rule, the EPA has estimated the total annualized ''information collection request'' (ICR) cost burden of the NSR permitting program under the proposed reforms to be $27.6 million. This includes costs for preparation of permit applications, including technology and environmental impact analyses, record-keeping, and reporting requirements. It represents a projected decrease of $11.1 million in the annual ICR cost burden to industry. The burden to State and local air pollution control agencies is expected to decrease by approximately $2.5 million, and to EPA by approximately $200,000.

Other cost savings will be realized by sources that avoid major NSR and thus become subject to minor NSR programs implemented at the State and local levels. The greatest savings, based on industry comments during the NSR Reform Subcommittee meetings, would be realized due to the shorter processing time of a minor versus major NSR permit. Also, the streamlining of some of the time-intensive aspects of the major source requirements would have a similar effect. The total industry savings would be difficult to predict given the diversity of industries covered by this program; nevertheless, every facility would experience less down time, quicker start up and resumption of

revenue generation. Further savings would accrue the extent that the minor NSR technology control requirements and mitigation measures are less costly than the major source requirements and measures. Industry and State representatives reported that the difference in emissions between minor and major source technology requirements are insignificant in most cases. The incremental cost savings could be quite large, however, if the minor source requirements are applicable. The EPA solicits further comment on the cost savings that would be derived from this proposed rulemaking.

The reader should note that the ICR cost burden reduction estimates in the draft RIA are highly sensitive to the estimated impact of the proposed revisions to the applicability test for modifications at existing major stationary sources. The EPA estimates that 20 percent fewer sources will be classified as major as a result of revising the period for establishing the baseline for actual emissions from which to calculate emissions increases to the highest 12 consecutive months operation by the source. Another 6% reduction is anticipated from the ''clean unit'' and ''clean facility'' tests and the exclusion for pollution control and pollution prevention projects. The EPA estimates still another 25 percent of modifications, which would otherwise be subject to major NSR, would be excluded due to allowing sources to use projected future actual emissions to calculate emissions increases rather than requiring the calculation to be based on the source's potential to emit in each case. The EPA solicits comments on these estimated impacts on the burden reduction of revising the regulations for netting as proposed.

The proposed revisions include certain provisions which, while generally intended to clarify the statutory Class I area protection process under the existing PSD program and improve coordination between the permitting authority and the FLM (an area of the PSD rules that has been the subject of significant confusion and controversy), may, in certain circumstances, place additional burdens on the permit applicant and the permitting authority. The EPA requests public comment on whether these proposed revisions represent a net increase in costs and burdens for permitting authorities and permit applicants in comparison with the existing rules related to the protection of Class I areas. These issues are described in more detail in the Information Collection Request (ICR) and will be further assessed in the draft RIA for the final rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, EPA must prepare and make available for public comment an initial regulatory flexibility analysis assessing the impact of a proposed rule on small entities. See 5 U.S.C. 603. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. See 5 U.S.C. 601. However, the requirement to prepare a regulatory flexibility analysis does not apply if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The major NSR program applies to new major stationary sources and major modifications to existing major stationary sources, as explained elsewhere in this preamble. These rules reform the existing major NSR rules, making them less burdensome and generally improving the rules for any small entities that might be affected by the major NSR program. Accordingly, the Administrator hereby certifies that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1230.08) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW.; Washington, DC 20460 or by calling (202) 260–2740.

Section 110 of the Act requires all States to adopt into their SIPs preconstruction review programs for new or modified stationary sources. The programs must include provisions that meet the specific requirements of Part C ''Prevention of Significant Deterioration'' (PSD) and Part D ''Plan Requirements for Nonattainment Areas'' of title I of the Act for permitting construction and modification of major stationary sources. Implementing regulations for State adoption of the two NSR programs into their SIPs are promulgated at §§ 51.160 through 51.166 and appendix S. Federal permitting regulations are promulgated at § 52.21 for PSD areas that are not covered by a SIP program. Essentially a source cannot construct without securing a permit to ensure that the requirements of the Act are met.

Part C of title I of the Act outlines specific preconstruction permitting requirements for new and modified sources constructing in areas that do not violate the NAAQS. These PSD rules, generally require a prospective major new or modified source to: (1) Demonstrate that the NAAQS and increments will not be exceeded, (2) ensure the application of best available control technology (BACT), and (3) protect Federal Class I areas from adverse impacts, including adverse impacts on air quality related values (AQRVs).

Similarly, Part D of title I of the Act specifies requirements for major new and modified sources constructing in areas designated as nonattainment for a NAAQS pursuant to section 107 of the Act. The part D provisions also apply to major source permitting in the Northeast Ozone Transport Region as established under section 184 of the Act. The part D rules generally require a major new or modified source to: (1) ensure the application of controls which will achieve the lowest achievable emission rate (LAER), (2) certify that all major sources in a State owned or controlled by the same person (or persons) are in compliance with all air emissions regulations, and (3) secure reductions in actual emissions from existing sources equal to or greater than the projected increase to show attainment and maintenance of the applicable NAAQS (offsets). A public review and comment period is required for all major source permit actions and some non-major source actions.

A new source that would be major if operated at full capacity may accept specific enforceable permit conditions to keep its emissions below the major source threshold. Similarly existing major sources that propose modifications that would produce significant emissions increases as a result of new or modified emissions units may either contemporaneously retire existing emissions units to generate emissions reductions credits or take permit limits on future emissions or both to avoid major NSR.

Prospective sources must conduct the necessary research, perform the appropriate analyses and prepare permit applications with documentation to support the conclusion that their project meets all applicable Statutory and regulatory, requirement summarized above. The specific activities are described further in the draft RIA and

the ICR for this proposed rulemaking, which are available from OPPE at the address stated above and in the Docket for this rulemaking.

Permitting agencies, either State, local or Federal, review the permit applications to affirm the proposed source or modification will comply with the Act and applicable regulations, conduct the public review process, issue the permit and then verify that a source has constructed and subsequently operates in compliance with the permit conditions. The EPA, more broadly, reviews a fraction of the total applications and audits the State and local programs for its effectiveness. Consequently, information prepared and submitted by the source is essential for proper administration and management of the NSR program.

Information that is to be submitted by sources as a part of their permit application, should generally be a matter of public record given the requirements for public participation in issuing permits. See sections 165(a)(2) and 110(a)(2)(C), (D) and (F) of the Act. Notwithstanding, to the extent that the information required for the completeness of a permit is proprietary, confidential, or of a nature that it could impair the ability of the source to maintain its market position, that information is collected and handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2). See also section 114(c) of the Act.

As mentioned previously, this proposed rulemaking would provide substantial reduction in major NSR permits, which would translate into a reduction in industry respondents and number of reviews by the Federal, State, and local permitting agencies. The baseline for comparison is drawn from that of the NSR program ICR approved in September 1995. A copy may be obtained from OPPE at the address stated above. As a result of this proposal, the estimated number of major PSD permits is expected to decrease from 320 to 144. Major part D nonattainment permits would decrease from 590 to 266. The number of minor source actions would increase by the combined reduction in both major source programs. The burden for PSD permits is estimated to increase for industry respondents by about 11 hours per permit, and the burden for part D permits should decrease by an estimated 5 hours per permit. The burden for State and local permitting agencies is estimated to decrease from 280 to 272 hours per permit for PSD, and stay about the same for part D permits and minor source actions, 110 hours and eight hours per permit respectively. The EPA burden on a per permit basis is expected to remain unchanged—15 hours for all major source permits and 2 hours for minor source permits. The resulting cost savings is estimated to be $11 million for industry, about $2.5 million for States and local agencies and about $250,000 for the EPA. These estimates are discussed in detail in the draft RIA and the Information ICR for this rulemaking.

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.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., 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 ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 23, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by August 22, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1-year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As shown in the draft RIA for this rule, EPA has estimated the total annualized cost of the NSR permitting program including the proposed reforms does not include a Federal mandate that may result in expenditures of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments, which generally do not have new source permitting authority.

Executive Order 12875 (''Enhancing the Intergovernmental Partnership'') is designed to reduce the burden to State, local, and tribal governments of the cumulative effect of unfunded Federal mandates, and recognizes the need for these entities to be free from unnecessary Federal regulation to enhance their ability to address problems they face and provides for Federal agencies to grant waivers to these entities from discretionary Federal requirements.

In accordance with the purposes of Executive Order 12875, the EPA has already initiated consultations with the government entities affected by the NSR changes. From August 1992 through June 1993 EPA convened three NSR simplification workshops, inviting representatives from among those involved with and affected by the major source NSR permitting program. In July 1993 EPA formed the NSR Reform Subcommittee under the auspices of the CAAAC, a committee formed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) This committee is composed of representatives from industry, State and local air pollution control agencies, environmental organizations and other Federal agencies. The purpose of this Subcommittee was to provide, under the direction of the CAAAC, independent advice and counsel to the EPA on policy and technical issues associated with reforming the major NSR program. Specifically, the responsibilities of the Subcommittee included developing draft recommendations on approaches for reforming the major NSR rules in order to reduce complexity and perceived impediments to speedy review of permit applications in the current systems, while at the same time maintaining the environmental goals and benefits embodied in the current approach. Upon proposal EPA anticipates reconvening the NSR Reform FACA Subcommittee to review the proposed revisions which will afford another opportunity for State, local and Tribal Governments to participate in this rulemaking effort.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, BACT, LAER offsets and Class I increments.

40 CFR Part 52

Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, BACT, and Class I increments.

Dated: April 3, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 51 and 52 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.165 is amended as follows:

a. Revising paragraph (a)(1)(i);

b. Revising paragraph (a)(1)(iv)(A);

c. Amending paragraph (a)(1)(v)(C)(*6*) by adding the words ''Standing alone,'' at the beginning of the sentence, and revising the word ''An'' to read ''an'';

d. Revising paragraph (a)(1)(v)(C)(*8*);

e. Adding new paragraphs (a)(1)(v)(C)(*10*) through (*15*);

f. Adding new paragraphs (a)(1)(v) (D) through (G);

g. Revising paragraph (a)(1)(vi)(C)(*1*);

h. Removing the word ''and'' at the end of paragraph (a)(1)(vi)(E)(*2*), adding the word ''and'' at the end of paragraph (a)(1)(vi)(E)(*3*), and revising paragraph (a)(1)(vi)(E)(*4*);

i. Redesignating paragraph (a)(1)(x) as (a)(1)(x)(A)

j. Amending newly redesignated paragraph (a)(1)(x)(A) by adding the words ''Particulate matter: 15 tpy of PM–10 emissions.'' at the end of the list of pollutant emission rates;

k. Adding new paragraphs (a)(1)(x) (B) through (F);

l. Revising paragraph (a)(1)(xii)(B);

m. Amending paragraph (a)(1)(xii)(C) by removing the word ''reviewing'' and adding in its place ''permitting'';

n. Adding new paragraph (a)(1)(xii)(F);

o. Amending paragraph (a)(1)(xxii) by removing the word ''it'' and adding in its place ''the project'';

p. Revising paragraph (a)(1)(xxv) introductory text and (a)(1)(xxv)(A);

q. Removing paragraph (a)(1)(xxv)(B) and redesignating paragraphs (a)(1)(xxv)(C) and (D) as newly redesignated paragraphs (a)(1)(xxv) (B) and (C);

r. Adding new paragraphs (a)(1) (xxvi) through (xxxiv);

s. Redesignating paragraph (a)(2) as (a)(2)(i);

t. Adding new paragraph (a)(2)(ii);

u. Revising paragraph (a)(3)(ii)(C);

v. Adding new paragraph (a)(5)(iii);

w. Adding new paragraphs (a) (6) through (16).

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(i)(A) *Stationary source* means any building, structure, facility, installation, or stationary internal combustion engine which emits or which may emit any air pollutant subject to regulation under the Act.

(B) A stationary source does not include emissions resulting directly from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

* * * * *

(iv)(A) *Major stationary source* means:

(*1*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act, except that lower emissions thresholds shall apply as follows:

(*i*) 70 tons per year of PM–10 or, where applicable, 70 tons per year of a specific PM–10 precursor, in any serious nonattainment area for PM–10.

(*ii*) 50 tons per year of volatile organic compounds in any serious nonattainment area for ozone.

(*iii*) 50 tons per year of volatile organic compounds in an area within an ozone transport region except for any severe or extreme nonattainment area for ozone.

(*iv*) 25 tons per year of volatile organic compounds in any severe nonattainment area for ozone.

(*v*) 10 tons per year of volatile organic compounds in any extreme nonattainment area for ozone.

(*vi*) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator);

(*2*) For the purposes of applying the requirements of paragraph (a)(12) of this section to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, nitrogen oxides emissions as follows:

(*i*) 100 tons per year or more of nitrogen oxides in any ozone

nonattainment area classified as marginal or moderate.

(*ii*) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(*iii*) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(*iv*) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(*v*) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(*vi*) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(*3*) Any physical change that would occur at a stationary source not qualifying under paragraphs (a)(1)(iv)(A)(*1*) or (*2*) of this section as a major stationary source, if the change would constitute a major stationary source by itself.

* * * * *

(v) * * *

(C) * * *

(*8*) The addition, replacement, or use of a pollution control project at an existing emissions unit unless the pollution control project will result in a significant net increase in representative actual annual emissions of any pollutant regulated under the Act and the permitting authority determines that this increase will cause or contribute to a violation of any national ambient air quality standard or any maximum increase over baseline concentrations (in accordance with § 51.166(c) or § 52.21(c) of this chapter) or will have an adverse impact on visibility in accordance with the definition at § 51.301(a). For the purpose of this paragraph (a)(1)(v)(C)(*8*), in lieu of the source's representative actual annual emissions, the emissions levels used for the source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, may be used.

* * * * *

(*10*) Any activity undertaken at an existing emissions unit for which a federally enforceable emission limit has been established, provided the activity or project will not increase the maximum emissions rate, in pounds or kilograms per hour, above the maximum emissions rate achievable by the emission unit at any time during the 180 consecutive days which precede the date of the activity or project and the emissions increase is determined by:

(*i*) Material balances, continuous emission monitoring data, or manual emission tests using the EPA-approved procedures, where available, and conducted under such conditions as the permitting authority will specify to the owner or operator based on representative performance of the emission units affected by the activity or project, including at least three valid test runs conducted before, and at least three valid test runs conducted after, the activity or project with all operating parameters which may affect emissions held constant to the maximum feasible degree for all such test runs; or

(*ii*) Emission factors as specified in the latest issue of ''Compilation of Air Pollutant Emission Factors,'' EPA Publication No. AP–42, available from EPA, MD14, Emission Inventory and Factors Group, RTP, NC 27711, or other emission factors determined by the permitting authority to be superior to AP–42 emission factors, in such cases where use of emission factors demonstrates that the emission level resulting from the activity or project will clearly not increase emissions.

(*11*) Any activity undertaken at an existing emissions unit for which a federally enforceable emission limit has been established, provided the federally enforceable emissions limit at the time of the change is comparable to the emission limit that, considering the air quality designation of the area where the source is located, would result from a current review in accordance with either paragraph (a)(2) of this section or regulations approved pursuant to § 51.166(j), or § 52.21(j) of this chapter, for emission units of the same class or source category. The permitting authority may presume that a source satisfies this paragraph (a)(1)(v)(C)(*11*) if:

(*i*) The activity would occur no later than 120 consecutive months from the date of issuance of the permit, issued under either this section or regulations approved pursuant to § 51.166 or § 52.21 of this chapter, that established the currently applicable emission limit for the emissions unit;

(*ii*) The activity would occur no later than 120 consecutive months from the date of issuance of the permit, issued under regulations approved pursuant to §§ 51.160 through 51.164, that established the currently applicable emission limit for the emissions unit, provided the permit was issued under regulations that were determined by the Administrator to provide for permits that contain emission limitations satisfying this paragraph (a)(1)(v)(C)(*11*); or

(*iii*) The activity would occur no later than 60 consecutive months from the date on which the permitting authority made a determination, with public notice and opportunity for public comment consistent with § 51.161, that the emissions satisfied paragraph (a)(1)(v)(C)(*10*)(*iii*) of this section.

(*12*) Any activity undertaken at an existing emissions unit for which a federally enforceable emission limit has been established, provided the activity would not require a revision to, or cause a violation of, any federally enforceable limit or condition in a permit issued either under regulations approved pursuant to §§ 51.160 through 51.166 or under § 52.21 of this chapter.

(*13*) Any activity undertaken at an existing emissions unit for which a federally enforceable emission limit has been established, provided the activity or project does not include the replacement or reconstruction of an emissions unit.

(*14*) Any activity undertaken at an existing major stationary source, provided:

(*i*) The activity would not require a revision to, or cause a violation of, any federally enforceable limit or condition in a permit issued under either regulations approved pursuant to §§ 51.160 through 51.166 or § 52.21 of this chapter; and

(*ii*) The entire major stationary source was permitted, and received the currently applicable emission limits for all emissions units under either this section or regulations approved pursuant to § 51.166 or § 52.21 of this chapter no more than 120 consecutive months prior to the proposed activity.

(D) For the purposes of applying the requirements of this section to any source of volatile organic compounds locating in a serious or severe ozone nonattainment area:

(*1*) A proposed modification shall not be considered to result in a significant net emissions increase for volatile organic compounds and is therefore not a major modification for if the project's net increase of volatile organic compounds (any proposed creditable increases and creditable decreases in emissions of volatile organic compounds at the source that are federally enforceable and occur between the date of permit application for the proposed modification and the date that the proposed modification begins to emit) from the proposed modification results in no increase of volatile organic compounds;

(*2*) The provisions of this section shall not apply to any and all discrete

emissions unit(s) (or other operations or pollutant emitting activities) that are part of a proposed modification (that is otherwise a major modification) at an existing major stationary source that emits, or has the potential to emit, less than 100 tons per year of volatile organic compounds if such source proposes creditable emissions reductions from the source to internally offset the emissions increase from the selected discrete emissions unit(s) (or other operations or pollutant emitting activities) at a ratio of at least 1.3:1.

(E) For the purpose of applying the requirements of paragraph (a)(12) of this section to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(F) Any physical change in, or change in the method of operation of a major stationary source of volatile organic compounds located in an extreme nonattainment area for ozone which results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone.

(G) For the purposes of applying the requirements of paragraph (a)(13) of this section to modifications at major stationary sources of PM–10 precursors, any significant net emissions increase of a PM–10 precursor is considered significant for PM–10.

(vi) * * *

(C) * * *

(*1*) It occurs within a reasonable contemporaneous period to be specified by the reviewing authority, except that for emissions of volatile organic compounds from sources locating in serious and severe ozone nonattainment areas the contemporaneous period shall be the period of 5 consecutive calendar years that ends with the full calendar year in which such increase is to occur; and

* * * * *

(E) * * *

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change such that, at a minimum, the decrease is sufficient to prevent the proposed increase from causing or contributing to a violation of any national ambient air quality standard or maximum allowable increase over baseline concentrations (in accordance with either § 51.166(c) or § 52.21(c) of this chapter) or having an adverse impact on visibility in accordance with the definition at § 51.301(a).

* * * * *

(x) * * *

(B) Notwithstanding the significant emissions rate for ozone under paragraph (a)(1)(x)(A) of this section, significant means any net emissions increase, as defined under paragraph (a)(1)(vi) of this section, in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation, of a major stationary source locating in a serious or severe ozone nonattainment area if such net emissions increase of volatile organic compounds exceeds 25 tons per year.

(C) For the purposes of applying the requirements of paragraph (a)(12) of this section to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs (a)(1)(x)(A) and (B) of this section shall apply to nitrogen oxides emissions.

(D) For the purposes of applying the requirements of paragraph (a)(13) of this section, where applicable, to a major stationary source of a PM–10 precursor located in a PM–10 nonattainment area, the significant emission rate for a PM–10 precursor is 40 tons per year or more of that precursor.

(E) Notwithstanding the significant emissions rate for carbon monoxide under paragraph (a)(1)(x)(A) of this section, a net emissions increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation, of a stationary source in a serious nonattainment area for carbon monoxide is significant if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(F) Notwithstanding the significant emissions rates for ozone under paragraphs (a)(1)(x)(A) and (B) of this section, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme nonattainment area for ozone shall be considered a significant net emissions increase.

(xii) * * *

(B) Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted for any 12 consecutive months during the 120 consecutive months that precede the commencement of construction of a proposed physical or operational change at the source, and any current, federally enforceable limitations on emissions required by the Act, including but not limited to, best available control technology (as defined at § 51.166(b)(12)), lowest achievable emission rate, reasonably available control technology, or emissions standards for hazardous air pollutants under section 112 of the Act.

* * * * *

(F) In lieu of paragraphs (a)(1)(xii)(D) and (E) of this section, the plan may provide that for any emissions unit, actual emissions of the unit following a physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the permitting authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the permitting authority if the permitting authority determines such a period to be more representative of normal source post-change operations.

* * * * *

(xxv) *Pollution control project* means:

(A) Any activity or project undertaken at an existing emissions unit which, as its primary purpose, reduces emissions of air pollutants from such unit. Such activities or projects do not include the replacement of an existing emissions unit with a newer or different unit, or the reconstruction of an existing emissions unit, and are limited to any of the following:

(*1*) The installation of conventional or advanced flue gas desulfurization, or sorbent injection for SO_2;

(*2*) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for particulate matter or other pollutants;

(*3*) Flue gas recirculation, low-NO_X burners, selective non-catalytic reduction or selective catalytic reduction for NO_X;

(*4*) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares, or carbon absorbers for volatile organic compounds or hazardous air pollutants;

(*5*) Activities or projects undertaken to accommodate switching to an inherently less polluting fuel, including

but not limited to, natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels, for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;

(*6*) Pollution prevention projects which the permitting authority has determined through a process consistent with § 51.161 to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous pollutants are not environmentally beneficial; and

(*7*) Installation of a technology, for purposes set forth in paragraph (a)(1)(xxv) of this section, which is not listed in paragraphs (a)(1)(xxv)(A)(1) through (5) of this section but meets the following:

(*i*) Its effectiveness in reducing emissions has been demonstrated in practice; and

(*ii*) It is determined by the permitting authority to be environmentally beneficial;

* * * * *

(*xxvi*) *Undemonstrated technology or application* means any system, process, material, or treatment technology (including pollution prevention), that has not been demonstrated in practice, but would have a substantial likelihood to:

(A) Operate effectively; and

(B) Achieve either equal or greater continuous reductions of air pollutant emissions than any demonstrated system at lower cost, lower energy input, or with less environmental impact.

(xxvii) *Complete* means, in reference to an application for a permit required under this section, that the permitting authority has deemed the application to contain the information necessary to begin formal review of the application. Determining an application complete for the purpose of beginning formal review does not preclude the permitting authority from requiring additional information as may be needed to determine whether the applicant satisfies all requirements of this section.

(xxviii) *Demonstrated in practice* means, for the purposes of this section, a control technology that has been—

(A) Listed in or required by any of the following:

(*1*) The EPA's RACT/BACT/LAER Clearinghouse;

(*2*) A major source construction permits issued pursuant to either part C or D of title I of the Act;

(*3*) An emissions limitations contained in a federally-approved plan, excluding any emissions limitations established by permits issued pursuant to programs for non-major sources;

(*4*) A permits or standard under either section 111 or 112 of the Act; and

(*5*) The EPA's Alternative Control Techniques documents and Control Techniques Guidelines; or

(B) Notwithstanding paragraph (a)(1)(xxviii)(A) of this section, installed and operating on an emissions unit (or units) which:

(*1*) Has operated at a minimum of 50 percent of design capacity for 6 months; and

(*2*) The pollution control efficiency performance has been verified with either:

(i) A performance test; or

(*ii*) Performance data collected at the maximum design capacity of the emissions unit (or units) being controlled, or 90 percent or more of the control technology's designed specifications.

(xxix) *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants and other pollutants to the environment (including fugitive emissions) prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal.

(xxx) *Plantwide applicability limit* means a plantwide federally enforceable emission limitation established for a stationary source such that subsequent physical or operational changes resulting in emissions that remain less than the limit are excluded from preconstruction review under this section.

(xxxi) *Plantwide applicability limit major modification* means, notwithstanding the requirements of paragraph (a)(1)(v) of this section, any increase in the emissions rate, in tons per year, over the plantwide applicability limit. Any emissions increase of volatile organic compounds shall be considered an increase for ozone.

(xxxii)(A) *Nonroad engine* means, except as discussed in paragraph (a)(1)(xxxii)(B) of this section, any internal combustion engine:

(*1*) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);

(*2*) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(*3*) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(B) An internal combustion engine is not a nonroad engine if:

(*1*) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act;

(*2*) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(*3*) The engine otherwise included in paragraph (a)(1)(xxxii)(A)(3) of this section remains or will remain at a location for more than 12 consecutive months, or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph (a)(1)(xxxii)(B)(*3*), a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph (a)(1)(xxxii)(B)(*3*) does not apply to an engine after the engine is removed from the location.

(xxxiii) *Nonroad vehicle* means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(xxxiv) *Stationary internal combustion engine* means:

(A) Any internal combustion engine that is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(B) Any internal combustion engine that is none of the following:

(*1*) A nonroad engine;

(*2*) An engine used to propel a motor vehicle or a vehicle used solely for competition; or

(*3*) An engine subject to standards promulgated under section 202 of the Act.

(2) * * *

(ii) *Control technology review.*

(A) In determining the lowest achievable emission rate the applicant shall consider all control technology alternatives that have been demonstrated in practice pursuant to paragraph (a)(1)(xxviii)(A) of this section prior to the date on which the permit application is complete, and paragraph (a)(1)(xxviii)(B) of this section 90 days prior to the date on which the permit application is complete.

(B) The plan may establish a cut-off date as the date on or subsequent to the date that an application is complete pursuant to paragraph (a)(6) of this section, after which the permit applicant will not be required to consider control technology alternatives that are identified through public comments and that are in addition to those alternatives required under paragraph (a)(2)(ii)(A) of this section, unless the permitting authority determines that the alternatives warrant further consideration by the applicant.

(3) * * *

(ii) * * *

(C)(*1*) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if:

(*i*) Such reductions are surplus, permanent, quantifiable, and federally enforceable;

(*ii*) The area has an EPA-approved attainment plan, except that the plan may provide that the reductions described in paragraph (a)(3)(ii)(C)(*1*)(*i*) of this section may be credited in the absence of an EPA-approved attainment demonstration in areas where the Act does not require an attainment demonstration, including any area designated attainment or unclassifiable for ozone (areas) in an ozone transport region and any marginal or nonclassified ozone nonattainment area; and

(*iii*) The shutdown or curtailment occurred on or after the date specified for this purpose in the attainment plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment.

(*2*) Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977.

(*3*) For purposes of paragraph (a)(3)(ii)(C)(*1*)(*iii*) of this section, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources.

(*4*) The reductions described in paragraph (a)(3)(ii)(C)(*1*) of this section may be credited in the absence of an approved attainment demonstration in an area where an attainment demonstration is or will be required only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of paragraph (a)(3)(ii)(C) of this section are observed.

Alternative 1—paragraphs (a)(3)(iii)(C)(*5*) and (a)(3)(iii)(C)(*6*):

(*5*) Notwithstanding paragraph (a)(3)(ii)(C)(*4*), the plan may provide that for ozone nonattainment areas the reductions described in paragraph (a)(3)(ii)(C)(*1*) of this section, occurring after November 15, 1990, may be credited in the absence of an EPA-approved attainment demonstration in an area where an attainment demonstration is or will be required if the following conditions are met as they come due:

(*i*) The State has submitted a complete emissions inventory as required by section 182(a)(1) of the Act;

(*ii*) The State has submitted complete revisions to its new source review permitting program as required under section 182(a)(2)(C) of title I of the Act;

(*iii*) The State has submitted the 15 percent volatile organic compounds reduction plan required under section 182(b)(1)(A) of the Act for moderate (or higher) ozone nonattainment areas;

(*iv*) The State has submitted the attainment demonstration required for moderate ozone nonattainment areas under section 182(b)(1)(A) of the Act or serious (or higher) ozone nonattainment areas under section 182(c)(2) of the Act;

(*v*) The State has submitted the 3 percent reduction plan for serious (or higher) ozone nonattainment areas under section 182(c)(2)(B) of the Act; and

(*vi*) The State has submitted milestone demonstrations for serious (or higher) ozone nonattainment areas under section 182(g)(2) of the Act.

(*6*) If any of the submissions included in paragraph (a)(3)(ii)(C)(*5*) of this section are delinquent, or deemed incomplete or disapproved by the Administrator, then at such time the restrictions of paragraph (a)(3)(ii)(C)(*4*) of this section are in effect. However, during review of a permit application, if a State becomes delinquent for any of these submissions, or a submission is deemed incomplete or disapproved by the Administrator, the plan may allow the reductions to remain creditable if the permit application was complete (as determined in writing by the reviewing authority) before the State became delinquent or had a submission deemed incomplete or disapproved by the Administrator.

Alternative 2—paragraph (a)(3)(iii)(C)(*5*) only:

(*5*) Notwithstanding paragraph (a)(3)(ii)(C)(*4*) of this section, the plan may provide that the reductions described in paragraph (a)(3)(ii)(C) of this section may be credited in the absence of an EPA-approved attainment demonstration if such reductions occurred after the last day of the baseline year of the most recent base year emissions inventory used (or to be used) in the plan.

* * * * *

(5) * * *

(iii) The reviewing authority shall provide an opportunity for judicial review in State court of the final permit action by the applicant and any person who participated in the public participation process provided pursuant to this part. The plan may provide that the opportunity for judicial review shall be the exclusive means by which citizens may obtain judicial review of the terms and conditions of permits, and may require that such actions for judicial review be filed no later than a reasonable period after the final permit action. If such a limited time period for judicial review is provided in the plan, then the plan shall provide that petitions for judicial review of final permit actions nevertheless can be filed after the deadline if they are based solely on grounds arising after the deadline for judicial review and if filed within a reasonable period specified in the plan after the new grounds for review arise.

(6) *Complete application criteria.*

(i) The plan shall provide that the permitting authority shall—

(A) Determine that a permit application is complete or deficient based on the permitting authority's consideration of determinations, analyses and other information contained in the application, and adequacy thereof, as specified in paragraphs (a)(6)(ii) through (iii) of this section; and

(B) Notify each applicant within a specified time period as to either the completeness of the application or any deficiencies in the application or

information submitted. In the event of such a deficiency, the date of receipt of the complete application shall be the date on which the permitting authority has received all required information.

(ii) The plan shall provide that such information shall include:

(A) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(B) A detailed schedule for construction of the source or modification;

(C)(*1*) A detailed description of the system of continuous emissions reduction which the applicant has submitted in a permit application for the source or modification to qualify for either the lowest achievable emission rate or an approved undemonstrated technology in accordance with the waiver provision under paragraph (a)(8) of this section; and

(*2*) All information used or consulted by the applicant in recommending a system of continuous emissions reduction that qualifies as either the lowest achievable emission rate or an approved undemonstrated technology; and

(D) All information necessary to document that the owner or operator of the proposed source or modification has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(iii) The plan shall provide that an application shall not be considered complete unless the permit application has been registered on the applicable EPA electronic bulletin board. To register, at a minimum, the following must be provided:

(A) Name and type of source;

(B) Nature of proposed project, i.e., new facility or modification;

(C) Proposed location of the source in state/county (including Universal Transverse Mercator coordinates) and the distance between the source and each Class I area within 250 kilometers;

(D) Anticipated allowable emissions, or increase in emission rate, for each affected air pollutant regulated under the Act;

(E) Source contact mailing address and telephone number; and

(F) The agency responsible for issuing the permit.

(7) *Public participation.*

(i) The plan shall provide that prior to issuing a permit under this section the requirements under § 51.161 shall be met;

(ii) The plan may set forth the minimum information which must be submitted by public commenters to accompany any recommendations for control technology alternatives for which permit applicants would not otherwise be responsible to consider in determining the lowest achievable emission rate as of the date an application is complete according to paragraph (a)(2)(ii) of this section. Such information may include the name and location of the source utilizing the control technology, manufacturer and type of control device, date of installation and operation of control device, and performance requirements and available test data; and

(iii) The plan shall provide that—

(A) After any cut-off date established in accordance with paragraph (a)(2)(ii)(B) of this section, the permitting authority shall notify a permit applicant within 10 working days from the date of receipt of a public comment concerning any control technology alternatives that the permitting authority determines to warrant further consideration by the applicant; and

(B) The permitting authority shall make available in the public record all information that was submitted with public comment regarding control technology alternatives and provide the basis for its decision to either require or not require the permit applicant to further consider such control technology alternatives.

(8) *Undemonstrated technology or application waiver.*

(i) The plan may provide that an owner or operator of a proposed major stationary source or major modification may satisfy the requirements of paragraph (a)(2)(ii) of this section through the use of an undemonstrated technology or application as set forth in this section. The plan may provide that the owner or operator shall provide to the permitting authority a written request for approval of an undemonstrated technology or application as part of the permit application.

(ii) The plan may provide that the permitting authority may approve a system of undemonstrated technology or application for a particular source or modification if:

(A) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(B) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (a)(2)(ii) of this section, by a date specified by the permitting authority. Such date shall not be later than 2 years from the time of startup or 5 years from permit issuance;

(C) The source or modification would meet the requirements equivalent to those in paragraph (a)(2) of this section, based on the emissions rate that the stationary source employing the system of undemonstrated technology or application would be required to meet on the date specified by the permitting authority;

(D) The source or modification would not, before the date specified by the permitting authority, cause or contribute to any violation of an applicable national ambient air quality standard; and

(E) All other applicable requirements including those for public participation have been met.

(iii) The plan shall provide that the permitting authority shall withdraw any approval to employ a system of undemonstrated technology or application made under this system if:

(A) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(B) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(C) The permitting authority decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(iv) The plan shall provide that, if the permitting authority withdraws approval of a system of undemonstrated technology or application, the owner or operator shall bring the affected emissions unit(s) into compliance with the reference lowest achievable emission rate within 18 months from the date of withdrawal.

(v) The plan shall provide that the permitting authority shall include, as a minimum, the following information in a waiver issued pursuant to paragraph (a)(8) of this section:

(A) The undemonstrated technology or application's emission control performance objective and the applicable reference lowest achievable emission rate;

(B) The marginal and gross failure emission limits as defined by the permitting authority on a case-by-case basis; and

(C) Identification and classification of potential failure modes and associated contingency measures.

(vi) The plan shall provide that if, by the date established in paragraph (a)(8)(ii)(B) of this section, the undemonstrated technology or application does not achieve the permitted emission limit, but actual emissions are equal to or less than the lowest achievable emission rate referenced in the permit, the permitting authority shall:

(A) Issue a final permit with the emissions limit equal to the undemonstrated technology or application's consistently achieved actual emission rate; and

(B) Report the final permit limits to the EPA's RACT/BACT/LAER Clearinghouse as a demonstrated control technology.

(vii) The plan shall provide that if, by the date established in paragraph (a)(8)(ii)(B) of this section, the actual emissions from the undemonstrated technology or application constitute marginal failure the owner or operator may petition the permitting authority to permit the undemonstrated technology or application to operate at its actual emissions limit. Accordingly, the permitting authority may either:

(A) Approve the petition and proceed in accordance with paragraph (a)(8)(vi) of this section; or

(B) Disapprove the petition and require the owner or operator to comply with paragraph (a)(8)(iv) of this section.

(viii) The plan shall provide that if, at any time prior to or on the date established in paragraph (a)(8)(ii)(B) of this section, the actual emissions from the undemonstrated technology or application constitute gross failure—

(A) The permitting authority shall withdraw approval pursuant to paragraph (a)(8)(iv) of this section; and

(B) The owner or operator shall mitigate all emissions increases above the emissions limit equivalent to the applicable reference lowest achievable emissions rate by reducing actual emissions.

(ix) The plan shall provide that the permitting authority submit to the Administrator a copy of the approval of the system of undemonstrated technology or application within 30 days of its approval.

(x) The plan shall provide that the permitting authority shall limit the number of waivers granted to the number necessary to ascertain whether or not such system complies with sections 111(j)(1)(A)(ii) and (iii) of the Act.

(9) *Plantwide applicability limit.*

(i) *Applicability.* The plan may provide that the owner or operator of a proposed or existing major stationary source may request the permitting authority to approve a plantwide applicability limit for any one or more pollutants, and that the permitting authority may approve a plantwide applicability limit in accordance with paragraphs (a)(9)(ii) through (iv) of this section.

(ii) *Procedure.* The plan shall provided that a plantwide applicability limit for:

(A) A proposed major stationary source may be established only through a process that complies with paragraph (a)(7) of this section;

(B) An existing major stationary source may be established only through a procedure consistent with § 51.161, and with at least 30 days allowed for public notice and opportunity for comment.

(iii) *Emission limitations and conditions.*

(A) The plan shall provide that a plantwide applicability limit shall be established based on either:

(*1*) Plantwide actual emissions (not to exceed current allowable emissions), including a reasonable operating margin that is less than the applicable significant emissions rate as defined under paragraph (a)(1)(x) of this section; or

(*2*) Source-wide limits on annual emissions established in a permit issued within the immediately preceding 5 years under regulations approved pursuant to this section, where the source-wide emissions limits were completely offset and relied upon in an approved state attainment demonstration plan.

(B) The plan shall provide that any plantwide applicability limit emissions limitations shall be achievable through application of production processes or available methods, systems, and techniques including, but not limited to, emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, substitution of less polluting materials, or limits on production that represent normal source operations.

(C) The plan shall provide that specific terms and conditions which assure the practical enforceability of plantwide applicability limit emissions limitations shall be contained in a federally enforceable permit applicable to the source.

(D) The plan shall provide that the emissions limitations and conditions established for a plantwide applicability limit shall not relieve any owner or operator of the responsibility to comply fully with any applicable control technology requirements.

(iv) *Plantwide applicability limit modifications.* The plan shall provide that:

(A) Notwithstanding paragraphs (a)(1)(v) and (vi) of this section (the definitions for major modification and net emissions increase), any physical or operational change consistent with plantwide applicability limit terms and conditions and paragraph (a)(1)(vi)(E)(*4*) of this section shall not constitute a major modification for the pollutants covered by the plantwide applicability limit. All decreases in emissions shall have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

(B) Requirements equivalent to those contained in paragraphs (a)(2) through (7) of this section shall apply to any plantwide applicability limit major modification as if it were a major modification, except that in lieu of paragraph (a)(2)(ii)(B) of this section, a plantwide applicability limit major modification shall apply the lowest achievable emission rate for each pollutant subject to regulation under the Act if an emissions increase above the plantwide applicability limit would occur; and

(C) The lowest achievable emission rate requirement applies to each emissions unit that contributes to the emissions increase above the plantwide applicability limit.

(v) *Plantwide applicability limit reevaluation.* (A) The plan shall provide that the permitting authority shall reevaluate the plantwide applicability limit emission limitations pursuant to—

(*1*) Permit renewal and public notification procedures under parts 70 or 71 of this chapter; or

(*2*) Another proceeding with public notice and opportunity for public comment.

(B) As part of the reevaluation, the permitting authority may reduce permitted emission limitations or otherwise adjust, but not increase, permitted emission limitations to reflect—

(*1*) Air quality concerns arising after the approval of the plantwide applicability limit;

(*2*) Changes at the source; or

(*3*) Other appropriate considerations.

(C) The plan shall provide that the permitting authority shall adjust the source's plantwide applicability limit emission limitations to reflect new applicable requirements as they become effective.

(10) For a major modification of volatile organic compounds at a

stationary source locating in a serious or severe ozone nonattainment area the plan shall include enforceable procedures to provide that:

(i) The lowest achievable emission rate requirement pursuant to paragraph (a)(2)(i) of this section does not apply to any discrete emissions unit(s) (or other operations or pollutant emitting activities) that is part of the proposed major modification of volatile organic compounds at an existing stationary source which emits, or has the potential to emit, 100 tons per year or more of volatile organic compounds if such source proposes creditable emissions reductions from the source to internally offset the emissions increase from the selected discrete emissions unit(s) (or other operations or pollutant emitting activities) at a ratio of at least 1.3:1;

(ii) Notwithstanding the requirement for the lowest achievable emission rate pursuant to paragraph (a)(2)(i) of this section, the best available control technology requirement of section 165(a)(4) of the Act shall apply to a proposed major modification of volatile organic compounds at an existing major stationary source which emits, or has the potential to emit, less than 100 tons of volatile organic compounds per year; and

(iii) Any emissions reduction of volatile organic compounds used as an internal offset pursuant to this section shall meet the applicable requirements for crediting emissions reductions under paragraph (a)(3)(ii) of this section.

(11) For modifications at major stationary sources of nitrogen oxides in serious or severe ozone nonattainment areas the plan shall require that the provisions of this section applicable to modifications of volatile organic compounds in serious and severe ozone nonattainment areas shall also apply to nitrogen oxides, except for serious or severe ozone nonattainment areas where the Administrator has determined that the requirements of section 182(f) of the Act do not apply.

(12) The plan shall provide that the requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area classified as marginal, moderate, serious, severe, or extreme, except in:

(i) Areas where the Administrator determines that the net air quality benefits are greater in the absence of nitrogen oxides reductions;

(ii) Nonattainment areas not within an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of nitrogen oxides would not contribute to attainment of the national ambient air quality standard for ozone in the area; or

(iii) Areas within an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of nitrogen oxides would not produce net air quality benefits in such region.

(13) The plan shall require that the requirements of this section applicable to major stationary sources and major modifications of PM–10 shall also apply to major stationary sources and major modifications of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the PM–10 ambient standards in the area.

(14)(i) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(2) of this section for ozone nonattainment areas, the ratio of total actual emission reductions of VOC to the emissions increase of VOC shall be as follows:

(A) In any marginal nonattainment area for ozone—at least 1.1:1;

(B) In any moderate nonattainment area for ozone—at least 1.15:1;

(C) In any serious nonattainment area for ozone—at least 1.2:1;

(D) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(E) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(ii) Notwithstanding the requirements of paragraph (a)(14)(i) of this section for meeting the requirements of paragraph (a)(2) of this section, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region except for serious, severe, and extreme ozone nonattainment areas.

(15) The plan shall require that a major modification of a major stationary source of VOC locating in an extreme nonattainment area for ozone shall be considered to comply with the emissions offset requirements under paragraph (a)(2) of this section if the owner or operator of the source elects to offset the proposed emissions increase of such VOC by a greater reduction in actual emissions of VOC from other discrete operations, units, or pollutant emitting activities within the same stationary source at a ratio of at least 1.3:1. Also, in extreme ozone nonattainment areas emissions increases of VOC resulting from modifications consisting of equipment that is needed to comply with the applicable implementation plan, permit, or provision under the Act need not be offset under this section.

(16) The plan shall require that the permitting authority shall, for each new major source and major modification subject to the provisions of this section, submit to the RACT/BACT/LAER Clearinghouse within 60 days of issuance of the permit, all relevant information on the emissions prevention or control technology for the new major source or major modification.

3. Paragraphs in § 51.166 are redesignated as follows:

Old paragraph	New paragraph
(b)(1)(i)(*a*) through (*c*)	(b)(1)(i)(A) through (C).
(b)(1)(iii)(*a*) through (*aa*)	(b)(1)(iii)(A) through (AA).
(b)(2)(iii)(*a*) through (*k*)	(b)(2)(iii)(A) through (K).
(b)(3)(i)(*a*) and (*b*)	(b)(3)(i)(A) and (B).
(b)(3)(vi)(*a*) through (*c*)	(b)(3)(vi)(A) through (C).
(b)(13)(i)(*a*) and (*b*)	(b)(13)(i)(A) and (B).
(b)(13)(ii)(*a*) and (*b*)	(b)(13)(ii)(A) and (B).
(b)(14)(i)(*a*) and (*b*)	(b)(14)(i)(A) and (B).
(b)(14)(ii)(*a*) and (*b*)	(b)(14)(ii)(A) and (B).
(b)(14)(iii)(*a*) and (*b*)	(b)(14)(iii)(A) and (B).
(b)(15)(ii)(*a*) and (*b*)	(b)(15)(ii)(A) and (B).
(f)(4)(iii)(*a*) and (*b*)	(f)(4)(iii)(A) and (B).
(i)(4)(ii)(*a*) through (*aa*)	(i)(4)(ii)(A) through (AA).
(i)(4)(iii)(*a*) through (*d*)	(i)(4)(iii)(A) through (D).
(i)(8)(i)(*a*) through (*m*)	(i)(8)(i)(A) through (M).
(m)(1)(i)(*a*) and (*b*)	(m)(1)(i)(A) and (B).
(s)(2)(iv)(*a*) and (*b*)	(s)(2)(iv)(A) and (B).

4. Section 51.166 is amended as follows:

a. Amending newly redesignated paragraph (b)(2)(iii)(F) by adding the words ''Standing alone,'' at the beginning of the sentence and revising the word ''An'' to read ''an'';

b. Revising newly redesignated paragraph (b)(2)(iii)(H);

c. Adding new paragraphs (b)(2)(iii)(L) through (N);

d. Revising newly redesignated paragraph (b)(3)(vi)(C);

e. Revising paragraph (b)(5);

f. Revising paragraphs (b)(19), (b)(21)(ii), and (b)(22);

g. Adding a new paragraph (b)(21)(vi);

h. Revising paragraph (b)(23);

i. Amending paragraph (b)(24) by adding the words ''(or the Secretary's designee)'' after the word ''lands'' at the end of the sentence;

j. Revising paragraph (b)(27);

k. Revising paragraphs (b)(31) introductory text and (b)(31)(i);

l. Removing paragraph (b)(31)(ii) and redesignating paragraphs (b)(31)(iii) and (iv) as new paragraphs (b)(31)(ii) and (iii);

m. Adding new paragraphs (b)(38) through (b)(48);

n. Amending paragraph (g)(1) by removing the words ''State implementation'' from the last sentence;

o. Amending paragraph (i)(8)(i) by removing newly redesignated paragraphs (i)(8)(i)(G), (H) and (J) and redesignating paragraph (i)(8)(i)(I) as paragraph (i)(8)(i)(G) and (i)(8)(i)(K) through (i)(8)(i)(M) as (i)(8)(i)(H) through (i)(8)(i)(J);

p. Adding new paragraph (i)(13);

q. Adding new paragraphs (j)(5) and (6);

r. Amending the introductory text of paragraph (k) by adding the word ''significantly'' after the words ''would not cause or'';

s. Amending paragraph (m)(2) by removing the word ''ambient'', removing the word ''reviewing'' and adding in its place ''permitting'', and adding the words '', or on air quality related values of a Federal Class I area. Decisions about post-construction monitoring for air quality related values in Federal Class I areas shall be made in consultation with the Federal Land Manager.'' at the end of the paragraph;

t. Revising the heading of paragraph (n);

u. Revising paragraph (n)(1);

v. Redesignating paragraph (q)(1) as new paragraph (n)(1)(ii);

w. Amending newly redesignated paragraph (n)(1)(ii) by removing the words ''The reviewing authority shall'', and capitalizing ''n'' in the word ''notify'', adding the word ''complete'' after the words ''receipt of the'' in the last sentence, and removing the word ''reviewing'' and adding in its place ''permitting'';

x. Amending paragraph (n)(2) introductory text by removing the word ''may'' and adding in its place ''shall'' and removing the words ''shall include'' and adding in its place ''includes'';

y. Revising paragraph (n)(2)(iii) and adding new paragraph (n)(2)(iv);

z. Revising paragraph (n)(3);

aa. Adding new paragraphs (n)(4) and (n)(5);

bb. Amending paragraph (o)(1) by adding '', except that for Federal Class I and II areas such analysis may be excluded only by approval of the Federal Land Manager'' to the end of the second sentence;

cc. Revising the heading of paragraph (p);

dd. Redesignating paragraph (p)(1) as new paragraph (q)(1);

ee. Adding new paragraph (p)(1);

ff. Revising paragraphs (p)(2) and (p)(3);

gg. Redesignating paragraphs (p)(4) through (p)(7) as new paragraphs (p)(8) through (p)(11);

hh. Adding new paragraphs (p)(4) through (p)(7);

ii. Amending newly redesignated paragraph (p)(9)(i) by revising the citation ''(q)(4)'' to read ''(p)(7)'';

jj. Amending newly redesignated paragraphs (p)(9)(iii) and (p)(10)(iii) by removing the citation ''(q)(7)'' and adding in its place ''(p)(11)'';

kk. Amending newly redesignated paragraph (p)(11) by removing the citation ''(q)(5) or (6)'' and adding in its place ''(p)(9) or (p)(10)'';

ll. Amending newly redesignated paragraph (q)(1) by removing the words ''Notice to EPA,'' and in the first sentence, removing the word ''reviewing'' and adding in its place ''permitting'';

mm. Redesignating paragraph (q)(2) introductory text through (q)(2)(v) as new paragraphs (q)(4) introductory text through (q)(4)(v);

nn. Redesignating paragraphs (q)(2)(vi) through (viii) as new paragraphs (q)(5)(i) through (iii);

oo. Adding new paragraphs (q)(2) and (q)(3);

pp. Amending newly redesignated paragraph (q)(4)(ii) by removing the words ''if any'' and adding in its place ''such as any information concerning an adverse impact on air quality related values required under paragraph (p)(6)(iii) of this section'';

qq. Amending newly redesignated paragraph (q)(4)(iii) by adding the words ''any potential adverse impact on air quality related values,'' after the words ''source or modification,'';

rr. Adding new paragraph (q)(6);

ss. Revising paragraph (r)(1);

tt. Revising the heading of paragraph (s);

uu. Revising paragraphs (s)(1) and (s)(2) introductory text;

vv. Amending paragraph (s)(2)(ii) by removing the cite ''(j)(2)'' and adding in its place ''(j)'', removing the word ''reviewing'' and adding in its place ''permitting'', removing the words ''4 years'' and adding in its place ''2 years'', and removing the words ''7 years'' and adding in its place ''5 years'';

ww. Amending the introductory text of both paragraphs (s)(2)(iii) and (s)(3) by removing the word ''reviewing'' and adding in its place ''permitting'' and removing the words ''innovative control technology'' to read ''undemonstrated technology or application'';

ww. Revising paragraph (s)(4);

xx. Adding new paragraphs (s)(5) through (s)(10);

yy. Adding new paragraphs (t) and (u).

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(H) The addition, replacement, or use of a pollution control project at an existing emissions unit unless the pollution control project will result in a significant net increase in representative actual annual emissions of any pollutant regulated under this section and the permitting authority determines that this increase will cause or contribute to a violation of any national ambient air quality standard or any maximum allowable increase over the baseline concentration, or will have an adverse impact on air quality related values at any Class I area. For the purpose of this paragraph, in lieu of the source's representative actual annual emissions, the emissions levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Act, if any, may be used.

* * * * *

(L) Any activity undertaken at an existing emissions unit for which a federally enforceable emission limit has been established, provided that:

(*1*) The activity or project will not increase the maximum emissions rate, in pounds or kilograms per hour, above the maximum emissions rate achievable by the emission unit at any time during the 180 consecutive days which precede the date of the activity or project and the emissions increase is determined by:

(*i*) Material balances, continuous emissions monitoring data, or manual

emissions tests using the EPA-approved procedures, where available, and conducted under such conditions as the permitting authority will specify to the owner or operator based on representative performance of the emissions units affected by the activity or project, including at least three valid test runs conducted before, and at least three valid test runs conducted after, the activity or project with all operating parameters which may affect emissions held constant to the maximum feasible degree for all such test runs; or

(*ii*) Emission factors as specified in the latest issue of ''Compilation of Air Pollutant Emission Factors,'' EPA Publication No. AP–42, or other emission factors determined by the permitting authority to be superior to AP–42 emission factors, in such cases where use of emission factors demonstrates that the emissions level resulting from the activity or project will clearly not increase emissions;

(*2*) The federally enforceable emissions limit at the time of the change is comparable to the emission limit that, considering the air quality designation of the area where the source is located, would result from a review in accordance with either paragraph (j) of this section or regulations approved pursuant to § 51.165(a)(2), or a review in accordance with § 52.21(j) of this chapter, for emission units of the same class or source category. The permitting authority may presume that a source satisfies paragraph (b)(2)(iii)(L)(*2*) of this section if:

(*i*) The activity would occur no later than 120 consecutive months from the date of issuance of the permit issued under regulations approved pursuant to either this section or § 51.165, or § 52.21 of this chapter, that established the currently applicable emission limit for the emissions unit;

(*ii*) The activity would occur no later than 120 consecutive months from the date of issuance of the permit issued under regulations approved pursuant to §§ 51.160 through 51.164, that established the currently applicable emissions limit for the emissions unit, provided the permit was issued under regulations that were determined by the Administrator to provide for permits that contain emission limitations that satisfy paragraph (b)(2)(iii)(L)(*2*) of this section; or

(*iii*) The activity would occur no later than 60 consecutive months from the date on which the permitting authority made a determination, with public notice and opportunity for public comment consistent with § 51.161 of this part, that the emissions limit satisfied paragraph (b)(2)(iii)(L)(*2*) of this section.

(*3*) The activity would not require a revision to, or cause a violation of, any federally enforceable limit or condition in a permit issued under either § 52.21 of this chapter or regulations approved pursuant to §§ 51.160 through 51.166;

(*4*) The activity or project does not include the replacement or reconstruction of an emissions unit; and

(M) Any activity undertaken at an existing major stationary source, provided:

(*1*) The activity would not require a revision to, or cause a violation of, any federally enforceable limit or condition in a permit issued under either § 52.21 of this chapter or regulations approved pursuant to §§ 51.160 through 51.166; and

(*2*) The entire major stationary source was permitted, and received the currently applicable emission limits for all emission units at the source issued in accordance with either this section, or regulations approved pursuant to § 51.165 or a permit issued under § 52.21 of this chapter, no more than 120 consecutive months prior to the proposed activity.

(N) A change to ozone-depleting substances with lower ozone-depleting potential under the provisions of sections 601 and 602 of the Act, including changes to ozone-depleting substances emitting equipment needed to accommodate the change, as long as the productive capacity of the equipment is not increased.

* * * * *

(3) * * *

(vi) * * *

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change such that, at a minimum, the decrease is sufficient to prevent the proposed increase from causing or contributing to a violation of any national ambient air quality standard or any applicable maximum allowable increase over baseline concentrations or having an adverse impact on air quality related values in Class I areas.

* * * * *

(5)(i) *Stationary source* means any building, structure, facility, installation, or stationary internal combustion engine which emits or which may emit any air pollutant subject to regulation under the Act.

(ii) A stationary source does not include emissions resulting directly from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

* * * * *

(19) *Undemonstrated technology or application* means any system, process, material, or treatment technology (including pollution prevention) that has not been demonstrated in practice, but would have a substantial likelihood to operate effectively and achieve:

(i) A greater continuous reduction of air pollutant emissions than any demonstrated system; or

(ii) A comparable emissions reduction at lower cost, or with lower energy input, or with less environmental impact.

* * * * *

(21) * * *

(ii) Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted for any 12 consecutive months during the 120 consecutive months that precede the commencement of construction of a proposed physical or operational change at the source and any current, federally enforceable limitations on emissions required by the Act, including, but not limited to, best available control technology, lowest achievable emission rate (as defined at § 51.165(a)(1)(xiii)), reasonably available control technology, or emissions standards for hazardous air pollutants under section 112 of the Act.

* * * * *

(vi) In lieu of paragraphs (b)(21)(iv) and (v) of this section, the plan may provide that, for any emissions unit, actual emissions of the unit following a physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the reviewing authority if it determines such a period to be more representative of normal source post-change operations.

(22) *Complete* means, in reference to an application for a permit required under this section, that the permitting authority has deemed the application to contain the information necessary (in accordance with the criteria contained in paragraph (n) of this section) to begin formal review of the application. Determining an application complete for the purpose of beginning formal review does not preclude the permitting

authority from requiring additional information as may be needed to determine whether the applicant satisfies all requirements of this section.

(23) *Significant* means:

(i) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

POLLUTANT AND EMISSIONS RATE

Carbon monoxide: 100 tons per year
Nitrogen oxides: 40 tons per year
Sulfur dioxide: 40 tons per year
Ozone: 40 tons per year of volatile organic compounds
Particulate matter: 25 tons per year of particulate matter emissions; 15 tons per year of PM–10 emissions
Lead: 0.6 tons per year
Fluorides: 3 tons per year
Sulfuric acid mist: 7 tons per year
Hydrogen sulfide: 10 tons per year
Total reduced sulfur (including hydrogen sulfide): 10 tons per year
Reduced sulfur compounds (including hydrogen sulfide): 10 tons per year
Municipal waste combustor organics (measured as total tetrathrough octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
Ozone-depleting substances (ODS): 100 tons per year.

(ii) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Act that paragraph (b)(23)(i) of this section does not list, any emissions rate. However, for purposes of the applicability of this section, the hazardous air pollutants listed under section 112(b)(1) of the Act, including the hazardous air pollutants that may be added to the list, are not considered subject to regulation under the Act.

(iii) Notwithstanding paragraph (b)(23)(i) of this section, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class 1 area, and have an impact on such area equal to or greater than 1 microgram per cubic meter (24-hour average).

(iv) In reference to the predicted ambient impact that the emissions from a proposed major source or major modification will have for purposes of determining compliance with the national ambient air quality standards, concentrations which exceed any of the following:

Pollutant	Averaging time	Significant Impact
SO_2	Annual	1.0 μg/m³
	24-Hour	5.0 μg/m³
	3-Hour	25.0 μg/m³
PM–10	Annual	1.0 μg/m/³
	24-hour	5.0 μg/m³
NO_2	Annual	1.0 μg/m³
CO	8-hour	0.5 mg/m³
	1–Hour	2.0 mg/m³

(v) In reference to the predicted ambient impact that emissions from a proposed major source or major modification will have for purposes of determining compliance with the maximum allowable increases in pollutant concentrations contained in paragraph (c) of this section, concentrations in excess of any of the following:

Pollutant	Averaging time	Class I significant impact	Class II significant impact	Class III significant impact
SO_2	Annual	0.1 μg/m³	1.0 μg/m³	1.0 μg/m³
	24–Hour	0.2 μg/m³	5.0 μg/m³	5.0 μg/m³
	3–Hour	1.0 μg/m³	25.0 μg/m³	25.0 μg/m³
PM–10	Annual	0.2 μg/m³	1.0 μg/m³	1.0 μg/m³
	24-Hour	0.3 μg/m³	5.0 μg/m³	5.0 μg/m³
NO_2	Annual	0.1 μg/m³	1.0 μg/m³	1.0 μg/m³

* * * *

(27) *Indian reservation* means all land within the limits of any Indian Reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

(31) *Pollution control project* means:

(i) Any activity or project undertaken at an existing emissions unit which, as its primary purpose, reduces emissions of air pollutants from such unit. Such activities or projects do not include the replacement of an existing emissions unit with a newer or different unit, or the reconstruction of an existing emissions unit, and are limited to any of the following:

(A) The installation of conventional or advanced flue gas desulfurization, or sorbent injection for SO_2;

(B) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for particulate or other pollutants;

(C) Flue gas recirculation, low-NO_X burners, selective non-catalytic reduction or selective catalytic reduction for NO_X;

(D) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares or carbon absorbers for volatile organic compounds or hazardous air pollutants;

(E) Activities or projects undertaken to accommodate switching to an inherently less polluting fuel, including but not limited to natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;

(F) Pollution prevention projects which are determined by the permitting agency through a process consistent with § 51.161 to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous pollutants are not environmentally beneficial; and

(G) Installation of a technology, for purposes set forth in paragraph (b)(31) of this section, which is not listed in paragraphs (b)(31)(i)(A) through (E) of this section but meets the following:

(*1*) Its effectiveness in reducing emissions has been demonstrated in practice; and

(*2*) It is determined by the permitting authority, consistent with § 51.161, to be environmentally beneficial.

* * * * *

(38) *Federal Class I area* means any Federal lands within the United States either designated by Congress as Class I pursuant to section 162(a) of the Act (and which may not be redesignated) or redesignated as Class I pursuant to either paragraph (g) of this section or § 52.21(g) of this chapter.

(39) *Federal official* means the Federal official charged with direct

responsibility for management of any lands within a Federal Class I area.

(40) *Air quality related value* means, for purposes of this section, visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands, or by the applicable State or Indian Governing Body for nonfederal lands.

(41) *Adverse impact on air quality related values* means, for purposes of this section, a deleterious effect on any air quality related value identified by a Federal Land Manager, resulting from emissions from a proposed major source or major modification, that interferes with the management, protection, preservation, or enjoyment of such air quality related values of a Federal Class I area. This determination shall be made on a case-by-case basis taking into account existing air quality conditions.

(42) *Demonstrated in practice* means, for the purposes of this section, a control technology that has been—

(i) Listed in or required by any of the following:

(A) The EPA's RACT/BACT/LAER Clearinghouse;

(B) A major source construction permit issued pursuant to either part C or D of title I of the Act;

(C) An emissions limitation contained in a federally-approved plan, excluding emissions limitations established by permits issued pursuant to programs for non-major sources;

(D) A permit or standard under section 111 or 112 of the Act;

(E) The EPA's Alternative Control Techniques documents and Control Techniques Guidelines; or

(ii) Notwithstanding paragraph (b)(42)(i) of this section, installed and operating on an emissions unit (or units) which:

(A) Has operated at a minimum of 50 percent of design capacity for 6 months; and

(B) The pollution control efficiency performance has been verified with either:

(*1*) A performance test; or

(*2*) Performance data collected at the maximum design capacity of the emissions unit (or units) being controlled, or 90 percent or more of the control technology's designed specifications.

(43) *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less-polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal.

(44) *Plantwide applicability limit* means a plantwide, federally enforceable emission limitation established for a stationary source such that any subsequent physical or operational changes resulting in emissions that remain less than the limit, are excluded from preconstruction review under this section.

(45) *Plantwide applicability limit major modification* means, notwithstanding the requirements of paragraph (b)(2) of this section, any increase in the emissions rate (in tons per year) over the plantwide applicability limit. Any emissions increase of volatile organic compounds shall be considered an increase for .

(46)(i) *Nonroad engine* means, except as discussed in paragraph (b)(46)(ii) of this section, any internal combustion engine:

(A) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);

(B) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(C) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(ii) An internal combustion engine is not a nonroad engine if:

(A) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act;

(B) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(C) The engine otherwise included in paragraph (b)(46)(i) of this section remains or will remain at a location for more than 12 consecutive months, or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph (b)(46)(ii)(C), a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph (b)(46)(ii)(C) does not apply to an engine after the engine is removed from the location.

(47) *Nonroad Vehicle* means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(48) *Stationary internal combustion engine* means:

(i) Any internal combustion engine that is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(ii) Any internal combustion engine that is none of the following: a nonroad engine, an engine used to propel a motor vehicle or a vehicle used solely for competition, or an engine subject to standards promulgated under section 202 of the Act.

* * * * *

(i) * * *

(13) The plan may provide that the provisions of this section do not apply to any stationary source with respect to any or all of the hazardous air pollutants listed in section 112 the Act, as well as any or all pollutants that may be added to the list under the provisions of section 112(b)(2) of the Act. However, the applicable provisions of this section shall apply to any pollutant listed under sections 112(b)(1) or (b)(2) of the Act that is deleted from such list under the provisions of section 112(b)(3) of the Act. Any hazardous air pollutants listed in section 112 of the Act which are regulated as constituents or precursors of a more general pollutant listed under section 108 of the Act are still subject to the provisions of this section, notwithstanding section 112(b)(6) of the Act.

(j) * * *

(5)(i) In determining best available control technology:

(A) The applicant shall identify and evaluate all available and technically feasible control technology alternatives that have been demonstrated in practice pursuant to either paragraph (b)(42)(i) of this section prior to the date on which the permit application is complete, or paragraph (b)(42)(ii) of this section 90 days prior to the date on which the permit application is complete; and

(B) The applicant shall demonstrate to the satisfaction of the permitting

authority that the rejection of all alternatives more stringent than the one recommended as best available control technology is justified by the energy, environmental, and economic impacts and other costs of those alternatives. If the most stringent technology is chosen, the permitting authority may wave the requirement to analyze less effective control technologies. Documentation supporting the demonstration shall be included in the public record pursuant to paragraph (q)(6)(iii) of this section.

(ii) The control technology alternatives considered in paragraph (j)(5)(i) of this section shall be based upon control technologies and methods for the same and similar source categories, i.e., those categories including sources that have similar emissions-stream characteristics.

(iii) The plan may establish a cut-off date on or subsequent to the date that an application is complete pursuant to paragraph (n) of this section, after which the permit applicant will not be required to consider control technology alternatives that are identified through public comments and that are in addition to those alternatives required under paragraph (j)(5)(i)(A) of this section, unless the permitting authority determines that, based on information submitted pursuant to paragraph (q)(2) of this section, the alternatives warrant further consideration by the applicant.

(6) For determinations of best available control technology under the requirements of this section, the reviewing authority shall submit the control technology information to the EPA's RACT/BACT/LAER Clearinghouse within 60 days after permit approval.

* * * * *

(n) Complete application criteria.

(1) The plan shall provide that the permitting authority shall—

(i) Determine that a permit application is complete or deficient based on the permitting authority's consideration of determinations, analyses and other information contained in the application, and adequacy thereof, as specified in paragraphs (n)(2) through (n)(5) of this section; and

* * * * *

(2) * * *

(iii)(A) A detailed description of the system of continuous emissions reduction which the applicant has submitted in a permit application for a source or modification, to qualify either as best available control technology, or for an undemonstrated technology waiver in accordance with paragraph (s) of this section; and

(B) All information used or consulted by the applicant in recommending a system of continuous emissions reduction as either the best available control technology or an approvable undemonstrated technology.

(iv) Information and data used to perform all required analyses or determinations under paragraphs (o), (p), (r), (s) and (u) of this section, as applicable.

(3) The plan shall provide that upon request of the permitting authority, the owner or operator shall provide any information and data used to perform all required analyses or determinations under paragraphs (k), (l) and (m) of this section.

(4) The plan shall provide that an application shall not be considered complete unless the permit application has been registered on the applicable EPA electronic bulletin board. To register, at a minimum, the following must be provided:

(i) Name and type of source;

(ii) Nature of proposed project, i.e., new facility or modification;

(iii) Proposed location of the source in state/county (including Universal Transverse Mercator coordinates) and the distance between the source and each Class I area within 250 kilometers;

(iv) Anticipated allowable emissions, or increase in emissions rate, for each affected air pollutant regulated under the Act;

(v) Source contact mailing address and telephone number; and

(vi) The agency responsible for issuing the permit.

(5) The plan shall provide that prior to making a completeness determination, the permitting authority shall provide for any Federal Land Manager review and coordination required under paragraph (p)(5) of this section.

* * * * *

(p) *Sources potentially impacting Federal Class I areas.*

(1) *Protection of air quality related values.* The Federal Land Manager and the Federal Official have an affirmative responsibility to protect the air quality related values of Federal Class I areas and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(2) *General requirements.*

(i) *Notification of potential impacts on a Federal Class I area and requirement for impact assessment.* The plan shall provide that:

(A) Where the Federal Official, Federal Land Manager, the Administrator, the Governor of an adjacent State, or the governing body of an adjacent Indian Tribe containing a Federal Class I area, files, prior to the date a completeness determination is made pursuant to paragraph (n)(1) of this section, a written notice alleging that emissions of a particular pollutant from a proposed major source or major modification may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change on affected air quality related values identified in the area by the Federal Land Manager, a permit shall not be issued unless the owner or operator of such source:

(*1*) Demonstrates to the satisfaction of the permitting authority that emissions will not cause or contribute to ambient pollutant concentrations in the Federal Class I area which violate the maximum allowable increases over baseline concentrations; and

(*2*) Provides an analysis of the potential impacts on air quality related values at the Federal Class I area.

(B) Notwithstanding the restriction on issuing a permit under paragraph (p)(2)(i)(A)(*1*) of this section, a permit otherwise prohibited under paragraph (p)(2)(i)(A)(*1*) of this section may be issued in accordance with the variance provisions in paragraphs (p)(8) through (p)(11) of this section.

(ii) *Available information on air quality related values and analytical methods.* The Federal Land Manager or Federal Official shall, upon request, provide to the owner or operator of a proposed major source or major modification that may have an adverse impact on air quality related values in a Federal Class I area all available information about such values and methods to analyze potential impacts.

(iii) *Consultation with Federal Land Manager.* The plan shall provide for consultation and coordination with the Federal Land Manager, including the procedures contained in paragraphs (p)(3) through (p)(6) of this section.

(3) *Pre-application coordination.* The plan shall provide that, for a proposed major source or major modification within 100 kilometers of a Federal Class I area the permitting authority shall:

(i) Notify the affected Federal Land Manager shall be notified within 30 days from receipt by the permitting authority of advance notification of a permit application; and

(ii) Give the affected Federal Land Manager reasonable notice and an opportunity to participate in pre-application meetings with the applicant.

(4) *Permit application coordination.* The plan shall provide that:

(i) The Federal Land Manager of any Federal Class I area within 100

kilometers of a proposed major source or major modification shall be provided with a copy of the permit application and other relevant information; and

(ii) The Federal Land Manager shall be provided with a copy of a permit application requested within 7 days from the date information about such application is registered on the applicable EPA electronic bulletin board (in accordance with paragraph (n)(4) of this section).

(5) *Completeness determination coordination.* The plan shall provide that prior to making the completeness determination under paragraph (n)(1) of this section, the permitting authority shall:

(i) Ensure that the applicant has provided any analysis required pursuant to paragraph (p)(2)(i) of this section;

(ii) Give the Federal Land Manager 30 days from receipt of an application to review the application, where the Federal Land Manager has received such application pursuant to paragraph (p)(4) of this section;

(iii) Consider any comments provided by the Federal Land Manager within the time period under paragraph (p)(5)(ii) of this section; and

(iv) Consult with the Federal Land Manager about any inconsistency between the determination by the permitting authority and the Federal Land Manager's recommendations.

(6) *Preliminary and final permit determination—No Class I increment violation.* The plan shall provide that, where the permitting authority has determined that the emissions from the proposed major source or major modification will not cause or contribute to ambient pollutant concentrations in the Federal Class I area which violate the maximum allowable increases over baseline concentrations—

(i) The permitting authority shall not issue a preliminary permit determination until the Federal Land Manager has been given at least 60 days (from the date of issuance of the completeness determination required under paragraph (n)(1) of this section to submit a demonstration that a proposed major source or major modification will have an adverse impact on air quality related values;

(ii) If the permitting authority agrees with the Federal Land Manager's demonstration under paragraph (p)(6)(i) of this section, the permitting authority shall propose to deny the permit;

(iii) If the permitting authority is not satisfied with the Federal Land Manager's demonstration under paragraph (p)(6)(i) of this section, the permitting authority shall consult with the Federal Land Manager, reference the Federal Land Manager's demonstration and its rejection of the demonstration in the public notice announcing the preliminary permit determination and propose to approve the permit with an explanation in writing (for inclusion in the public record along with the Federal Land Manager's demonstration) of the reasons for rejecting the Federal Land Manager's demonstration. The permitting authority's written explanation shall address, at a minimum, the following:

(A) The basis for any disagreement with the data and analyses contained in the Federal Land Manager's demonstration of adverse impact on air quality related values;

(B) Any conclusions the permitting authority reaches, about whether the projected impacts of the proposed source's emissions will have an adverse impact on air quality related values, that are inconsistent with the conclusions reached in the demonstration submitted by the Federal Land Manager; and

(C) Any measures undertaken to mitigate the potential adverse impacts of proposed emissions increases, including the estimated effect of any mitigation;

(iv) In the final permit determination, the permitting authority shall address any comments made by the Federal Land Manager concerning the permitting authority's preliminary determination.

(7) *Mitigation of adverse impacts.* The plan may provide that the permitting authority may issue a permit for a proposed major source or major modification that would otherwise be denied a permit under paragraph (p)(6) of this section, if the permitting authority determines, in consultation with the Federal Land Manager, that the source has mitigated its adverse impact on air quality related values. The owner or operator of a proposed major source or major modification may mitigate an adverse impact by obtaining enforceable and permanent emissions reductions of sufficient amount and in such location that the reductions will offset the change in air quality in the Federal Class I area that would have resulted from the proposed source.

* * * * *

(q) * * *

(2) The plan may set forth the minimum information which must be submitted by public commenters to accompany any recommendations for control technology alternatives for which permit applicants would not otherwise be responsible to consider in determining best available control technology as of the date an application is complete according to paragraph (j)(5)(iii) of this section. Such information may include the name and location of the source utilizing the control technology, manufacturer and type of control device, date of installation and operation of control device, and performance requirements and available test data.

(3) The plan shall provide that—

(i) After any cut-off date established pursuant to paragraph (j)(5)(iii) of this section, the permitting authority shall notify a permit applicant within 10 working days from the date of receipt of a public comment concerning any control technology alternatives that the permitting authority determines to warrant further consideration by the applicant; and

(ii) The permitting authority shall make available in the public record all information that was submitted with public comment regarding control technology alternatives and provide the basis for its decision to either require or not require the permit applicant to further consider such control technology alternatives.

* * * * *

(6) The reviewing authority shall provide an opportunity for judicial review in State court of the final permit action by the applicant and any person who participated in the public participation process provided pursuant to this section. The plan may provide that the opportunity for judicial review shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and may require that such petitions for judicial review be filed no later than a reasonable period after the final permit action. If such a limited time period for judicial review is provided in the plan, then the plan shall provide that petitions for judicial review of final permit actions can be filed after the deadline only if they are based solely on grounds arising after the deadline for judicial review and only if filed within a reasonable period specified in the plan after the new grounds for review arise.

(r) *Source obligation.*

(1) The plan shall include enforceable procedures to—

(i) Provide that approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law; and

(ii) Require any owner or operator to construct and operate a source or modification in accordance with the application submitted pursuant to this

section or with the terms of any approval to construct.

* * * * *

(s) *Undemonstrated technology or application waiver.*

(1) The plan may provide that an owner or operator of a proposed major stationary source or major modification may satisfy the requirements of paragraph (j) of this section through the use of an undemonstrated technology or application as set forth in this section. The plan may provide that the owner or operator shall provide to the permitting authority a written request for approval of an undemonstrated technology or application as part of the permit application.

(2) The plan may provide that the permitting authority may approve a system of undemonstrated technology or application for a particular source or modification if:

* * * * *

(4) The plan shall provide that, if the permitting authority withdraws approval of a system of undemonstrated technology or application, the owner or operator shall bring the affected emissions unit(s) into compliance with the reference best available control technology emissions limit within 18 months from the date of withdrawal.

(5) The plan shall provide that the permitting authority shall include, as a minimum, the following information in a waiver issued pursuant to paragraph (s) of this section:

(i) The undemonstrated technology or application's emission control performance objective and the applicable reference best available control technology emissions limit;

(ii) The marginal and gross failure emissions limit(s) as defined by the permitting authority on a case-by-case basis; and

(iii) Identification and classification of potential failure modes and associated contingency measures.

(6) The plan shall provide that if, by the date established in paragraph (s)(2)(ii) of this section, the undemonstrated technology or application does not achieve the permitted emission limit, but actual emissions are equal to or less than the best available control technology emission limit referenced in the permit, the permitting authority shall:

(i) Issue a final permit with the emission limit equal to the undemonstrated technology or application's consistently achieved actual emission rate; and

(ii) Report the final permit limits to the EPA's RACT/BACT/LAER Clearinghouse as a demonstrated control technology.

(7) The plan shall provide that if, by the date established in paragraph (s)(2)(ii) of this section, the actual emissions from the undemonstrated technology or application constitute marginal failure, the owner or operator may petition the permitting authority to permit the undemonstrated technology or application at its actual emission limit. Accordingly the permitting authority shall either:

(i) Approve the petition and proceed in accordance with paragraphs (s)(6)(i) and (ii) of this section; or

(ii) Disapprove the petition and require the owner or operator to comply with paragraph (s)(4) of this section.

(8) The plan shall provide that if, at any time prior to, or on, the date established in paragraph (s)(2)(ii) of this section, the actual emissions from the undemonstrated technology or application constitute gross failure:

(i) The permitting authority shall withdraw approval pursuant to paragraph (s)(4) of this section; and

(ii) The owner or operator shall mitigate all emission increases above the applicable reference best available control technology emission limit by reducing actual emissions.

(9) The plan shall provide that the permitting authority submit to the Administrator a copy of the approval of the system of undemonstrated technology or application within 30 days of its approval.

(10) The plan shall provide that the number of waivers granted by the permitting authority shall not exceed such number as necessary to ascertain whether or not such system complies with section 111(j)(1)(A)(ii) and (iii) of the Act.

(t) *Disputed permits or redesignations.* If any State affected by the redesignation of an area by an Indian Tribe, or any Indian Tribe affected by the redesignation of an area by a State disagrees with such redesignation of an area, or if a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any State which the Governor of an affect State or Governing Body of an affected Indian Tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this section within the affected State or Indian Reservation, the Governor or Indian Governing Body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian Tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and the Administrator's determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values.

(u) *Plantwide applicability limit.*

(1) *Applicability.* The plan may provide that an owner or operator of an existing major stationary source may request the permitting authority to approve a plantwide applicability limit for any one or more pollutants, and that the permitting authority may approve a plantwide applicability limit for an existing major stationary source, in accordance with paragraphs (u)(2) through (5) of this section.

(2) *Procedure.* The plan shall provide that a plantwide applicability limit for an existing major stationary source may be established only through a procedure consistent with § 51.161 of this chapter, and with at least 30 days allowed for public notice and opportunity for comment.

(3) *Emission limitations and conditions.* (i) The plan shall provide that a plantwide applicability limit shall be established based on either:

(A) Plantwide actual emissions (not to exceed current allowable emissions) and a reasonable operating margin less than the applicable significant emissions rate; or

(B) Source-wide limits on annual emissions established in a permit issued within the immediately preceding 5 years under regulations approved pursuant to § 51.165 of this part, where the source-wide emissions limits were completely offset and relied upon in an approved state attainment demonstration plan.

(ii) The plan shall provide that any plantwide applicability limit emission limitations shall be achievable through application of production processes or available methods, systems, and techniques including, but not limited to, emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, substitution of less polluting materials, or limits on production that represent normal source operations.

(iii) The plan shall provide that specific terms and conditions that assure the practical enforceability of plantwide applicability limit emission limitations shall be contained in a

federally enforceable permit applicable to the source.

(iv) The plan shall provide that the emissions limitations and conditions established for a plantwide applicability limit shall not relieve any owner or operator of the responsibility to comply fully with any applicable control technology requirements.

(4) *Plantwide applicability limit modifications.* The plan shall provide that:

(i) Notwithstanding paragraphs (b)(2) and (b)(3) of this section (the definitions for major modification and net emissions increase), any physical or operational change consistent with plantwide applicability limit terms and conditions of this section shall not constitute a major modification for the pollutants covered by the plantwide applicability limits. All decreases in emissions shall have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

(ii) Requirements equivalent to those contained in paragraphs (j) through (r) of this section shall apply to any plantwide applicability limit major modification as if it were a major modification, except that in lieu of paragraph (j)(3) of this section, a plantwide applicability limit major modification shall apply best available control technology for each pollutant subject to regulation under the Act if an emissions increase above the plantwide applicability limit would occur; and

(iii) The best available control technology requirement applies to each emissions unit that contributes to the emissions increase above the plantwide applicability limit.

(5) *Plantwide applicability limit reevaluation.*

(i) The plan shall provide that the permitting authority shall reevaluate the plantwide applicability limit emission limitations pursuant to:

(A) Permit renewal and public notification procedures under parts 70 or 71 of this chapter; or

(B) Another proceeding with public notice and opportunity for public comment.

(ii) As part of the reevaluation required under paragraph (u)(5)(i) of this section, the permitting authority may reduce permitted emission limitations or otherwise adjust (but not increase) permitted emission limitations to reflect:

(A) Air quality concerns arising after the approval of the plantwide applicability limit;

(B) Changes at the source; or

(C) Other appropriate considerations.

(iii) The plan shall provide that the permitting authority shall adjust the source's plantwide applicability limit emissions limitations to reflect new applicable requirements as they become effective.

PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.21 is amended by redesignating the paragraphs as follows:

Old paragraph	New paragraph
(b)(1)(i) (*a*) through (*c*).	(b)(1)(i) (A) through (C).
(b)(1)(iii) (*a*) through (*aa*).	(b)(1)(iii) (A) through (AA).
(b)(2)(iii) (*a*) through (*k*).	(b)(2)(iii) (A) through (K).
(b)(3)(i) (*a*) and (*b*)	(b)(3)(i) (A) and (B).
(b)(3)(vi) (*a*) through (*c*).	(b)(3)(vi) (A) through (C).
(b)(13)(i) (*a*) and (*b*)	(b)(13)(i) (A) and (B).
(b)(13)(ii) (*a*) and (*b*)	(b)(13)(ii) (A) and (B).
(b)(14)(ii) (*a*) and (*b*)	(b)(14)(ii) (A) and (B).
(b)(14)(iii) (*a*) and (*b*)	(b)(14)(iii) (A) and (B).
(b)(15)(ii) (*a*) and (*b*)	(b)(15)(ii) (A) and (B).
(i)(4)(ii) (*a*) through (*c*).	(i)(4)(ii) (A) through (C).
(i)(4)(iv) (*a*) through (*c*).	(i)(4)(iv) (A) through (C).
(i)(4)(v) (*a*) through (*c*).	(i)(4)(v) (A) through (C).
(i)(4)(vii) (*a*) through (*aa*).	(i)(4)(vii) (A) through (AA).
(i)(4)(viii) (*a*) through (*d*).	(i)(4)(viii) (A) through (D).
(i)(4)(ix) (*a*) through (*c*).	(i)(4)(ix) (A) through (C).
(m)(1)(i)(*a*) and (*b*)	(m)(1)(i) (A) and (B).
(m)(1)(v) (*a*) through (*c*).	(m)(1)(v) (A) through (C).
(v)(2)(iv) (*a*) and (*b*)	(v)(2)(iv) (A) and (B).

3. Section 52.21 is amended as follows:

a. Amending newly redesignated paragraph (b)(2)(iii)(F) by adding the words ''Standing alone,'' at the beginning of the sentence and revising the word ''An'' to read ''an'';

b. Revising newly redesignated paragraph (b)(2)(iii)(H);

c. Adding new paragraphs (b)(2)(iii)(L) through (N); Revising newly redesignated paragraph (b)(3)(vi)(C);

e. Revising paragraph (b)(5);

f. Revising paragraphs (b)(19), (b)(21)(ii), and (b)(22);

g. Adding new paragraph (b)(21)(vi);

h. Revising paragraph (b)(23);

i. Amending paragraph (b)(24) by adding the words ''(or the Secretary's designee)'' after the word ''lands'' at the end of the sentence;

j. Revising paragraph (b)(27);

k. Revising paragraphs (b)(32) introductory text and (b)(32)(i);

l. Removing paragraph (b)(32)(ii) and redesignating paragraphs (b)(32)(iii) and (iv) as new paragraphs (b)(32)(ii) and (iii);

m. Adding new paragraphs (b)(39) through (b)(49);

n. Amending paragraph (g)(1) by removing the words ''State implementation'' from the the last sentence;

o. Revising paragraph (i)(8)(i);

p. Adding new paragraph (i)(14);

q. Adding new paragraphs (j)(5) and (6);

r. Amending paragraph (k) introductory text by adding the word ''significantly'' after the words ''would not cause or'';

s. Amending paragraph (m)(2) by removing the word ''ambient'' and adding the words '', or on air quality related values of a Federal Class I area. Deci sions about post-construction monitoring for air quality related values in Federal Class I areas shall be made in consultation with the Federal Land Manager.'' at the end of the paragraph;

t. Revising the heading and removing the introductory text of paragraph (n);

u. Redesignating paragraph (n)(2) as paragraph (n)(3) and revising it;

v. Redesignating paragraph (n)(1) as paragraph (n)(2);

w. Revising newly redesignated paragraph (n)(2) introductory text and newly redesignated paragraph (n)(2)(iii) and adding new paragraph (n)(2)(iv);

x. Adding new paragraphs (n)(1), (n)(4) and (n)(5);

y. Amending paragraph (o)(1) by adding the words '', except that for Federal Class I and II areas such analysis may be excluded only by approval of the Federal Land Manager'' to the end of the second sentence;

z. Revising the heading of paragraph (p);

aa. Removing paragraph (p)(1);

bb. Redesignating paragraph (p)(2) as paragraph (p)(1);

cc. Amending newly redesignated paragraph (p)(1) by revising the heading and removing the words ''charged with direct responsibility for management of such lands'';

dd. Adding new paragraph (p)(2);

ee. Revising paragraphs (p)(3) and (p)(4);

ff. Redesignating paragraphs (p)(5) through (p)(8) as paragraphs (p)(8) through (p)(11);

gg. Adding new paragraphs (p)(5) through (p)(7);

hh. Amending the newly redesignated paragraph (p)(9) by removing the citation ''(q)(4)'' and adding in its place ''(p)(7)'';

ii. Amending the newly redesignated paragraphs (p)(9) and (p)(10) by removing the citation ''(q)(7)'' and adding in its place ''(p)(11)'';

jj. Amending the newly redesignated paragraph (p)(11) by removing the citation ''(q) (5) or (6)'' and adding in its place ''(p)(9) or (p)(10)'';

kk. Revising paragraph (q);

ll. Amending paragraph (t) by removing the words ''State implementation'' in the phrase ''applicable State implementation plan'';

mm. Revising the heading of paragraph (v);

nn. Revising paragraphs (v)(1) and (v)(2) introductory text;

oo. Amending paragraph (v)(2)(ii) by removing the cite ''(j)(2)'' and adding in its place ''(j)'', removing the words ''4 years'' and adding in its place ''2 years'', and removing the words ''7 years'' and adding in its place ''5 years'';

pp. Amending paragraphs (v)(2)(iii) and (v)(3) introductory text by removing the words ''innovative control technology'' and adding in its place ''undemonstrated technology or application'';

qq. Revising paragraph (v)(4);

rr. Adding new paragraphs (v)(5) through (v)(9);

ss. Adding new paragraph (x).

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2)—* * *

(iii) * * *

(H) The addition, replacement, or use of a pollution control project at an existing emissions unit unless the pollution control project would result in a significant net increase in representative actual annual emissions of any pollutant regulated under this section and the Administrator determines that this increase would cause or contribute to a violation of any national ambient air quality standard or any maximum allowable increase over the baseline concentration or will have an adverse impact on any air quality related value at any Class I area. For the purpose of this paragraph, in lieu of the source's representative actual annual emissions, the emissions levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Act, if any, may be used.

* * * * *

(L) Any activity undertaken at an existing emissions unit for which a federally enforceable emissions limit has been established, provided that:

(*1*) The activity or project will not increase the maximum emissions rate, in pounds or kilograms per hour, above the maximum emissions rate achievable by the emissions unit at any time during the 180 consecutive days which precede the date of the activity or project and the emissions increase is determined by:

(*i*) Material balances, continuous emissions monitoring data, or manual emissions tests using the EPA-approved procedures, where available, and conducted under such conditions as the permitting authority will specify to the owner or operator based on representative performance of the emissions units affected by the activity or project, including at least three valid test runs conducted before, and at least three valid test runs conducted after, the activity or project with all operating parameters which may affect emissions held constant to the maximum feasible degree for all such test runs; or

(*ii*) Emission factors as specified in the latest issue of ''Compilation of Air Pollutant Emission Factors,'' EPA Publication No. AP–42, or other emission factors determined by the permitting authority to be superior to AP–42 emissions factors, in such cases where use of emission factors demonstrates that the emissions level resulting from the activity or project will clearly not increase emissions;

(*2*) The federally enforceable emissions limit at the time of the change is comparable to the emission limit that, considering the air quality designation of the area where the source is located, would result from a current review in accordance with either paragraph (j) of this section or regulations approved pursuant to § 51.165(a)(2) or § 51.166(j) of this chapter, for emissions units of the same class or source category. The Administrator may presume that a source satisfies this paragraph (b)(2)(iii)(L)(*2*) if:

(*i*) The activity would occur no later than 120 consecutive months from the date of issuance of the permit issued under either this section or regulations approved pursuant to § 51.165 or § 51.166 of this chapter, that established the currently applicable emissions limit for the emissions unit;

(*ii*) The activity would occur no later than 120 consecutive months from the date of issuance of the permit issued under regulations approved pursuant to §§ 51.160 through 51.164 of this chapter, that established the currently applicable emissions limit for the emissions unit, provided the permit was issued under regulations that were determined by the Administrator to provide for permits that contain emissions limitations that satisfy paragraph (b)(2)(iii)(L)(*2*) of this section; or

(*iii*) The activity would occur no later than 60 consecutive months from the date on which the applicable permitting authority made a determination, with public notice and opportunity for public comment consistent with § 51.161 of this chapter, that the emissions limit satisfied paragraph (b)(2)(iii)(L)(*2*) of this section.

(*3*) The activity would not require a revision to, or cause a violation of, any federally enforceable limit or condition in a permit issued under either this section or regulations approved pursuant to §§ 51.160 through 51.166 of this chapter;

(*4*) The activity or project does not include the replacement or reconstruction of an emissions unit; and

(M) Any activity undertaken at an existing major stationary source, provided :

(*1*) The activity would not require a revision to, or cause a violation of, any federally enforceable limit or condition in a permit issued under either this section or regulations approved pursuant to §§ 51.160 through 51.166 of this chapter; and

(*2*) The entire major stationary source was permitted, and received the currently applicable emissions limits for all emissions units, at the source issued in accordance with either this section or regulations approved pursuant to §§ 51.165 through 51.166 of this chapter no more than 120 consecutive months prior to the proposed activity.

(N) A change to ozone-depleting substances with lower ozone-depleting potential under the provisions of sections 601 and 602 of the Act, including changes to ozone-depleting substances emitting equipment needed to accommodate the change, as long as the productive capacity of the equipment is not increased.

* * * * *

(3) * * *

(vi) * * *

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change such that, at a minimum, the decrease is sufficient to prevent the proposed increase from causing or contributing to a violation of any national ambient air quality standard or any applicable maximum allowable increase over baseline concentrations or having an adverse impact on air quality related values in Class I areas.

* * * * *

(5) (i) *Stationary source* means any building, structure, facility, installation, or stationary internal combustion engine which emits or which may emit any air

pollutant subject to regulation under the Act.

(ii) A stationary source does not include emissions resulting directly from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

* * * * *

(19) *Undemonstrated technology or application* means any system, process, material, or treatment technology (including pollution prevention) that has not been demonstrated in practice, but would have a substantial likelihood to operate effectively and achieve:

(i) A greater continuous reduction of air pollutant emissions than any demonstrated system; or

(ii) A comparable emissions reduction at lower cost, or with lower energy input, or with less environmental impact.

* * * * *

(21) * * *

(ii) Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during any 12 consecutive months during the 120 consecutive months that precede the commencement of construction of a proposed physical or operational change at the source, and any current, federally enforceable limitation on emissions, as required by the Act, including but not limited to, best available control technology, lowest achievable emission rate (as defined at § 51.165(a)(1)(xiii) of this chapter), reasonably available control technology, or emissions standards for hazardous air pollutants under section 112 of the Act.

* * * * *

(vi) In lieu of paragraphs (b)(21)(iv) and (v) of this section, actual emissions of the unit following a physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Administrator if the Administrator determines such a period to be more representative of normal source post-change operations.

(22) *Complete* means, in reference to an application for a permit required under this section, that the Administrator has deemed the application to contain the information necessary (in accordance with the criteria contained in paragraph (n) of this section) to begin formal review of the application. Determining an application complete for the purpose of beginning formal review does not preclude the Administrator from requiring additional information as may be needed to determine whether the applicant satisfies all requirements of this section.

(23) *Significant* means:

(i) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

POLLUTANT AND EMISSIONS RATE

Carbon monoxide: 100 tons per year
Nitrogen oxides: 40 tons per year
Sulfur dioxide: 40 tons per year
Ozone: 40 tons per year of volatile organic compounds
Particulate matter: 25 tons per year of particulate matter emissions; 15 tons per year of PM–10 emissions
Lead: 0.6 tons per year
Fluorides: 3 tons per year
Sulfuric acid mist: 7 tons per year
Hydrogen sulfide: 10 tons per year
Total reduced sulfur (including hydrogen sulfide): 10 tons per year
Reduced sulfur compounds (including hydrogen sulfide): 10 tons per year
Municipal waste combustor organics (measured as total tetrathrough octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
Ozone-depleting substances (ODS): 100 tons per year.

(ii) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Act that paragraph (b)(23)(i) of this section does not list, any emissions rate. However, for purposes of the applicability of this section, the hazardous air pollutants listed under section 112(b)(1) of the Act, including the hazardous air pollutants that may be added to the list, are not considered subject to regulation under the Act.

(iii) Notwithstanding paragraph (b)(23)(i) of this section, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class 1 area, and have an impact on such area equal to or greater than 1 microgram per cubic meter (24-hour average).

(iv) In reference to the predicted ambient impact that the emissions from a proposed major source or major modification will have for purposes of determining compliance with the national ambient air quality standards, concentrations which exceed any of the following:

Pollutant	Averaging time	Significant impact
SO_2	Annual	1.0 µg/m^3.
	24–Hour	5.0 µg/m^3.
	3–Hour	25.0 µg/m^3.
PM–10	Annual	1.0 µg/m^3.
	24–Hour	5.0 µg/m^3.
NO_2	Annual	1.0 µg/m^3.
CO	8–Hour	0.5 mg/m^3.
	1–Hour	2.0 mg/m^3.

(v) In reference to the predicted ambient impact that emissions from a proposed major source or major modification will have for purposes of determining compliance with the maximum allowable increases in pollutant concentrations contained in paragraph (c) of this section, concentrations which exceed any of the following:

Pollutant	Averaging time	Class I	Class II	Class III
		Significant impact	Significant impact	Significant impact
SO_2	Annual	0.1 µg/m^3	1.0 µg/m^3	1.0 µg/m^3.
	24-Hour	0.2 µg/m^3	5.0 µg/m^3	5.0 µg/m^3.
	3-Hour	1.0 µg/m^3	25.0 µg/m^3	25.0 µg/m^3.
PM–10	Annual	0.2 µg/m^3	1.0 µg/m^3	1.0 µg/m^3.
	24-Hour	0.3 µg/m^3	5.0 µg/m^3	5.0 µg/m^3.
NO_2	Annual	0.1 µg/m^3	1.0 µg/m^3	1.0 µg/m^3.

* * * * *

(27) *Indian Reservation* means all land within the limits of any Indian Reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

(32) *Pollution control project* means:

(i) Any activity or project undertaken at an existing emissions unit which, as its primary purpose, reduces emissions of air pollutants from such unit. Such activities or projects do not include the replacement of an existing emissions unit with a newer or different unit, or the reconstruction of an existing emissions unit, and are limited to any of the following:

(A) The installation of conventional or advanced flue gas desulfurization, or sorbent injection for SO_2;

(B) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for particulate matter or other pollutants;

(C) Flue gas recirculation, low-NO_X burners, selective non-catalytic reduction or selective catalytic reduction for NO_X;

(D) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, flares, or carbon absorbers for volatile organic compounds or hazardous air pollutants;

(E) Activities or projects undertaken to accommodate switching to an inherently less polluting fuel, including but not limited to, natural gas or coal reburning, or the cofiring of natural gas and other inherently less polluting fuels, for the purpose of controlling emissions, and including any activity that is necessary to accommodate switching to an inherently less polluting fuel;

(F) Pollution prevention projects which the Administrator has determined through a process consistent with § 51.161 of this chapter to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous pollutants are not environmentally beneficial; and

(G) Installation of a technology, for purposes set forth in paragraph (b)(32) of this section, which is not listed in paragraphs (b)(32)(i) (A) through (E) of this section but meets the following:

(*1*) Its effectiveness in reducing emissions has been demonstrated in practice; and

(*2*) It is determined by the Administrator to be environmentally beneficial.

* * * * *

(39) *Federal Class I area* means any Federal lands within the United States either designated as Class I pursuant to section 162(a) of the Act (and which may not be redesignated) or redesignated as Class I pursuant to either paragraph (g) of this section or § 51.166(g) of this chapter.

(40) *Federal official* means the Federal official charged with direct responsibility for management of any lands within a Federal Class I area.

(41) *Air quality related value* means, for purposes of this section, visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands and as defined by the applicable State or Indian Governing Body for nonfederal lands.

(42) *Adverse impact on air quality related values* means, for purposes of this section, a deleterious effect on any air quality related value identified by a Federal Land Manager, resulting from emissions from a proposed major source or major modification, that interferes with the management, protection, preservation, or enjoyment of such air quality related values of a Federal Class I area. This determination shall be made on a case-by-case basis taking into account existing air quality conditions.

(43) *Demonstrated in practice* means, for the purposes of this section, any control technology that has been—

(i) Listed in or required by any of the following:

(A) The EPA's RACT/BACT/LAER Clearinghouse;

(B) A major source construction permit issued pursuant to either part C or D of title I of the Act;

(C) An emissions limitation contained in a federally-approved plan, excluding any emissions limitations established by permits issued pursuant to programs for non-major sources;

(D) A permit or standard under either section 111 or 112 of the Act; and

(E) The EPA's Alternative Control Techniques documents and Control Techniques Guidelines; or

(ii) Notwithstanding paragraph (b)(43)(i) of this section, installed and operating on an emissions unit (or units) which:

(A) Has operated at a minimum of 50 percent of design capacity for 6 months; and

(B) The pollution control efficiency performance has been verified with either:

(*1*) A performance test; or

(*2*) Performance data collected at the maximum design capacity of the emissions unit (or units) being controlled, or 90 percent or more of the control technology's designed specifications.

(44) *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal.

(45) *Plantwide applicability limit* means a plantwide federally enforceable emissions limitation established for a stationary source such that any subsequent physical or operational change resulting in plantwide emissions that remain less than the limit are excluded from preconstruction review under this section.

(46) *Plantwide applicability limit major modification* means, notwithstanding the requirements of paragraph (b)(2) of this section, any increase in the emissions rate, in tons per year, over the plantwide applicability limit. Any emissions increase of volatile organic compounds shall be considered an increase for.

(47)(i) *Nonroad engine* means, except as discussed in paragraph (b)(46)(ii) of this section, any internal combustion engine:

(A) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);

(B) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(C) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(ii) An internal combustion engine is not a nonroad engine if:

(A) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act;

(B) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(C) The engine otherwise included in paragraph (b)(47)(i) of this section remains or will remain at a location for

more than 12 consecutive months, or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph (b)(47)(ii)(C), a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately three months (or more) each year. This paragraph (b)(47)(ii)(C) does not apply to an engine after the engine is removed from the location.

(48) *Nonroad vehicle* means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(49) *Stationary internal combustion engine* means:

(i) Any internal combustion engine that is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(ii) Any internal combustion engine that is none of the following: a nonroad engine, an engine used to propel a motor vehicle or a vehicle used solely for competition, or an engine subject to standards promulgated under section 202 of the Act.

* * * * *

(i) * * *

(8) * * *

(i) The emission increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(A) Carbon monoxide: 575 micrograms per cubic meter, 8-hour average;

(B) Nitrogen dioxide: 14 micrograms per cubic meter, annual average;

(C) Sulfur dioxide: 13 micrograms per cubic meter, 24-hour average;

(D) Ozone; [1]

(E) Particulate matter: 10 micrograms per cubic meter PM–10, 24-hour average;

(F) Lead: 0.1 micrograms per cubic meter, 3-month average;

(G) Fluorides: 0.25 micrograms per cubic meter, 24-hour average;

(H) Hydrogen sulfide: 0.2 micrograms per cubic meter, 1-hour average;

(I) Total reduced sulfur: 10 micrograms per cubic meter, 1-hour average;

(J) Reduced sulfur compounds: 10 micrograms per cubic meter, 1-hour average; or

* * * * *

(14) The requirements of this section do not apply to any stationary source with respect to each hazardous air pollutant listed pursuant to section 112 of the Act, as well as all pollutants that may be added to such list under the provisions of section 112(b)(2) of the Act. However, the applicable provisions of this section shall apply to any pollutant listed pursuant to sections 112(b)(1) or (b)(2) of the Act that is deleted from such list under the provisions of section 112(b)(3) of the Act. Any hazardous air pollutants listed in section 112 of the Act which are regulated as constituents or precursors of a more general pollutant listed under section 108 of the Act are still subject to the provisions of this section, notwithstanding section 112(b)(6) of the Act.

(j) * * *

(5)(i) In determining best available control technology:

(A) The applicant shall identify and evaluate all available and technically feasible control technology alternatives that have been demonstrated in practice pursuant to paragraph (b)(43)(i) of this section prior to the date on which the permit application is complete and pursuant to paragraph (b)(43)(ii) of this section 90 days prior to the date on which the permit application is complete;

(B) All control technology alternatives identified pursuant to paragraph (j)(5)(i)(A) of this section shall be ranked and evaluated in descending order of control effectiveness. The alternative providing the maximum degree of emissions reduction shall be established as best available control technology unless it is demonstrated to the satisfaction of the Administrator that, based upon technical considerations, or energy, environmental, and economic impacts and other costs, the maximum degree of emissions reduction is not achievable in that case. If the applicant identifies the technology providing the maximum degree of emissions reduction as the best available control technology, then the Administrator may waive the requirement to analyze or evaluate less effective control technologies. Otherwise, the next most stringent control technology shall then be evaluated in the same manner. Documentation supporting the demonstration shall be included in the public record pursuant to paragraph (q)(2) of this section.

(ii) The control technology alternatives considered in paragraph (j)(5)(i) of this section shall be based upon control technologies and methods for the same and similar source categories, i.e., those categories including sources that have similar emissions stream characteristics.

(iii) On or after the date that an application is complete pursuant to paragraph (n) of this section, the permit applicant will not be required to consider control technology alternatives identified through public comments that are in addition to those alternatives required under paragraph (j)(5)(i)(A) of this section, unless the Administrator determines that, based on information provided pursuant to paragraph (q)(2) of this section, the alternatives warrant further consideration by the applicant.

(iv) After the date on which the public comment period is closed for a permit issued pursuant to this section, the applicant for such permit will not be required to consider any control technology that has not been identified either prior to or during the public comment period.

(6) For determinations of best available control technology required under this section, the Administrator shall include the control technology information in the EPA's RACT/BACT/LAER Clearinghouse within 60 days after permit approval.

* * * * *

(n) *Complete application criteria.*

(1)(i) The Administrator shall determine that a permit application is complete or deficient based on the consideration of determinations, analyses and other information contained in the application, and adequacy thereof, as specified in paragraphs (n)(2) through (n)(5) of this section.

(ii) The Administrator shall notify each applicant, in accordance with procedures set forth in § 124.3(c) of this chapter, as to either the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the complete application shall be the date on which the Administrator received all required information.

(2) Information necessary to determine a permit application complete shall include:

* * * * *

[1] No *de minimis* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of VOC subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

(iii) (A) A detailed description of the system of continuous emissions reduction which the applicant has submitted in a permit application for a source or modification, to qualify either as best available control technology, or for an undemonstrated technology waiver in accordance with paragraph (s) of this section; and

(B) All information used or consulted by the applicant in recommending a system of continuous emissions reduction as either the best available control technology or an approvable undemonstrated technology.

(iv) Information and data used to perform all required analyses or determinations under paragraphs (o), (p), (r), (v) and (x) of this section, as applicable.

(3) Upon request of the Administrator, the owner or operator shall provide any information and data used to perform all required analyses or determinations under paragraphs (k), (l) and (m) of this section.

(4) An application shall not be considered complete unless the permit application has been registered on the applicable EPA electronic bulletin board. To register, at a minimum, the following must be provided:

(i) Name and type of source;

(ii) Nature of proposed project, i.e., new facility or modification;

(iii) Proposed location of the source in State/county (including Universal Transverse Mercator coordinates) and the distance between the source and each Class I area within 250 kilometers;

(iv) Anticipated allowable emissions, or increase in emissions rate, for each affected air pollutant regulated under the Act;

(v) Source contact mailing address and telephone number, and

(vi) The agency responsible for issuing the permit.

(5) Prior to making a completeness determination, the Administrator shall provide for any Federal Land Manager review and coordination required under paragraph (p)(5) of this section.

* * * * *

(p) *Sources potentially impacting Federal Class I areas.*

(1) *Protection of air quality related values.* * * *

(2) *General requirements.*

(i) *Notification of potential impacts on a Federal Class I area and requirement for impact assessment.*

(A) Where the Federal Official, Federal Land Manager, the Administrator, the Governor of an adjacent State, or the governing body of an adjacent Indian Tribe containing a Federal Class I area, files, prior to the date a completeness determination is made pursuant to paragraph (n)(1) of this section, a written notice alleging that emissions of a particular pollutant from a proposed major source or major modification may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change on affected air quality related values identified in the area by the Federal Land Manager, a permit shall not be issued unless the owner or operator of such source:

(*1*) Demonstrates to the satisfaction of the Administrator that emissions will not cause or contribute to ambient pollutant concentrations in the Federal Class I area which violate the maximum allowable increases over baseline concentrations; and

(*2*) Provides an analysis of the potential impacts on air quality related values at the Federal Class I area.

(B) A permit otherwise prohibited under paragraph (p)(2)(i)(A)(*1*) of this section may be issued in accordance with the variance provisions in paragraphs (p)(8) through (p)(11) of this section.

(ii) *Available information on air quality related values and analytical methods.* The Federal Land Manager or Federal Official shall, upon request, provide to the owner or operator of a proposed major source or major modification that may have an adverse impact on air quality related values in a Federal Class I area all available information about such values and methods to analyze potential impacts.

(iii) *Consultation with Federal Land Manager.* The Administrator shall provide for consultation and coordination with the Federal Land Manager including the procedures contained in paragraphs (p)(3) through (p)(6) of this section.

(3) *Pre-application coordination.* For a proposed major source or major modification within 100 kilometers of a Federal Class I area:

(i) The affected Federal Land Manager shall be notified within 30 days from receipt by the Administrator of advance notification of a permit application; and

(ii) The affected Federal Land Manager shall be given reasonable notice and an opportunity to participate in pre-application meetings with the applicant.

(4) *Permit application coordination.* (i) The Federal Land Manager of any Federal Class I area within 100 kilometers of a proposed major source or major modification shall be provided with a copy of the permit application and other relevant information, and

(ii) The Federal Land Manager shall be provided with a copy of a permit application requested within 7 days from the date information about such application is registered on the applicable EPA electronic bulletin board (in accordance with paragraph (n)(4) of this section).

(5) *Completeness determination coordination.* Prior to making the completeness determination under paragraph (n)(1) of this section, the Administrator shall:

(i) Ensure that the applicant has provided any analysis required pursuant to paragraph (p)(2)(i) of this section;

(ii) Give the Federal Land Manager 30 days from receipt of an application to review the application, where the Federal Land Manager has received such application pursuant to paragraph (p)(4) of this section;

(iii) Consider any comments provided by the Federal Land Manager within the time period under paragraph (p)(5)(ii) of this section; and

(iv) Consult with the Federal Land Manager about any inconsistency between the determination by the Administrator and the Federal Land Manager's recommendations.

(6) *Preliminary and final permit determination—No Class I increment violation.* Where the Administrator has determined that the emissions from the proposed major source or major modification will not cause or contribute to ambient pollutant concentrations in the Federal Class I area which violate the maximum allowable increases over baseline concentrations:

(i) The Administrator shall not issue a preliminary permit determination until the Federal Land Manager has been given at least 60 days (from the date of issuance of the completeness determination required under paragraph (n)(1) of this section that the permit is complete) to submit a demonstration that a proposed major source or major modification will have an adverse impact on air quality related values.

(ii) If the Administrator agrees with the Federal Land Manager's demonstration under paragraph (p)(6)(i) of this section, the Administrator shall propose to deny the permit.

(iii) If the Administrator is not satisfied with the Federal Land Manager's demonstration under paragraph (p)(6)(i) of this section, the Administrator shall consult with the Federal Land Manager, reference the Federal Land Manager's demonstration and the Administrator's proposed rejection of the demonstration in the public notice announcing the preliminary permit determination, and provide an explanation in writing (for inclusion in the public record along

with the Federal Land Manager's demonstration) of the reasons for proposing to reject the Federal Land Manager's demonstration. The Administrator's written explanation shall address, at a minimum, the following:

(A) The basis for any disagreement with the data and analyses contained in the Federal Land Manager's demonstration of adverse impact on air quality related values;

(B) Any conclusions the Administrator reaches, about whether the projected impacts of the proposed source's emissions will have an adverse impact on air quality related values, that are inconsistent with the conclusions reached in the demonstration submitted by the Federal Land Manager; and

(C) Any measures undertaken to mitigate the potential adverse impacts of proposed emissions increases, including the estimated effect of any mitigation.

(iv) In the final permit determination, the Administrator shall address any comments made by the Federal Land Manager concerning the Administrator's preliminary determination.

(7) *Mitigation of adverse impacts.* The Administrator may issue a permit for a proposed major source or major modification that would otherwise be denied a permit under paragraph (p)(6) of this section, if the Administrator determines, in consultation with the Federal Land Manager, that the source has mitigated its adverse impact on air quality related values. The owner or operator of a proposed major source or major modification may mitigate an adverse impact by obtaining enforceable and permanent emissions reductions of sufficient amount and in such location that the reductions will offset the change in air quality in the Federal Class I area that would have resulted from the proposed source.

* * * * *

(q) *Public participation.*

(1) The Administrator shall follow the applicable procedures of part 124 of this chapter in processing applications under this section. The Administrator shall follow the procedures at § 51.166(q) of this chapter to the extent that the procedures of part 124 of this chapter do not apply.

(2) The following information must be submitted with any new control technology alternatives recommended by the public for the Administrator to consider in determining best available control technology pursuant to paragraph (j)(5) of this section:

(i) Name and location of the source utilizing the control technology;

(ii) Manufacturer, type and model of pollution control device;

(iii) Date installed and date operational;

(iv) Performance requirements specified under applicable permits, implementation plans or Federal standards; and

(v) Available test or performance data or identification of source of additional information.

(3)(i) After any cut-off date established in accordance with paragraph (j)(5)(iii) of this section, the Administrator shall notify a permit applicant within 10 working days from the date of receipt of a public comment concerning any control technology alternatives that the Administrator determines to warrant further consideration by the applicant; and

(ii) The Administrator shall make available in the public record all information that was submitted with public comment regarding control technology alternatives and provide the basis for its decision to either require or not require the permit applicant to further consider such control technology alternatives.

* * * * *

(v) *Undemonstrated technology or application waiver.*

(1) An owner or operator of a proposed major stationary source or major modification may satisfy the requirements of paragraph (j) of this section through the use of an undemonstrated technology or application as set forth in this section. The owner or operator shall provide to the Administrator a written request for approval of an undemonstrated technology or application as part of the permit application.

(2) The Administrator may approve a system of undemonstrated technology or application for a particular source or modification if:

* * * * *

(4) If the Administrator withdraws approval of a system of undemonstrated technology or application, the owner or operator shall bring the affected emissions unit(s) into compliance with the reference best available control technology emissions limit within 18 months from the date of withdrawal.

(5) The Administrator shall include, as a minimum, the following information in a waiver issued pursuant to paragraph (v) of this section:

(i) The undemonstrated technology or application's emissions control performance objective and the applicable reference best available control technology emissions limit;

(ii) The marginal and gross failure emissions limits as defined by the Administrator on a case-by-case basis; and

(iii) Identification and classification of potential failure modes and associated contingency measures.

(6) If, by the date established in paragraph (v)(2)(ii) of this section, the undemonstrated technology or application does not achieve the permitted emissions limit, but actual emissions are equal to or less than the best available control technology emissions limit referenced in the permit, the Administrator shall:

(i) Issue a final permit with the emissions limit equal to the undemonstrated technology or application's consistently achieved actual emissions rate; and

(ii) Report the final permit limits to the EPA's RACT/BACT/LAER Clearinghouse as a demonstrated control technology.

(7) If, by the date established in paragraph (v)(2)(ii) of this section, the actual emissions from the undemonstrated technology or application constitute marginal failure the owner or operator may petition the Administrator to permit the undemonstrated technology or application to operate at its actual emissions limit. Accordingly, the Administrator shall either:

(i) Approve the petition and proceed in accordance with paragraphs (v)(6) (i) and (ii) of this section; or

(ii) Disapprove the petition and require the owner or operator to comply with paragraph (v)(4) of this section.

(8) If, at any time prior to or on the date established in paragraph (v)(2)(ii) of this section, the actual emissions from the undemonstrated technology or application constitute gross failure:

(i) The Administrator shall withdraw approval pursuant to paragraph (v)(4) of this section; and

(ii) The owner or operator shall mitigate all emissions increases above the applicable reference best available control technology emissions limit by reducing actual emissions.

(9) The Administrator shall limit the number of waivers granted to the number necessary to ascertain whether or not such system complies with sections 111(j)(1)(A)(ii) and (iii) of the Act.

* * * * *

(x) *Plantwide applicability limit.*

(1) *Applicability.* The owner or operator of an existing major stationary source may request the Administrator to approve a plantwide applicability limit for any one or more pollutants, and the Administrator may approve a plantwide applicability limit for an existing major stationary source, in accordance with paragraphs (x)(2) through (x)(5) of this section.

(2) *Procedure.* A plantwide applicability limit for an existing major stationary source may be established only through a procedure consistent with § 51.161 of this chapter, and with at least 30 days allowed for public notice and opportunity for comment.

(3) *Emissions limitations and conditions.*

(i) A plantwide applicability limit shall be established based on either:

(A) Plantwide actual emissions (not to exceed current allowable emissions), including a reasonable operating margin, less than the applicable significant emissions rate; or

(B) Source-wide limits on annual emissions established in a permit issued within the immediately preceding 5 years under regulations approved pursuant to § 51.165 of this part, where the source-wide emissions limits were completely offset and relied upon in an approved State attainment demonstration plan.

(ii) Any plantwide applicability limit emissions limitations shall be achievable through application of production processes or available methods, systems, and techniques including, but not limited to, emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, substitution of less polluting materials, or limits on production that represent normal source operations.

(iii) Specific terms and conditions that assure the practical enforceability of plantwide applicability limit emissions limitations shall be contained in a federally enforceable permit applicable to the source.

(iv) The emissions limitations and conditions established for a plantwide applicability limit shall not relieve any owner or operator of the responsibility to comply fully with any applicable control technology requirements.

(4) *Plantwide applicability limit modifications.*

(i) Notwithstanding paragraphs (b)(2) and (b)(3) of this section (the definitions for major modification and net emissions increase), any physical or operational change consistent with plantwide applicability limit terms and conditions and paragraph (b)(3)(vi)(C) of this section shall not constitute a major modification for the pollutants covered by the plantwide applicability limits. All decreases in emissions shall have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;

(ii) Requirements equivalent to those contained in paragraphs (j) through (r) of this section shall apply to any plantwide applicability limit major modification as if it were a major modification, except that in lieu of paragraph (j)(3) of this section, a plantwide applicability limit major modification shall apply best available control technology for each pollutant subject to regulation under the Act if an emissions increase above the plantwide applicability limit would occur; and

(iii) The best available control technology requirement applies to each emissions unit that contributes to the emissions increase above the plantwide applicability limit.

(5) *Plantwide applicability limit reevaluation.*

(i) The Administrator shall reevaluate the plantwide applicability limit emissions limitations pursuant to—

(A) Permit renewal and public notification procedures under part 70 or 71 of this chapter; or

(B) Another proceeding with public notice and opportunity for public comment.

(ii) As part of the reevaluation required under paragraph (x)(5)(i) of this section, the Administrator may reduce permitted emissions limitations or otherwise adjust (but not increase) permitted emissions limitations to reflect:

(A) Air quality concerns arising after the approval of the plantwide applicability limit;

(B) Changes at the source; or

(C) Other appropriate considerations.

(iii) The Administrator shall adjust the source's plantwide applicability limit emissions limitations to reflect new applicable requirements as they become effective.

* * * * *

4. Section 52.24 is revised to read as follows:

§ 52.24 Statutory restriction on new sources.

(a) Any area designated nonattainment pursuant to section 107(d) of the Act to which, immediately prior to the enactment of the Amendments to the Act of 1990 (November 15, 1990), a prohibition of construction or modification of major stationary sources was applied, shall retain that prohibition if such prohibition was applied by virtue of a finding of the Administrator that the State containing such an area:

(1) Failed to submit an implementation plan meeting the requirements of an approvable new source review permitting program; or

(2) Failed to submit an implementation plan that provided for timely attainment of the national ambient air quality standard for sulfur dioxide by December 31, 1982. This prohibition shall apply until the Administrator approves a plan for such area as meeting the applicable requirements of part D of title I of the Act as amended (NSR permitting requirements) or subpart 5 of part D of title I of the Act as amended (relating to attainment of the national ambient air quality standards for sulfur dioxide), as applicable.

(b) Permits to construct and operate as required by permit programs under section 172(c)(5) of the Act may not be issued for new or modified major stationary sources proposing to locate in nonattainment areas or areas in a transport region where the Administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area or transport region in which the proposed source is to be constructed or modified in accordance with the requirements of part D of title I of the Act.

(c) Whenever, on the basis of any information, the Administrator finds that a State is not in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may issue an order under section 113(a)(5) of the Act prohibiting the construction or modification of any major stationary source in any area to which such requirement applies.

(d) The restrictions in paragraphs (a) and (b) of this section apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant (or precursors, as applicable) for which the transport region or nonattainment area was designated such, and for which the applicable implementation plan is not being carried out in accordance with, or does not meet, the requirements of part D of title I of the Act.

(e) For any transport region or any area designated as nonattainment for any national ambient air quality standard, the restrictions in paragraphs (a) and (b) of this section shall apply to any major stationary source or major modification that would be major for the pollutant (or precursors, where applicable) for which the area is designated nonattainment or a transport region, if the stationary source or major modification would be constructed anywhere in the designated nonattainment area or transport region. A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.

(f) The definitions in § 51.165(a) of this chapter shall apply under this section.

(g) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then:

(1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area or transport region in which the source or modification is located, then the permit may not be so revised; or

(2) If the construction moratorium is no longer in effect in that area, then the requirements of § 51.165(a) of this chapter shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(h) This section does not apply to major stationary sources or major modifications locating in a clearly defined part of a nonattainment area or transport region (such as a political subdivision of a State), where the EPA finds that a plan which meets the requirements of part D of title I of the Act is in effect and is being implemented in that part.

[FR Doc. 96–17544 Filed 7–22–96; 8:45 am]

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Federal Register

Tuesday
July 23, 1996

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 803, et al.
Medical Devices; Final and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803, 804, and 807

[Docket No. 91N–0295]

RIN 0910–AA09

Medical Devices; Medical Device Distributor and Manufacturer Reporting; Certification, Registration, Listing, and Premarket Notification Submission; Stay of Effective Date; Revocation of Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: In response to numerous requests for the Food and Drug Administration (FDA) to consider further comments concerning medical device reporting (MDR) certification and U.S. designated agent requirements, FDA is staying the effective date of these two specific provisions of the adverse event reporting final rule that was published in the Federal Register of December 11, 1995. Specifically, these provisions relate to manufacturer certification and U.S. designated agent requirements. In addition, for consistency purposes, FDA is revoking the distributor reporting certification requirement that went into effect on May 28, 1992.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1995 (60 FR 63578), FDA published a final rule amending parts 803 and 807 (21 CFR parts 803 and 807) to require medical device manufacturers, including U.S. designated agents of foreign manufacturers, to report adverse events related to medical devices under a uniform reporting system (hereinafter referred to as the December 1995 final rule). This rule also required U.S. designated agents to register, list, and submit premarket notifications on behalf of foreign manufacturers. The effective date of this rule was to be April 11, 1996. On April 11, 1996 (61 FR 16043), FDA extended the effective date to July 31, 1996.

Earlier, in the Federal Register of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the distributor reporting requirements, including certification, that were published as a tentative final rule on November 26, 1991, became effective by operation of law on May 28, 1992.

After issuing the December 1995 final rule, FDA received numerous requests for reconsideration of the certification requirements and for reconsideration of issues relating to U.S. designated agent requirements. These comments led FDA to meet with the Health Industry Manufacturers Association (HIMA) and several industry representatives on April 19, May 23, and June 13, 1996. During these meetings, issues concerning industry burdens and procedures relating to the certification and U.S. designated agent requirements were put forth that had previously not been fully considered.

Section 519(d) of the act (21 U.S.C. 360i(d)) states that each manufacturer and distributor required to make reports under section 519(a) (21 U.S.C. 360i(a)) of the act must submit annual statements certifying the number of reports that were filed or that no reports were filed during the previous 12-month period. The certification regulations for manufacturers and distributors require that the certification include the number of MDR's filed during the previous 12-month period and that all MDR reportable events have been submitted (§§ 803.57 and 804.30 (21 CFR 804.30)). FDA required the certification that all MDR reportable events were filed on the basis of legislative history citing the General Accounting Office report recommending that certification state that the reporter ''filed a specific number of reports * * * and that the firm received or became aware of information concerning only these events.'' (H. Rept. 808, 101st Cong., 2d sess., 23 (1990).) FDA, in response to comments asking who should certify for manufacturers, also required in the December 1995 final rule that the certifier must be the president, chief executive officer, U.S. designated agent of a foreign manufacturer, or other official most directly responsible for the firm's operations.

After the final rule was issued, FDA received comments taking the position that the certifier may more appropriately be a person with more direct involvement with the reporting requirements. Comments also objected to requiring that the reporter certify all reportable events have been filed on the basis that such a requirement was not specifically required in the act, and that potential liability would be created.

The December 1995 final rule also required that foreign firms identify a U.S. designated agent who would be responsible for the foreign firm's MDR reporting requirements, as well as the foreign manufacturer's registration listing and premarket notification submissions. After issuing the December 1995 final rule, FDA received comments from industry objecting to these requirements as being unduly burdensome. In response to these comments, FDA is publishing a proposed rule, elsewhere in this issue of the Federal Register, addressing the certification and U.S. designated agent issues. FDA intends that the requirements relating to distributor and manufacturer certification, and to U.S. designated agents, will not be in effect until at least 75 days after the date of publication in the Federal Register of a new final rule.

The Administrative Procedure Act (Pub. L. 79–404) and FDA regulations provide that the agency may issue a regulation without notice and comment procedures when the agency for good cause finds (and incorporates the finding and a brief statement of reasons thereof in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(8); § 10.40(e)(1) (21 CFR 10.40 (e)(1)).) FDA finds that there is good cause for dispensing with notice and comment procedures to stay the effective date of the manufacturer certification and U.S. designated agent reporting provisions, (§§ 803.3(n)(4), 803.57, 803.58, 807.3(r), 807.20(a)(6), and 807.40) and for revoking the certification requirements for distributors (§ 804.30) because such notice and comment procedures are impracticable and contrary to the public interest.

Notice and comment rulemaking on the postponement of manufacturer certification and U.S.designated agent requirements is impracticable. FDA was not aware of a number of significant issues relating to these requirements until after publication of the December 1995 final rule. Since that time, FDA has had numerous meetings with HIMA and industry representatives and internal meetings to decide the best approach to understand and resolve issues concerning the rule. The last meeting with HIMA and industry representatives occurred on June 13, 1996. Without the issuance of a stay under good cause procedures, the certification and U.S. designated agent requirements would become effective on July 31, 1996.

In addition, notice and comment rulemaking, in this instance, on the stay of the present certification requirements would be contrary to the public interest. Because there is not enough time to allow notice and comment on the issue

of staying the effective date before it occurs, the certification and U.S. designated agent requirements would be in effect only for the interim period between the effective date of the final manufacturer rule, July 31, 1996, and the date the agency expects that these provisions, after issuance of a reproposed rule, would be revised and become final a second time. This result would cause industry to implement costly certification and U.S. designated agent procedures and contractual arrangements that would most likely have to be changed with additional cost after these requirements are reproposed and refinalized.

It is also against the public interest to have a certification requirement in effect for distributors, while not having such a requirement in effect for manufacturers. The MDR system is intended to operate as a uniform reporting system where user facilities, distributors, and manufacturers efficiently share, forward, and provide complementary information on the same adverse events. Having a system whereby distributors certify reports and manufacturers do not certify reports would hinder the uniformity of this program and result in regulatory confusion.

For all the reasons stated above, FDA concludes, under 5 U.S.C. 553(b)(8) and § 10.40(e)(1), that there is good cause for staying the effective date of the certification and U.S. designated agent provisions of the December 1995 final rule and for revoking the distributor certification requirements of the May 28, 1992 rule.

Foreign manufacturers have a responsibility for compliance with all medical device reporting requirements which will not be affected by the stay of the effective date of the U.S. designated agent requirements. This is because the December 1995 final rule contained a significant change regarding foreign manufacturers. The original medical device reporting regulation that became effective December 13, 1984, defined a manufacturer who was required to submit MDR reports as any person who is required to register under part 807. Because foreign manufacturers are not required to register, the December 1984 regulation did not apply to them. The revised December 1995 final rule, however, no longer defines a manufacturer who is required to report adverse events as a person who is required to register under part 807. Rather, under § 803.3(n) of the December 1995 final rule, a manufacturer means any person who manufactures, prepares, propagates compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. Accordingly, foreign manufacturers clearly fit within the definition of manufacturers who are required to submit MDR's under the December 1995 final rule. This means that, on July 31, 1996, foreign manufacturers will be fully subject to the same requirements of part 803 applicable to all domestic manufacturers. This includes, but is not limited to, the requirements for written procedures (§ 803.17), MDR event files (§ 803.18), individual adverse event reports (§§ 803.50 and 803.52), 5-day reports (§ 803.53), baseline reports (§ 803.55), and supplemental reports (§ 803.56). In addition, existing regulations will remain in effect pending the stay that permits foreign manufacturers to register (§ 807.40(a)) and submit premarket notifications (§ 807.81), and require them to list their devices (§ 807.40(b)).

List of Subjects

21 CFR parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803, 804, and 807 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

1. In the revision of part 803 and the amendments to part 807 which were published at 60 FR 63578 (December 11, 1995), the effective date of which was extended until July 31, 1996, at 61 FR 16043 (April 11, 1996), the following provisions are stayed until further notice:

A. §§ 803.3(n)(4), 803.57, and 803.58.

B. The addition of § 807.3(r) and 807.20(a)(6); and

C. The revision of § 807.40.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

2. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

§ 804.30 [Removed]

3. Section 804.30 is removed.

Dated: July 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–18700 Filed 7–19–96; 2:26 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 96N–0241]

RIN 0910–AA09

Medical Devices; Reporting; Certification and U.S. Designated Agents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its regulations for medical device manufacturer certification, and to issue conforming certification requirements for distributors. FDA is also announcing its intent to reconsider the requirement for foreign manufacturers to appoint a U.S. designated agent to perform certain duties under the adverse event reporting final rule that was published in the Federal Register of December 11, 1995. FDA is taking this action in response to comments from industry raising concerns that have not been addressed previously. Elsewhere in this issue of the Federal Register, FDA is announcing a stay of the effective date of the manufacturer certification and U.S. designated agent provisions and the revocation of the May 28, 1992, distributor certification provisions. This proposed rule will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended uses while reducing the regulatory burden on reporting entities.

DATES: Submit written comments by October 7, 1996. FDA intends that any final rule based on this proposal become effective 75 days after publication of the final rule in the Federal Register.

Submit written comments on the collection of information requirements by August 22, 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.

Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

I. Background

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1995 (60 FR 63578), FDA published a final rule (parts 803 and 807 (21 CFR parts 803 and 807)) requiring medical device user facilities and manufacturers to report adverse events related to medical devices under a uniform reporting system (hereinafter referred to as the December 1995 final rule). The December 1995 final rule was scheduled to go into effect on April 11, 1996. On April 11, 1996 (61 FR 16043), FDA announced that OMB had approved the information collection requirements in the final rule; FDA also announced an extension of the effective date of the final rule to July 31, 1996. On May 28, 1992, a distributor adverse event reporting rule became final. This rule went into effect by operation of statute without the benefit of notice and comment.

After the issuance of the December 1995 final rule, FDA received numerous requests for reconsideration of the certification requirements and reconsideration of issues relating to U.S. designated agent requirements. These comments led FDA to meet with the Health Industry Manufacturers Association and several industry representatives on April 19, May 23, and June 13, 1996. During these meetings, issues concerning industry burden and procedures relating to the certification and U.S. designated agent requirements were put forth that had not been considered previously .

To allow further consideration of these issues before implementation, elsewhere in this issue of the Federal Register, FDA is publishing a final rule staying the effective date of the manufacturer certification and U.S. designated agent requirements until the agency issues a new final rule addressing these issues. This final rule also revokes the May 28, 1992, distributor certification provisions to provide uniform manufacturer and distributor certification requirements.

A. Section 803.57—Annual Certification

Section 519(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(d)) (the act) provides that each manufacturer, importer, and distributor shall certify that it did file a certain number of medical device reports (MDR's) in the previous 12 months or it did not file any MDR reports. The final rule (§ 803.57) required manufacturers through their president, chief executive officer (C.E.O.), U.S. designated agent of a foreign manufacturer, or other official most directly responsible for the firm's operations, to certify that they filed MDR's for all reportable events required under the rule for the previous 12 months and a numerical summary of MDR's that they submitted, or that they did not receive any reportable events during the reporting period.

Industry representatives objected to the corporate status of the person required to certify, as well as the content of the certification statement itself. Industry representatives objected to requiring the C.E.O. or president to certify, because, especially in a large company, that person may not be familiar with the details of the MDR reporting program. Industry representatives also objected to the requirement that they certify that they filed reports for all reportable events during the reporting period. Industry representatives objected that this requirement was not supported by the language of section 519(d) of the act and objected to potential liability that may arise from certification that all reportable events had been submitted, if there were unintentional reporting mistakes.

In the December 1995 final rule, FDA required the certification that all MDR reportable events were filed on the basis of the statute's legislative history. The legislative history of section 519(d) of the act states that Congress included this provision on the recommendation of the General Accounting Office (GAO) as an important means of increasing the effectiveness of the MDR system. (See H. Rept. 808, 101st Congress, 2d sess. 23, (1990); S. Rept. 513, 101st Congress, 2d sess. 26, (1990)). The GAO report noted that certain information indicated that a third of the establishments inspected were not even aware that the MDR reporting requirements existed (GAO/PEMD–89–10, ''FDA's Implementation of the Medical Device Reporting Regulation,'' p. 4). The GAO report recommended certification to ensure that all manufacturers and importers be made aware of their obligation to submit MDR's and to identify those firms that were not aware of their obligation (id. at pp. 5 and 69). The legislative history of section 519(d) of the act also cites the GAO report recommendation that the certification state that the reporter filed a specific number of reports and that the firm received or became aware of only these reports (H. Rept. 808, 101st Congress, 2d sess. 23).

FDA believes that its regulation implementing the certification requirements was within the scope of the statutory authority provided in section 519(d) of the act. FDA, however, in response to the comments objecting to the person required to certify and to the content of the certification, has reexamined the certification requirement and believes that the regulation may be revised in a manner that will address the main concerns raised about the regulation and still meet the intent of section 519(d) of the act that will improve MDR efficiency by making firms aware of their reporting obligations under MDR.

FDA designated in the December 1995 final rule that the certifier must be the president, C.E.O., U.S. designated agent, or other official most directly responsible for the firm's operations, in response to a comment to the tentative final rule (56 FR 60024, November 26, 1991) requesting FDA to identify who should certify. FDA now believes, however, based on subsequent comments received, that it may be appropriate for someone other than the president or chief executive officer to sign the certification statement. FDA believes that the proposal suggested by the comments to place this particular responsibility of certification with the same individual in whom the company has already vested overall responsibility for implementing and overseeing its MDR program may be more appropriate than requiring certification by the president or C.E.O. FDA, therefore, is proposing to revise § 803.57 to provide that the manufacturer shall designate, as the certifying official, an individual with oversight responsibilities for, and knowledge of, the firm's medical device reporting system.

This proposal also provides that, based upon its organizational structure, a firm may designate more than one certifying official, each of whom would sign a certification statement for his or her identified organizational component or site. This provision is designed to provide needed flexibility to large companies with more than one operating division or medical device reporting site.

Regarding the content of the certification, FDA is proposing to amend § 803.57 to require that the individual certifying for the firm state that: (1) He/she has read the requirements of the MDR regulation, (2) the firm has established a system to implement medical device reporting; and (3) following the procedures of its medical device reporting system, the firm submitted a specified number of reports, or no reports, during the certification period.

FDA believes that this certification statement is a reasonable application of the intent of section 519(d) of the act. The legislative intent is to improve compliance with the MDR reporting requirements by making responsible persons within medical device companies fully aware of the MDR reporting requirements. This intent may be reasonably accomplished by requiring a responsible company official to certify that: (1) He/she has read the MDR regulation, (2) the company has put in place a system to implement those regulations, and (3) a specified number of MDR reports were submitted during the previous year as a result of its implementation system.

Under proposed § 803.57(a), the dates of certification would remain the same as the December 1995 final rule, i.e., the date of the firm's annual registration. FDA intends that the first certification statement would be due with the first annual registration due at least 6 months after the effective date of the final rule. For example, if the final rule were to become effective in March 1997, the first group of certifications would be due with annual registrations due in September 1997 and would cover a 6-month period. The next group of annual certifications would be due in December 1997 and would cover a 9-month period. Annual certifications due in April 1998 or later would cover a 12-month period. Foreign manufacturers would be required to submit their certification with the annual registration, if they voluntarily register, or in accordance with the schedule in § 807.21(a).

B. Section 803.58—Foreign Manufacturers

Section 803.58 of the December 1995 final rule required that foreign manufacturers designate a U.S. agent to be responsible for reporting under part 803. U.S. designated agents were to be responsible for: (1) Reporting to FDA in accordance with §§ 803.50, 803.52, 803.53, 803.55, and 803.56; (2) conducting, or obtaining from the foreign manufacturer, the necessary information regarding the investigation and evaluation of the event under the requirements of § 803.50; (3) certifying in accordance with § 803.57; (4) forwarding MDR complaints to the foreign manufacturer and maintaining documentation of this requirement; (5) maintaining complaint files in accordance with § 803.18; and (6) registering, listing, and submitting premarket notifications in accordance with part 807.

After the issuance of the December 1995 final rule, manufacturers who began to implement arrangements with U.S. designated agents stated that it was difficult to find individuals willing to take on the duties of a U.S. designated agent and that fees were high for those willing to take on the duties. Manufacturers noted particular concern about the appropriateness of a U.S. designated agent providing certifications related to MDR's and premarket notification requirements because they believed that the U.S. designated agent may not be able to accurately provide such certifications. Moreover, the potential liability associated with certification responsibilities greatly increased the cost of U.S. designated agent services.

In addition to the concerns discussed previously, many other issues relating to the implementation and scope of U.S. designated agent requirements were raised for the first time after the December 1995 final rule. After further internal discussions, FDA decided to stay the effective date of these requirements, as noted elsewhere in this issue of the Federal Register, until further notice and comment proceedings and the issuance of a new rule.

In the interim, foreign manufacturers have a responsibility for compliance with all medical device reporting requirements which will not be affected by the stay of the effective date of the U.S. designated agent requirements. This is because the December 1995 final rule contained a significant change regarding foreign manufacturers. The original MDR regulation that became effective December 13, 1984, applied only to manufacturers that were required to register under part 807. Because foreign manufacturers are not required to register, the 1984 rule did not apply to them. The December 1995 final rule, however, applies to manufacturers regardless of whether they are required to register under part 807. Rather, under § 803.3(n) of the December 1995 final rule, a manufacturer means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. Accordingly, foreign manufacturers clearly fit within the definition of manufacturers who are required to submit MDR's under the December 1995 final rule. Therefore, on July 31, 1996, foreign manufacturers will be fully subject to the same requirements of part 803 applicable to domestic manufacturers. This includes, but is not limited to, the requirements for written procedures (§ 803.17), MDR event files (§ 803.18), individual adverse

event reports (§§ 803.50 and 803.52), five-day reports (§ 803.53), baseline reports (§ 803.55), and supplemental reports (§ 803.56).

The stayed provisions for U.S. designated agents would have required that these functions be performed by a U.S. designated agent on behalf of the foreign firm. Because FDA is staying the effective date of the U.S. designated agent requirement, the full responsibility for reporting is now the obligation of the foreign manufacturer. Beginning July 31, 1996, foreign manufacturers are required to submit MDR reports directly to FDA (except for certification). In addition, existing registration, listing, and premarket notification regulations, which will remain in effect during the stay, permit foreign manufacturers to register (§ 807.40(a)) and submit premarket notifications (§ 807.81) and require them to list their devices. (§ 807.40(b)).

FDA is reconsidering the duties of a U.S. designated agent. As noted in the preamble to the December 1995 final rule, FDA intends to issue a proposed rule to revoke the reporting requirements for distributors, including importers, (part 804 (21 CFR part 804)) and replace them with requirements consistent with the new manufacturer and user facility reporting requirements under part 803. Because importers may be able to play a role, in whole or in part, that was assigned to the U.S. designated agent in the December 1995 final rule, FDA believes that it would be appropriate to address the issue of U.S. designated agents at the same time the agency reproposes requirements for distributors and importers generally.

FDA included the U.S. designated agent requirement in the December 1995 final rule in order to assure that foreign and domestic manufacturers are treated equally and that FDA has access to the same information it has from domestic manufacturers that will enable the agency to protect the public health. To this end, FDA listed certain duties in the December 1995 final rule that a U.S. designated agent would be required to perform as described above. FDA solicits comments on who may best perform these duties and specifically seeks comments on the following points:

1. What person is best situated to perform the following duties that, in the December 1995 final rule, were assigned to the U.S. designated agent on behalf of the foreign manufacturer: (1) Reporting to FDA in accordance with §§ 803.50, 803.52, 803.53, 803.55, and 803.56; (2) conducting, or obtaining from the foreign manufacturer the necessary information regarding the investigation and evaluation of the event under the requirements of § 803.50; (3) certifying in accordance with § 803.57; (4) forwarding MDR complaints to the foreign manufacturer and maintaining documentation of this requirement; (5) maintaining complaint files in accordance with § 803.18; and (6) registering, listing, and submitting premarket notifications in accordance with part 807?

2. Should FDA require a foreign manufacturer to designate a U.S. agent to fulfill the role of an ''official correspondent'' with FDA regarding MDR reporting and other regulatory issues (e.g., product listing)? The intent of this function would be to ensure that FDA can easily contact foreign firms on MDR issues and communicate in English with them, particularly on urgent public health matters.

3. Should FDA require foreign manufacturers to designate a U.S. agent for the purpose of fulfilling their substantive U.S. MDR obligations regarding complaint investigations, reporting, and maintenance of MDR files? The intent of this function would be for FDA to be able to monitor MDR compliance of foreign firms without conducting a costly overseas inspection.

4. Can either of these functions readily be carried out by importers, or by other means, so that foreign manufacturers would not be required to enter into contractual arrangements with new entities?

5. How can these functions be carried out efficiently by foreign manufacturers who distribute devices into the United States by multiple importers, and how can FDA be routinely informed of all importers of a firm annually or on an as needed basis?

Notwithstanding FDA's intent to repropose these requirements, the agency has already tentatively concluded that it should propose that two aspects of the U.S. designated agent regulations be deleted. The first is the requirement for U.S. designated agents to issue the annual certification required under § 803.57. Upon reconsideration, FDA believes it is more appropriate for the foreign manufacturer to issue this certification as proposed in this rule. The other is the requirement for foreign manufacturers to submit premarket notifications (510(k)'s) through U.S. designated agents. Although the agency had hoped this provision would help resolve 510(k) ownership issues regarding foreign manufacturers, FDA is persuaded that the costs imposed by this requirement are not likely to outweigh the possible benefits. FDA solicits comment on its intent to propose to delete these two parts of the U.S. designated agent regulations.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the economic impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 22601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity. The agency believes that the proposed rule is consistent with the principles set out in the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. The proposed rule would apply to all medical device manufacturers and distributors whose devices are sold in the United States. The proposed rule would relieve two regulatory burdens. It would allow the certification statement to be signed by the person most familiar with the MDR program, not necessarily the president or C.E.O. It also changes the certification statement to minimize the possibility of liability as a result of an unintended mistake in reporting. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 2605(b), the Commissioner of Food and Drugs certifies that the proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below along with an estimate of the annual record keeping and periodic reporting burden. Included in the estimate is the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and record keeping requirements for user facilities, distributors, and manufacturers of medical devices under the Safe Medical Devices Act of 1990 and the Medical Device Amendments of 1992 (General Requirements).

Description: This regulation proposes to amend regulations regarding device manufacturer and distributor reporting of deaths, serious injuries, and certain malfunctions related to medical devices. The purpose of these changes is to improve the protection of the public health while also reducing the regulatory burden on reporting entities. The rule amends information collection requirements which have been approved under OMB no. 0910–0059.

Description of Respondents: Businesses or other for profit organizations, nonprofit organizations, Federal, State, and local governments.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.57	12,000	1	12,000	1	12,000
804.30	8,200	1	8,200	1	8,200
Total	20,200		20,000		20,200

There are no capital or operating and maintenance costs expected as a result of this proposal.

Under OMB information collection no. 0910–0059, which expires on February 28, 1999, a total of 187,610 burden hours were approved for collection of information requirements in the December 11, 1995, final rule (60 FR 63578) on medical device user facility and manufacturer reporting, certification and registration. The 12,000 burden hours reported above in Table 1 for § 803.57 were included in that approval and therefore do not affect the total number of approved burden hours. However, the 8,200 burden hours reported in Table 1 for § 804.30 have not previously been considered in an information collection submission to OMB, and do represent an increase in the burden. Therefore, this proposed rule would add 8,200 hours to the existing approved burden and would result in a proposed total annual information collection burden of 195,810 hours (187,610 + 8,200 = 195,810).

Therefore, the agency solicits public comments on the revised information collection requirements in order 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, 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.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of the proposed rule amending parts 803 and 804 to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA. Written comments on the information collections should be submitted by August 22, 1996.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and record keeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 803 and 804 amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, medical device user facilities and manufacturers must report deaths and serious injuries to which a device has or may have caused or contributed, and manufacturers must also report certain device malfunctions. Additionally, user facilities and manufacturers must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

* * * * *

3. Section 803.57 is revised to read as follows:

§ 803.57 Annual certification.

(a) All manufacturers required to report under this section shall submit an annual certification report to FDA, on FDA Form 3381, or electronic equivalent as approved under § 803.14. The date for submission of certification coincides with the date for the firm's annual registration, as designated in § 807.21 of this chapter. Foreign manufacturers shall submit their certification by the date on which they would be required to register under § 807.21 of this chapter if they were domestic manufacturers. The certification period will be the 12-month period ending 1 month before the certification date.

(b) The manufacturer shall designate, as the certifying official, an individual with oversight responsibilities for, and knowledge of, the firm's medical device reporting system. A manufacturer may determine, based upon its organizational structure, that one individual cannot oversee or have

complete knowledge of the operation of the reporting system at all organizational components or manufacturing sites owned by the firm. In this circumstance, the firm may designate more than one certifying official, each of whom will sign a certification statement pertaining to their respective identified organizational component(s) or site(s).

(c) The report shall contain the following information:

(1) Name, address, telephone number, and FDA registration number or FDA-assigned identification number of the reporting site and whether the firm is a manufacturer;

(2) Name, title, address, telephone number, signature, and date of signature of the person making the certification;

(3) Name, address, and FDA registration number of each manufacturing site covered by the certification and the number of reports submitted for devices manufactured at each site;

(4) A statement certifying that:

(i) The individual certifying for the firm has read the MDR requirements under part 803;

(ii) The firm has established a system to implement medical device reporting; and

(iii) Following the procedures of its medical device reporting system, the reporting site submitted the specified number of reports, or no reports, during the 12-month certification period.

(d) The name of the manufacturer and the registration number submitted under paragraph (c)(1) of this section shall be the same as the reporting site that submitted the reports required by §§ 803.52, 803.53 and 803.55. Multi-reporting site manufacturers who choose to certify centrally must identify the reporting sites, by registration number or FDA-assigned identification number and name covered by the certification, and provide the information required by paragraph (c)(2) and (c)(3) of this section for each reporting site.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

4. The authority citation for part 804 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

5. Part 804 is amended by adding new § 804.30 to read as follows:

§ 804.30 Annual certification.

(a) Distributors required to report under this section shall submit an annual certification report to FDA on form FDA 3381, or electronic equivalent as approved under § 803.14 of this chapter. The date for submission of certification coincides with the date for the firm's annual registration as designated in § 807.21 of this chapter. This certification period will be the 12-month period ending 1 month before the certification date.

(b) The distributor shall designate, as the certifying official, an individual with oversight responsibilities for, and knowledge of, the firm's medical device reporting system. A distributor may determine, based upon its organizational structure, that one individual cannot oversee or have complete knowledge of the operation of the reporting system at all organizational components or distribution sites owned by the firm. In this circumstance, the firm may designate more than one certifying official (one for each component or site), each of whom will sign a certification statement pertaining to their respective identified organizational component(s) or site(s).

(c) The report shall contain the following information:

(1) Name, address, telephone number, and FDA registration number or FDA assigned identification number of the firm;

(2) Name, title, address, telephone number, signature, and date of signature of the person making the certification;

(3) Name, address, and FDA registration number of the distributor covered by the certification and the number of reports submitted for devices distributed by the distributor;

(4) A statement certifying that;

(i) The individual certifying for the firm has read the MDR requirements under part 804;

(ii) The firm has established a system to implement medical device reporting; and,

(iii) Following the procedures of its medical device reporting system, the firm submitted the specified number of reports, or no reports, during the 12-month certification period.

Dated: July 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Food and Drug Administration

Medical devices:

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Manufacturer certification and U.S. designated agent provisions effective date stayed and distributor reporting certification requirement revoked; published 7-23-96

JUSTICE DEPARTMENT

Justice Programs Office

State criminal illegal alien States assistance program regulations; CFR part removed; published 7-23-96

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Aged, blind, and disabled--

Social Security Independence and Program Improvements Act, et al.; overage provisions; published 7-23-96

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Alcohol, Tobacco and Firearms Bureau

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Commerce in explosives

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Agricultural Marketing Service

Onions (sweet) grown in Washington and Oregon; comments due by 7-30-96; published 7-15-96

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Animal and Plant Health Inspection Service

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AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

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National Oceanic and Atmospheric Administration

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DEFENSE DEPARTMENT

Army Department

Military traffic management:

Motor common carriers of perishable subsistence and bulk fuel; cargo insurance requirements; comments due by 7-29-96; published 6-27-96

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Federal Acquisition Regulation (FAR):

Final indirect cost rates; comments due by 7-29-96; published 5-28-96

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Educational research and improvement:

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ENERGY DEPARTMENT

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Electric utilities (Federal Power Act):

Capacity reservation open access transmission tariffs; comments due by 8-1-96; published 5-10-96

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Food and Drug Administration

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Workplace drug and alcohol testing programs--
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