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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 96–ACE–12]

Amendment to Class E Airspace, Knob Noster, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Whiteman AFB, Knob Noster, MO. A review of military Standard Instrument Approach Procedures (SIAP) requires an increase in the size of controlled airspace from 6 miles to 7 miles in order to contain Instrument Flight Rules (IFR) operations at Whiteman AFB. The effect of this rule is to provide additional controlled airspace for aircraft executing the SIAPs at Whiteman AFB.

DATES: Effective date: December 5, 1996.

Comment date: Comments must be received on or before September 20, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–12, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has reviewed the controlled airspace at Whiteman AFB, Knob Noster, MO. The existing 6-mile radius area is not sufficient to contain IFR operations at Whiteman AFB. The amendment to Class E airspace at Knob Noster, MO, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federa Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—AMENDED

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE MO E5 Knob Noster, MO [Revised]

Knob Noster, Whiteman AFB, MO
(lat. 38°43′49″ N., long. 93°32′53″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Whiteman AFB and within 1.8 miles each side of the Whiteman ILS localizer south course, extending from the 7-mile radius to 9.7 miles south of the AFB.

* * * * *

Issued in Kansas City, MO, on July 23, 1996.

Jack L. Skelton,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 96–20005 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Docket No. 96–ACE–6]

Amendment to Class E Airspace, Boone, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule amends the Class E airspace area at Boone Municipal Airport, Boone, IA. The effect of this rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at Boone Municipal Airport and departing aircraft to transition into controlled airspace.

EFFECTIVE DATE: 0901 UTC August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64016, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on June 11, 1996 (61 FR 29472). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 30, 1996. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on July 16, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–20004 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 96–ACE–10]

Amendment to Class E Airspace, Seward, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Seward Municipal Airport, Seward, NE. The Federal Aviation Administration has developed Standard Instrument Approach Procedures (SIAP) based on the Non-directional Radio Beacon (NDB) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at Seward Municipal Airport.

DATES: Effective date: October 25, 1996.

Comment date: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–10, 601 East 12th ST., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Non-Directional Radio Beacon (NDB) at Seward Municipal Airport, Seward, NE. The amendment to Class E airspace at Seward, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or

negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–10.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—AMENDED

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE NE E5 Seward, NE [Revised]

Seward Municipal Airport, NE
(Lat. 40°51′55″ N., long. 97°06′34″ W.)
Seward NDB
(Lat. 40°51′54″ N., long. 97°06′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Seward Municipal Airport and within 4 miles each side of the 166° bearing from the Seward NDB extending from the 6.4-mile radius to 14 miles southeast of the NDB and 4 miles each side of the 359° bearing from Seward NDB extending from the 6.4-mile radius to 13 miles north of the NDB.

* * * * *

Issued in Kansas City, MO, on July 16, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 96–20003 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–11]

Amendment to Class E Airspace, Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Sioux Gateway Airport, Sioux City, IA. The Federal Aviation Administration has developed Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) and the Non-directional Radio Beacon (NDB) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at Sioux Gateway Airport.

DATES: Effective date: October 25, 1996.

Comment date: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–11, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An formal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) and the Non-directional Radio Beacon (NDB) at the Sioux Gateway Airport, Sioux City, IA. The amendment to Class E airspace at Sioux City, IA, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieve by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–11.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.).

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE IA E5 Sioux City, IA [Revised]

Sioux City, Sioux Gateway Airport, IA
(lat. 42°24′09″ N., long. 96°23′04″ W.)
Sioux City VORTAC
(lat. 42°20′40″ N., long. 96°19′25″ W.)
Gateway NDB
(lat. 42°24′29″ N., long. 96°23′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sioux Gateway Airport and within 3 miles each side of the 139° degree radial of the Sioux City VORTAC extending from the 7-mile radius to 17.8 miles southeast of the VORTAC and within 3 miles each side of the 319° radial of the Sioux City VORTAC extending from the 7-mile radius to 25.3 miles northwest of the VORTAC and 2 miles each side of the 260° bearing from the Sioux Gateway Airport extending from the 7-mile radius to 9.2 miles north of the airport.

* * * * *

ACE IA E4 Sioux City, IA [Revised]

Sioux City, Sioux Gateway Airport, IA

(lat. 42°24′09″ N., long. 96°23′04″ W.)
Sioux City VORTAC
(lat. 42°20′40″ N., long. 96°19′25″ W.)
Gateway NDB
(lat. 42°24′29″ N., long. 96°23′09″ W.)

That airspace extending upward from the surface within 2.2 miles each side of the 140° radial of the Sioux City VORTAC extending from the 4.3-mile radius of the Sioux Gateway Airport to 5.3 miles southeast of the VORTAC and 2.5 miles each side of the 170° bearing from the Gateway NDB extending from the 4.3-mile radius of the Sioux Gateway Airport to 7 miles south of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on July 16, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 96–20002 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 97]

Staff Accounting Bulletin No. 97

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this staff accounting bulletin express the views of the staff regarding the inappropriate application of Staff Accounting Bulletin No. 48, *Transfers of Nonmonetary Assets by Promoters or Shareholders,* to purchase business combinations consummated just prior to or concurrent with an initial public offering, and the identification of an accounting acquirer in accordance with APB Opinion No. 16, *Business Combinations,* for purchase business combinations involving more than two entities.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Heckler, Office of the Chief Accountant (202–942–4400), or Douglas Tanner, Division of Corporation Finance (202–942–2960), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: July 31, 1996.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 97 to the table found in Subpart B.

Staff Accounting Bulletin No. 97

The staff hereby adds Item 8 and Question 2 to Item 2 to Section A of Topic 2 of the Staff Accounting Bulletin Series. Item 8 of Topic 2:A provides guidance regarding the applicability of SAB No. 48 to purchase business combinations just prior to or concurrent with an initial public offering. Question 2 of Topic 2:A(2) provides the staff's views regarding the identification of an accounting acquirer in a business combination involving more than two entities.

TOPIC 2: BUSINESS COMBINATIONS

* * * * *

A. Purchase Method

* * * * *

8. Business Combinations Prior to an Initial Public Offering

Facts: Two or more businesses combine in a single combination just prior to or contemporaneously with an initial public offering.

Question 1: Does the guidance in SAB Topic 5:G (SAB No. 48) apply to business combinations entered into just prior to or contemporaneously with an initial public offering?

Interpretive Response: No. The guidance in SAB Topic 5:G is intended to address the transfer, just prior to or contemporaneously with an initial public offering, of nonmonetary assets in exchange for a company's stock. The guidance in SAB Topic 5:G is not intended to modify the requirements of APB Opinion No. 16, ''Business Combinations'' (APB Opinion 16).[1] Accordingly, the staff believes that the combination of two or more businesses should be accounted for in accordance with APB Opinion 16 and its interpretations.[2]

Paragraphs 46 through 48 of APB Opinion 16 specify the conditions that must be met for a business combination to be recorded using the pooling-of-interests method of accounting. If the business combination fails to meet any of the conditions for the pooling-of-interests method of accounting, APB Opinion 16 requires the combination to be recorded as the acquisition of one or more entities by an acquiring entity using the purchase method.[3]

* * * * *

2. Determination of the Acquiring Corporation

* * * * *

Question 2

Facts: Three or more substantive operating entities combine in a single business combination effected by the issuance of stock. The combination occurs just prior to or contemporaneously with an initial public offering and does not meet the criteria in APB Opinion No. 16, ''Business Combinations,'' (APB Opinion 16) for the application of the pooling-of-interests method of accounting.[1]

Question: In the staff's view, does APB Opinion 16 require the identification of an acquirer when three or more entities combine in a single transaction accounted for using the purchase method of accounting?

Interpretive Response: Yes. The staff believes that APB Opinion 16 requires the identification of the acquiring entity for all business combinations that are

[1] The provisions of APB Opinion 16 apply to transactions involving the transfer of net assets as well as the acquisition of stock of a corporation. This guidance does not address the accounting for joint ventures or leveraged buy-out transactions as discussed in EITF Issue No. 88–16.

[2] Except as otherwise provided below, the staff will expect the provisions of this SAB to be applied by registrants in all filings with the Commission subsequent to the publication of this guidance. The staff is aware that accounting practices regarding the application of SAB Topic 5:G to business combinations have varied in previous filings with the Commission. Accordingly, the staff generally will not object to the application of the guidance in SAB Topic 5:G to business combinations entered into just prior to, or contemporaneously with, an initial public offering for which merger agreements were executed by all of the combining companies prior to the publication of this guidance and the initial public offering is filed with the Commission prior to September 30, 1996.

[3] AICPA Accounting Interpretation No. 38 of APB Opinion 16 states, ''when more than two companies negotiate a combination which is contingent upon the mutual agreement by the several companies to the terms, the resulting combination is deemed to be a single business combination regardless of the number of companies involved. Each company must meet all of the conditions of paragraphs 46–48 if the combination is to be accounted for by the pooling of interest method. . .if any condition in paragraphs 46–48 is not met by any company, the entire combination would be accounted for by the purchase method.''

[1] See AICPA Accounting Interpretation No. 38 of APB Opinion 16.

required to be accounted for using the purchase method of accounting.

When more than two entities are involved in a purchase business combination, the identification of the acquiring entity may require rigorous analysis when no single former shareholder group obtains more than 50 percent of the outstanding shares of the new entity following the transaction. APB Opinion 16 states, ''presumptive evidence of the acquiring corporation in combinations effected by an exchange of stock is obtained by identifying the former common shareholder interests of a combining company which either retain or receive the larger portion of the voting rights in the combined corporation.'' [2] Thus, even when no single former shareholder group of the combining entities individually obtains more than a 50 percent ownership interest in the new combined entity, the staff believes that the shareholder group receiving the largest ownership interest in the combined company should be presumed to be the acquirer unless objective and verifiable evidence rebuts that presumption and supports the identification of a different shareholder group as the acquirer for accounting purposes.[3]

[FR Doc. 96–19901 Filed 8–5–96; 8:45 am]

BILLING CODE 8010–01–P

[2] APB Opinion 16, paragraph 70.

[3] The accounting acquirer should provide its financial statements for the periods specified in Rules 3–01 and 3–02 of Regulation S–X. The financial statements of each individually significant acquired company should be presented pursuant to the requirements of Rule 3–05 of Regulation S–X and SAB No. 80. The presentation of pre-acquisition combined financial statements of the accounting acquirer and the acquired companies is not appropriate for a transaction that is not accounted for using the pooling-of-interests method.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM96–15–000]

Annual Update of Filing Fees

July 31, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This document provides the yearly update using data in the Commission's Payroll Utilization Reporting System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 1995.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT:

John Sotelo, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42–69, Washington, D.C. 20426, (202) 219–2927.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–(800) 856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 144000, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

The Federal Energy Regulatory Commission (Commission) by its designee the Executive director and Chief Financial Officer[1] is issuing this notice to update filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 1995 costs. The adjusted fees announced in this notice are effective September 5, 1996. The new fee schedule is as follows:

[1] 18 CFR 375.313(a).

Fees Applicable to the Natural Gas Policy Act:	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$6,370
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	12,790
2. Review of a Department of Energy remedial order:	
Amount in Controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	18,680
3. Review of a Department of Energy denial of adjustment:	
Amount in Controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	9,790
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	3,670
Fees Applicable to Natural Gas Pipelines:	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	1,000
Fees Applicable to Cogenerators and Small Power Producers:	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	11,000
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	12,450
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	1,670

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing ''$11,550'' and adding ''$12,790'' in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing ''$16,860'' and adding ''$18,680'' in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing ''$8,840'' and adding ''$9,790'' in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing ''$3,310'' and adding ''3,670'' in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing ''$5,740'' and adding ''$6,370'' in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing ''$9,930'' and adding ''$11,000'' in its place and by removing ''$11,240'' and adding ''$12,450'' in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing ''$1,020'' and adding ''$1,670'' in its place.

[FR Doc. 96–19928 Filed 8–5–96; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 29

[OJP No. 1081]

RIN 1121–AA38

Motor Vehicle Theft Prevention Act Program Regulations

AGENCY: Office of Justice Programs, Bureau of Justice Assistance. Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Justice Assistance is publishing a Final Rule to implement the Motor Vehicle Theft Prevention Act of 1994 (MVTPA) by issuing regulations to establish a national voluntary motor vehicle theft prevention program. A Proposed Rule for public comment was published in the Federal Register on October 24, 1995. Under this program, motor vehicle owners may sign a consent form and obtain a program decal authorizing law enforcement officers to stop their motor vehicle if it is being driven under certain specified conditions, and take reasonable steps to determine whether the vehicle is being operated with the owner's consent. There are two program conditions proposed in this rule. Under the first condition, the owner may consent to have the car stopped if it is operated between the hours of 1:00 a.m. and 5:00 a.m. Under the second condition, the owner may consent to have the car stopped if it crosses, is about to cross, or about to be transported across a United States land border, or if it enters a port. States and localities may elect to participate in the program solely at their option. The MVTPA grants the Attorney General authority to establish additional conditions so long as consent from program participants is obtained and a separate design for program decals is provided.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Greg Morris, Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, N.W., Room 1086D, Washington, D.C. 20531. (202) 616–3458.

SUPPLEMENTARY INFORMATION: Section 220001 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 2074, codified at 42 U.S.C. 14171, contains the Motor Vehicle Theft Prevention Act (MVTPA). The MVTPA requires the Attorney General to establish a national voluntary motor vehicle theft prevention program. The Attorney General has delegated the authority to establish such a program to the Assistant Attorney General for the Office of Justice Programs. The Assistant Attorney General for the Office of Justice Programs has delegated the authority and responsibility for the management and administration of the program to the Director of the Bureau of Justice Assistance.

Under this program, automobile owners may voluntarily sign a consent form and obtain a program decal that authorizes law enforcement officers to stop the motor vehicle if it is being operated under certain specified conditions and take reasonable steps to determine whether the vehicle is being operated with the owner's consent. Participation in this program is completely voluntary on the part of the vehicle owner and State and local governments.

A Proposed Rule with request for comments was published in the Federal Register on October 24, 1995. 60 FR 54459. The following is a summary of the comments received before the comment period closed on December 26, 1995.

The California Department of the Highway Patrol raised the following concerns: (1) Whether an officer has probable cause to stop a vehicle displaying a decal; (2) the ease with which a thief can remove a decal; (3) the necessity for extensive public awareness campaigns; and (4) the transferability or renewal of a decal from one vehicle to another.

The Department of Justice takes the position that under section § 29.8 of the rule, *Motor vehicle owner participation*, the owner of the vehicle has already granted permission to law enforcement officials to stop the vehicle if it is being operated under the specified conditions. It is also the owner's responsibility to advise any other user of the vehicle that they are subject to being stopped by law enforcement officials under specified conditions.

BJA intends to use a tamper-resistant, unobtrusive front window decal to be applied on the inside of the glass directly above the inside rear-view mirror. In the event that state or local regulations preclude placing a decal there, it may be placed on the lower right side. For the rear window, a tamper-resistant decal shall be placed on the exterior side of the glass along the lower left side. The decision to place the rear window decal on the outside face of the glass is due to the wide spread use of tinted glass, and to minimize the adverse effects from use of rear window defogger units.

BJA intends to use state-of-the-art, retroreflective sheeting paper in the manufacture of its decals which will result in the decal being luminescent and easily discernible at night when either direct or indirect light is cast upon it. This feature would have been compromised had the decal been placed on the interior side of tinted glass.

Secondly, the heat generated by a rear window defogger sometimes results in the loosening of stickers applied on the interior face of the glass. The removal of such stickers by scraping with a sharp object can result in damage to the defogger heating filaments embedded near the interior face of the glass.

For those vehicles that are convertibles or have removable tops, the rear window decal can be applied to the left side of the rear bumper.

The main purposes of the MVTPA Program is to create additional, time-consuming impediments for thieves, and to create a mechanism for law enforcement to proactively investigate auto theft before a stolen vehicle report is filed with the authorities.

The MVTPA Program compels a thief to remove a tamper-resistant bumper sticker while they are alongside the

vehicle, acting suspiciously and drawing attention to themself. The thief must then gain access to the vehicle and arouse even greater suspicion by scraping from the interior of the windshield, a second, tamper-resistant, decal(s). These additional impediments, in addition to other theft prevention devices such as an steering wheel locks, increase the number of hurdles a thief must overcome and raise the deterrence threshold.

A significant number of auto thefts are committed during the early morning hours when the owners are asleep and unaware that their vehicles have been stolen. In many instances, a stolen car can be driven to a chop shop or driven across state lines before the owner awakens to discover the theft. The MVTPA Program allows police to proactively investigate auto theft before a stolen vehicle report is made by stopping those vehicles which are not normally driven during the early morning hours, or operated near to an international land border or port.

Additionally, some states maintain an additional computerized data base of vehicles enrolled in MVTPA-type programs which are instantly accessible to law enforcement at all times. Thus, if a thief has removed the vehicle's decals and while driving, arouses the suspicion of a police officer on patrol, that officer can access a computerized data base to not only check whether the vehicle has been reported as stolen, but also verify that the owner of the vehicle has enrolled the car in the MVTPA Program and that decals *should* be affixed to the vehicle. The absence of decals would heighten the officer's suspicion that the vehicle had been stolen.

As the MVTPA Program eventually expands into a nationwide program, BJA will begin a national public awareness campaign to both inform the public and publicize the Program. However, since the MVTPA will originate in a few selected states, BJA will focus its initial public awareness efforts on corroborative efforts with the respective state automobile theft prevention authorities to publicize their program statewide.

Section 29.10 and 29.11 respectively address the issues of owners withdrawing from the program, and the sale or transfer of the enrolled vehicle. In both instances the owner is required to completely remove the program decals, change the license plate if necessary, and is encouraged to notify the participating agency in writing.

The Illinois Motor Vehicle Theft Prevention Council questioned whether a registration fee would be required and who would be responsible for its payment. The Bureau of Justice Assistance will defer to the participating states and localities on the question of fees charged to owners for registration and materials such as decals, stickers, emblems and license plates.

The Council also expressed concern over the size and design of the emblems, decals, stickers and devices. Section 29.3 of the Final Rule has been amended to task the Bureau of Justice Assistance with the responsibility of creating a standard, universally recognizable MVTPA reflective emblem, icon, stickers and or decal. The size and design of the front windshield decal will make them readily identifiable to a person standing a short distance away. The rear window decal or sticker will be readily identifiable to a person traveling in a vehicle at a safe distance behind.

The Council and other respondents raised concern regarding the maintenance of a computerized registry of participants. BJA fully supports the use of computerized state registries and has further amended the rule to provide states the flexibility of adopting the design of the icon or emblem into the manufacture of optional, vehicular license plates which would have to specifically requested by vehicle registrants. BJA believes that specialized license plates would be preferable to emblems or decals in the long-term. States can facilitate public awareness campaigns through the distribution of customized license plates and track their transferability.

Additionally, the Council noted that the design of the consent forms should be specified, and questioned whether unreasonable requirements may be placed on vehicle owners. Section 29.3 has been amended to require BJA to produce a model consent and registration form. The requirements will be clearly specified on such forms and section 29.13 prohibits the addition of new conditions without the owner's consent.

Finally, the Council expressed some concern that a national registration program would draw state registrants from Illinois' Beat Auto Theft (BAT) Program, creating duplication and necessitating retraining of public employees already familiar with BAT. However, the Council conceded that the advantages of a uniform, nation-wide program outweigh the temporary disadvantages of duplication and retraining while states with their own programs make the transition to the national program.

The National Automobile Dealers Association (NADA) wrote to request that new and used auto dealerships be included in the program. Whereas BJA supports dealership decal registration programs in which states supply dealerships with an inventory of decals to be attached to vehicles on an as needed basis, BJA wishes to avoid micro management of states' programs. BJA has not included such dealership programs as a provision of the final regulation, but has revised the definition of the term ''owner'' in § 29.2 to include them. States and/or localities may elect to participate in the program by requesting program enrollment materials from BJA and by following the program requirements set forth in guidelines. BJA further notes that the previously cited option of utilizing license plate registration would not only better facilitate state record keeping, it would also enable automobile dealers to use special dealer license plates instead of constantly applying and removing decals.

NADA also suggested that Department of Justice abandon the current proposed time frame (1:00 a.m. to 5:00 a.m.) in favor of a time frame more conducive to the operation of automobile dealerships, such as 10:00 p.m. to 7:00 a.m. This recommendation has been rejected on the grounds that it would place an inordinate burden on participating motorists by exposing them to traffic stops between the hours of 10:00 p.m. and 1:00 a.m., and would place an extraordinary burden on commuters who must leave home before 7:00 a.m to reach the workplace. In response to NADA's suggestion that states adopt criminal penalties for illegally tampering or removing decals, BJA notes that the MVPTA already imposes Federal sanctions for those who with the intent to steal, remove, deface, or obstruct a MVPTA decal, emblem or sticker. The Act also imposes a criminal fine for the unauthorized application of a theft prevention decal or device.

The MVTPA requires, as a condition of participation, that each State or locality agrees to take reasonable steps to ensure that law enforcement officials throughout its jurisdiction are familiar with the program, and with the conditions under which motor vehicles may be stopped. Participating states and/or localities are free to choose one or more of the program conditions established under this rule, and, therefore, need not authorize their law enforcement officers to stop motor vehicles under all the conditions specified hereunder in order to participate.

Participation in this program on the part of states and/or localities is completely voluntary, and participating jurisdictions may withdraw from the

program at any time by sending written notification to BJA.

The adoption of a universally recognizable MVTPA emblem or icon was prompted by comments received expressing concern over the lack of uniformity as various states devise their own emblems and decals; the transferability of decals from one vehicle to another; the ability of states to track participation in the program by integrating it with automobile registration systems; the need for public awareness campaigns; removal of decals by thieves; and a desire to implement a uniform national program to encourage participation by current nonparticipating states and localities.

This program is a Federal program that operates separately from any existing State and local motor vehicle theft prevention program. It is not intended to preempt existing State or local laws or programs. Likewise, this program is not intended to preclude states or localities from setting up their own programs with different or additional conditions. Participating owners also should be notified of the State or locality's decision to terminate the program.

Sections 29.8 through 29.12 of the rule explain how an owner in a participating jurisdiction may enroll his or her automobile in the program and the responsibilities that accompany participation. In order to enroll, the owner of the vehicle must sign a program consent form and register his or her vehicle with a participating State or locality. By signing the consent form, the owner states that his or her vehicle is normally not operated under certain specified conditions and consents to have the automobile stopped if participating law enforcement officials see the car operated under these conditions. Additionally, in those instances where states do not issue special license plates, the owner agrees to display the program decal on his or her vehicle. For each of the conditions, the owner must give consent and affix a separate decal.

Section 29.9 requires any person who is in the business of renting or leasing motor vehicles that bear a program decal to notify the person to whom the motor vehicle is rented or leased of the program prior to transferring possession of the vehicle. Failure to provide such notice to a renter or lessee may result in the assessment of a civil penalty of an amount not to exceed $5,000. The Assistant Attorney General of the Civil Division, or his or her designee, shall have the responsibility to enforce the civil penalties hereunder.

Initially, the program will have two sets of conditions. Under the first condition, the owner may consent to have the car stopped if it is operated between the hours of 1:00 a.m. and 5:00 a.m. Under the second condition, the owner may consent to have the car stopped if it crosses, is about to cross, or is about to be transported across a United States land border, or if it enters a port. The rule establishes a one-mile limit within which states or localities may enforce the border provision. The one-mile limit is intended to give participating jurisdictions flexibility to implement the program in a manner most suitable to local conditions. However, jurisdictions are strongly encouraged to establish the boundary close to the border for enforcement purposes without disrupting traffic.

The early morning and border crossing conditions have been used successfully in existing State and local programs. The port provision is not, to BJA's knowledge, currently employed in any jurisdiction but has been included in these proposed regulations because many states, police departments, prosecutors, and industry representatives have expressed an interest in methods to reduce stolen vehicles transported through ports.

The MVTPA authorizes the Attorney General to add conditions to the program only with the consent of the vehicle owner. Accordingly, after the program has begun, new conditions under which a vehicle may be stopped may be added to an existing program only if the owner consents to the new condition or conditions.

At this time, based on consultations with State and local law enforcement organizations, prosecutors, and private industry representatives, the Department of Justice intends to implement the MVTPA with the two basic program conditions outlined above, limited to operation of a vehicle between 1:00 a.m. and 5:00 a.m., and operation or transport of a vehicle across a United States land border or into a United States port.

In accordance with 5 U.S.C. 605(b), the Director of the Bureau of Justice Assistance certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a significant regulatory action under Executive Order No. 12866, and therefore, this rule has not been reviewed by the Office of Management and Budget. This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Regulatory Flexibility Act

The Director of the Bureau of Justice Assistance, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. Motor vehicle owners, State, and localities may elect to participate in this program solely at their option. This rule sets forth conditions under which such parties may participate but does not impose any fees. The Bureau of Justice Assistance defers to the participating States and localities on the question of whether fees will be charged to owners for registration and materials such as decals, stickers, emblems, and license plates.

List of Subjects in 28 CFR Part 29

Administrative practice and procedure, Authority delegations, Crime, Highways and roads, International boundaries, Law enforcement, Motor vehicles, Organization and functions (Government agencies), Searches.

Accordingly, under the authority delegated by the Attorney General to the Bureau of Justice Assistance, title 28 of the Code of Federal Regulations is amended by adding part 29 to read as follows:

PART 29—MOTOR VEHICLE THEFT PREVENTION ACT REGULATIONS

Sec.
29.1 Purpose.
29.2 Definitions.
29.3 Administration by the Bureau of Justice Assistance.
29.4 Election to participate by states and localities.
29.5 Notification of law enforcement officials.
29.6 Limited participation by states and localities permitted.
29.7 Withdrawal from the program by states and localities.
29.8 Motor vehicle owner participation.
29.9 Motor vehicles for hire.
29.10 Owner withdrawal from the program.
29.11 Sale or other transfer of an enrolled vehicle.
29.12 Specified conditions under which stops may be authorized.
29.13 No new conditions without consent.

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 14171.

§ 29.1 Purpose.

(a) The purpose of this part is to implement the Motor Vehicle Theft Prevention Act, 42 U.S.C. 14171, which requires the Attorney General to develop, in cooperation with the states, a national voluntary motor vehicle theft

prevention program. The program will be implemented by states and localities, at their sole option.

(b) Under this program, individual motor vehicle owners voluntarily sign a consent form in which the owner

(1) Indicates that the identified vehicle is not normally operated under certain specified conditions and

(2) Agrees to display a program decal or license plate on the vehicle and to permit law enforcement officials in any jurisdiction to stop the motor vehicle if it is being operated under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

(c) The regulations set forth in this part establish the conditions under which an owner may consent to having his or her vehicle stopped and the manner in which a State or locality may elect to participate.

§ 29.2 Definitions.

For the purposes of this part:

(a) ''The Act'' or ''the MVTPA'' means the Motor Vehicle Theft Prevention Act.

(b) ''Owner'' means the person or persons whose name(s) appear(s) on the certificate of title or to whom the car is registered. In the instance of a new vehicle awaiting sale or lease or in the instance of a used vehicle where the title has been assigned to a dealership, the term ''owner'' shall be construed to mean new and used automobile dealerships.

(c) ''The Program'' refers to the National Voluntary Motor Vehicle Theft Prevention Program implemented pursuant to the Motor Vehicle Prevention Act.

§ 29.3 Administration by the Bureau of Justice Assistance.

The Director of the Bureau of Justice Assistance shall administer this Program and shall issue guidelines governing the operational aspects of it, including the design and production of a standardized, universally recognizable MVTPA reflective decal, as well as model consent and registration forms.

§ 29.4 Election to participate by states and localities.

(a) Any State or locality that wishes to participate in the program shall register with the BJA and request program enrollment materials. Registration forms will be available upon request. Participation in the program is wholly voluntary on the part of the State or locality.

(b) By electing to participate in the program, a State or locality agrees to do the following:

(1) Make program enrollment materials, including consent forms, available to interested motor vehicle owners;

(2) Collect completed consent forms;

(3) Provide enrolled motor vehicle owners with the decal(s), and license plate(s) applicable to their program condition or conditions and instructions governing program participation;

(4) Take the necessary steps to authorize law enforcement officials to stop motor vehicles enrolled in the program; and

(5) Comply with any other regulation(s) or guideline(s) governing participation in this program.

§ 29.5 Notification of law enforcement officials.

In addition to the actions enumerated in § 29.4(b), as a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials under its jurisdiction are familiar with the program and with the conditions under which motor vehicles may be stopped.

§ 29.6 Limited participation by states and localities permitted.

A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

§ 29.7 Withdrawal from the program by states and localities.

Any participating State or locality may withdraw from the program at any time by sending written notification to BJA and by notifying participating owners individually by mail of the decision to withdraw.

§ 29.8 Motor vehicle owner participation.

In order to participate in this program, the owner(s) of a motor vehicle must sign a program consent form and register with a participating State or locality. If the vehicle is registered to more than one person, both owners must sign the consent form. By enrolling in the federal program, the owner(s) of the motor vehicle—

(a) State(s) that the vehicle is not normally operated under the specified conditions; and

(b) Agree(s) to:

(1) Display the program decals or devices on the owner's vehicle;

(2) Permit law enforcement officials in any State or locality to stop the motor vehicle if the vehicle is being operated under the specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner;

(3) Expressly advise any borrower of the vehicle of the existence of this agreement, and that such user will be subject to being stopped by law enforcement officials if the vehicle is being operated under the specified condition(s) even if the officials have no other basis for believing the vehicle is being operated unlawfully; and

(4) Comply with any other regulation(s) or guideline(s) governing participation in this program.

§ 29.9 Motor vehicles for hire.

(a) Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall notify the person to whom the motor vehicle is rented or leased about the program, prior to transferring possession of the vehicle.

(b) The notice required by this section shall be printed in bold type in the rental or lease agreement, and on the envelope in which the rental agreement is placed. The notice provision in the rental or lease agreement must utilize a larger font than the standard type in the agreement. The notice must state that the motor vehicle may be stopped by law enforcement officials if it is operated under the conditions specified by the program in which the car is enrolled even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

(c) Failure to provide the notice required by this section to a renter or lessee may result in the assessment of a civil penalty by the Assistant Attorney General, Civil Division, or his or her designee, of an amount not to exceed $5,000. No penalty shall be assessed unless the person charged has been given notice and an opportunity for a hearing of such charge.

§ 29.10 Owner withdrawal from the program.

An owner may withdraw from the program at any time by completely removing the program decal and changing the license plate if necessary. The owner is also encouraged to notify the participating agency in writing of such withdrawal.

§ 29.11 Sale or other transfer of an enrolled vehicle.

Upon the transferral of ownership of an enrolled vehicle, the transferring owner must completely remove the program decals, change the license plate(s) if necessary, and is encouraged to notify the participating agency in writing of the transfer of ownership of the vehicle.

§ 29.12 Specified conditions under which stops may be authorized.

A motor vehicle owner may voluntarily enroll his or her vehicle(s) and give written consent to law enforcement official to stop the vehicle if it is being operated under any or all the conditions set forth in this section. For each condition, the owner(s) must grant consent and affix a separate decal, device, or license plate.

(a) *Time.* A motor vehicle owner may authorize law enforcement officers to stop the enrolled vehicle if it is being operated between the hours of 1:00 AM and 5:00 AM. By enrolling in a program with this condition, the owner must state that the vehicle is not normally operated between the specified hours, and that the owner understands that the operation of the vehicle between those hours provides sufficient grounds for a law enforcement officer to reasonably believe that the vehicle is not being operated by or with the consent of the owner, even if the law enforcement official has no other basis for believing that the vehicle is being operated unlawfully.

(b) *Border crossing or port entry.* A motor vehicle owner may authorize law enforcement officers to stop the enrolled vehicle if it crosses, is about to cross or is about to be transported across a United States land border, or if it enters a United States port. For purposes of this section, the phrase ''about to cross a United States land border'' means the vehicle is operated or transported within one mile of a United States land border. Participating States or localities may implement this provision in accordance with local conditions, provided that a participating State or locality may not extend the applicable geographic area beyond one mile from the United States land border. By enrolling in a program with this condition, the owner must state that the vehicle is not normally driven across a border or into a port, and that the owner understands that the operation or transport of the vehicle within a mile of a United States land border or into a port provides sufficient grounds for a law enforcement officer to believe that the vehicle is not being operated by or with the consent of the owner even if the law enforcement officer has no other basis for believing that the vehicle is being operated unlawfully.

§ 29.13 No new conditions without consent.

After the program has begun, new conditions under which a vehicle may be stopped may only be added to an existing program if the owner consents to the new condition or conditions.

Dated: July 30, 1996.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 96–19778 Filed 8–5–96; 8:45 am]

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28 CFR Part 90

[OJP No. 1019]

RIN 1121–AA35

Grants To Encourage Arrest Policies

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: This document announces the final rule for the Grants to Encourage Arrest Policies authorized by the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994. For Fiscal Year 1996, Congress has appropriated $28 million to the United States Department of Justice, Office of Justice Programs, for Grants to Encourage Arrest Policies. This regulation is being published under the general statutory grant of authority to issue rules and regulations pursuant to the Omnibus Crime Control and Safe Streets Act of 1968. The purpose of this regulation is to provide a general outline of the program and its purposes as set forth in the statute.

EFFECTIVE DATE: The final rule is effective August 6, 1996.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or Catherine Pierce, Violence Against Women Grants Office, Office of Justice Programs, at (202) 307–6026.

SUPPLEMENTARY INFORMATION: The Final Rule implements a discretionary grant program that does not impose any restrictive regulations on recipients. Grant recipients will benefit from immediate access to the funds available through this program, and it would be contrary to the public interest to delay implementation of the program. Therefore, the Final Rule is effective upon publication.

Title IV Grants To Encourage Arrest Policies

For Fiscal Year 1996, Congress authorized a federal discretionary grant program under Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 1033–22, 108 Stat. 1796, 1902–55, as amended, codified at 42 U.S.C. 3796hh *et seq.* (1994) [hereinafter the ''Act''], for States, units of local government, and Indian tribal governments to encourage the treatment of domestic violence as a serious violation of criminal law. The Act gives the Attorney General and an authorized designee, in this case the Assistant Attorney General for the Office of Justice Programs, the authority to make grants to the above mentioned entities. Omnibus Crime Control and Safe Streets Act of 1968 805, as amended, codified at 42 U.S.C. 3786 [hereinafter the ''Omnibus Act'']. Section 2104 of the Omnibus Act, codified as amended at 42 U.S.C. 3796hh–3, requires that regulations be issued specifically to implement these policies and programs.

On May 14, 1996, the Office of Justice Programs published a proposed rule on the implementation of the Grants to Encourage Arrest Policies in the Federal Register (Vol. 61, No. 94, pages 24256–24261). Comments were specifically solicited regarding, but not limited to, the following issues:

(1) Other priority areas that should be considered for funding in addition to the statutory award priorities identified in Section 90.66 of Subpart D;

(2) The special needs of Indian tribal governments, underserved populations and rural communities in implementing this Program;

(3) Effective strategies to ensure that local jurisdictions, States and tribal governments will accord full faith and credit to all valid protection orders pursuant to 18 U.S.C. 2265; and

(4) Methods and approaches for conducting research on the effectiveness of arrest and other legal sanctions for domestic violence in communities that have adopted a system-wide coordinated response to the problem.

The Office of Justice Programs received 34 letters commenting on the proposed regulations: 12 from law enforcement agencies; 4 from prosecution agencies; 2 from probation agencies; 6 from other Federal, State and local governmental agencies; 1 from an Indian tribal government; 9 from non-profit, non-governmental victim service agencies; 1 from a national organization and 1 from a private citizen. The Office of Justice Programs gratefully acknowledges the agencies, organizations, and individuals who took the time to express their views. Comments are on file at OJP's Violence Against Women Grants Office.

In preparing the Final Rule, OJP is interpreting the scope of the Program as broadly as possible while adhering closely to the letter and spirit of the legislation. Language contained in the final regulations has been modified to reflect the following changes:

■ The *Statement of the Problem* has been revised to: (1) emphasize that, in

addition to police departments, probation and parole departments and other criminal justice agencies can play a vital role in jurisdictions with mandatory or pro-arrest policies by implementing complementary practices and strategies to enhance the safety of victims and hold perpetrators of domestic violence accountable for their criminal actions; (2) to encourage police departments to develop sanctions for officers who do not follow or enforce official policies and procedures mandating or encouraging arrest of domestic violence perpetrators as well as procedures that respond to the complex problem of police officers who batter; (3) to encourage victim advocates to explore new partnerships with community policing units that apply the problem-solving approach to ending violence and increasing their availability to victims by establishing an independent or agency-sponsored presence in prosecution agencies, the courts and probation and parole departments; (4) to clarify the need for specialized training for police officers on the identification of the primary aggressor, effective methods for gathering evidence at the scene of a domestic violence incident, conducting intensive follow-up investigations that incorporate lethality assessment methods and developing sensitivity to the complexity of domestic violence cases; (5) to encourage the use of lethality assessment tools by police, probation and parole departments in order to investigate cases of domestic violence and supervise perpetrators of domestic violence more effectively; (6) to encourage that specialized training and education programs for all criminal justice professionals include a component requiring them to work for a specified number of hours in a shelter for battered women; and (7) to encourage the development of multi-agency fatality review teams made up of criminal justice professionals and non-profit, non-governmental victim service providers.

■ Section 90.61 has been modified to include the definition of ''unit of local government'' for purposes of clarifying that eligible grantees for this Program are States, Indian tribal governments, cities, counties, townships, towns, boroughs, parishes, villages, or other general purpose political subdivisions of a State.

■ Section 90.62 has been modified to clarify that all grants awarded for the purposes of this Program must demonstrate meaningful attention to victim safety and offender accountability.

■ Section 90.62 (b) has been modified to clarify that policies and training programs that improve the tracking of domestic violence cases may be developed by all criminal justice agencies, *including* police departments in eligible jurisdictions.

■ Section 90.62 (c) has been modified to clarify that probation and parole departments also play a vital role in centralizing and coordinating the response to domestic violence cases.

■ Section 90.63 (b) has been modified to clarify that judicial education programs should be developed for all professionals responsible for judicial handling of domestic violence cases, including tribal judges.

■ Section 90.63 (a)(4) has been modified to clarify that grantees must certify that their laws, policies, or practices do not require that the abused bear the costs associated with the issuance or service of a warrant, protection order, or witness subpoena (arising from an incident that is the subject of arrest or criminal prosecution).

■ Section 90.63 (c) has been expanded to clarify that, for the purposes of this Program, a jurisdiction need not have pre-existing policies encouraging or mandating arrest to be eligible to receive a grant. However, a State, Indian tribal government, or unit of local government must identify the type of policy it intends to develop and specify the process by which the policy will be developed and enacted by the statutory deadline. In addition, the section clarifies that the policy development process must involve a coordinated effort by criminal justice personnel and non-profit, private, domestic violence or sexual assault programs, including State coalitions.

■ Section 90.64 (c) has been expanded to include examples of the types of agencies or offices that may be responsible for carrying out the project in an applicant jurisdiction (e.g., police departments, prosecution agencies, courts and probation or parole departments).

■ Section 90.66 has been expanded to clarify that priority will be given to applicants that provide evidence of meaningful attention to victims' safety and demonstrate a strong commitment to provide victims with information on the status of their cases from the time a complaint is filed through sentencing.

Two suggested modifications were not incorporated into the final regulations.

■ The jurisdictional issues related to enforcement of felony crimes raised in the comments submitted by an Indian tribal government are covered by statutes and Supreme Court cases which are beyond the scope of the Violence Against Women Act and grants programs.

■ The suggestion that all applicants consult and coordinate with the highest court of each State was not incorporated into the regulations. However, all applicants are strongly encouraged to include State and local courts as part of a coordinated and integrated response to domestic violence.

Statement of the Problem

In the past, police departments, and the criminal justice system as a whole, generally treated domestic violence as a private, family matter unlike any other violent crime. Many police departments maintained informal non-arrest policies for domestic violence, focusing instead on alternative responses such as family crisis intervention and counseling for domestic abusers.[1] In recent years, many departments have implemented new policies and practices that encourage or mandate arrest of a perpetrator of domestic violence for probable cause or for violating a protection order.[2] To ensure the effectiveness of these new policies, some police departments have created special domestic violence units; train personnel on the phenomenon of domestic violence; developed guidelines and protocols for enforcing laws related to domestic violence; created sophisticated tracking and communication systems; investigated both misdemeanor and felony domestic assaults; developed accountability measures which ensure enforcement of the law by all officers in the department; and developed effective strategies to coordinate with other criminal justice agencies and victim service providers.

Likewise, other criminal justice agencies have implemented complementary practices and strategies which prioritize the safety of victims and hold the perpetrators of domestic violence accountable for their criminal actions. In particular, several probation and parole departments have instituted methods of supervision designed to enhance victim safety by vigorously

[1] Liebman, D.A., and Schwartz, J.A., Police Programs in Crisis Intervention: A Review, (J.R. Snibbe and H.M. Snibbe eds. 1973). See also Charles C. Thomas, The Urban Policeman in Transition: A Psychological and Sociological Review (1973).

[2] Garner, J., Fagan, J., and Maxwell, C., Published Findings from the Spouse Assault Replication Program: A Critical Review, Journal of Quantitative Criminology, 11[1], 3–28, 1995.

Fagan, J., The Criminalization of Domestic Violence: Promises and Limits, Presentation at the 1995 National Institute of Justice Conference on Criminal Justice Research and Evaluation, January, 1996, available through the National Criminal Justice Reference Service, 1–800–851–3420.

enforcing the terms of protection orders, thereby promoting coordination with the courts. A number of prosecution agencies have established domestic violence teams that work closely with legal advocates and advocates affiliated with non-profit, non-governmental victim service organizations. Together, prosecutors and advocates alike keep victims informed about the progress of their cases as well as the status and known whereabouts of the offenders. They also provide assistance in preparing long-and short-term safety plans for victims and their children. Additionally, courts are beginning to recognize the need for continuing education for judges. They also are implementing improved case processing procedures with designated dockets to better manage domestic violence cases and expedite scheduling of trials.

To enhance these very significant accomplishments and encourage the adoption of similar innovations in additional communities throughout the country, agencies throughout the criminal justice system require more tools and resources. *Furthermore, for arrest to be an effective domestic violence intervention, it must be part of a coordinated and integrated response to the problem on the part of the entire criminal justice system.*[3] That is, mandatory or pro-arrest policies will be effective only if police departments implement clear guidelines and protocols for the arrest of domestic violence perpetrators; if police and prosecutors alike conduct thorough and careful investigations of domestic violence cases; if the courts institute improved management techniques to process domestic violence cases more efficiently; if judges impose appropriate sentences; if batterers remain in custody after they are arrested; if probation and parole departments enforce protection orders and devise improved ways to effectively supervise batterers; *and, most importantly, if victims feel confident that all professionals in the system are committed to their safety and the safety of their children.*

Policies That Mandate or Encourage Arrest

Laws and policies that encourage or mandate the arrest of a domestic violence perpetrator based on probable cause are not new. Currently, at least 27 States and the District of Columbia have adopted laws that mandate or encourage arrest of a person who assaults a family member, or of a person who violates a domestic violence protection order.[4] Federal law also requires all states to honor certain protection orders issued by other jurisdictions. Act § 40221(a), 18 U.S.C. 2265(a). Domestic violence incidents are among the most difficult and most sensitive calls requesting police assistance. For this reason, many police departments with mandatory or pro-arrest policies inform their officers that, when responding to a domestic violence call, they must anticipate the unexpected, be carefully impartial and be primarily concerned for the needs and safety of the victim or victims. Some mandatory or pro-arrest policies go a step further by directing responding officers to arrest only the primary aggressor in a domestic violence incident. These policies warn that dual arrests may trivialize the seriousness of domestic violence and potentially increase danger to its victims. Most importantly, arrest of the batterer conveys a message to the batterer, the victim, the family and the community that domestic violence is a serious crime that will not be tolerated. Mandatory or pro-arrest policies also offer the potential benefit of deterring future abuse if the offender is separated from the victim and held publicly accountable for his[5] actions. Arrest, accompanied by a thorough evidentiary investigation and an intensive follow-up investigation, demonstrates to the offender that he has committed a serious crime and communicates to the victim that she does not have to endure the offender's abuse. Moreover, arrest of the offender sends a broader public message—that violent behavior, even between intimates, is criminal.

Orders of Protection

An order of protection is the legal instrument many victims of domestic violence initially seek to protect themselves from further abuse. For protection orders to be effective, the terms of the order must be strictly and consistently enforced, and abusers violating the terms of the order must be punished. To ensure a consistent response, departmental policies specifying the violations for which an abuser is subject to arrest must be communicated clearly to police officers who respond to domestic violence calls. Furthermore, there must be consistent enforcement between same-State jurisdictions (e.g., county to county or city to city) or between communities under the jurisdiction of the same tribal government. In addition to intrastate enforcement, States and tribal governments must also take steps to ensure the interstate (i.e., State to State) enforcement of protection orders as required by Section 40221(a) of the Act.

Prior to the enactment of the Violence Against Women Act, a woman who obtained a protection order in her home state often could not use that order as the basis for protection if she worked, traveled, or moved to most other states. Under the Violence Against Women Act, a victim does not have to wait for abuse to occur in the new state, nor does she have to meet the new jurisdictional requirements. A woman may now seek enforcement of the out-of-state order in the new state.

Although there is no universal approach to effective implementation of the full faith and credit provisions of the Act, State and tribal law enforcement agencies, courts, prosecutors, non-profit, non-governmental victim services agencies and private attorneys are encouraged to collaborate on efforts and strategies for bolstering and implementing enforcement of out-of-state protective orders. The state administrative office of the court and state law enforcement agencies, in consultation with victim advocates, should devise and publicize widely a state plan for according full faith and credit to protection orders.

Centralized Communication, Information and Tracking Systems

Regardless of whether there is a particular jurisdictional domestic violence arrest policy in place, police must have probable cause to make an arrest. Police often are dispatched, however, without any information regarding the domestic violence or criminal history of the people involved in an altercation. The officers frequently do not know if there is an outstanding order of protection against the offender, whether the offender has previously been arrested for assaulting the victim, or if charges are pending against the perpetrator for prior alleged domestic violence. Knowledge of this information clearly would help guide the discretion

[3] Hart, B.J., Coordinated Community Approaches to Domestic Violence, presented at the Strategic Planning Workshop on Violence Against Women sponsored by the National Institute of Justice in Washington, D.C., March 31, 1995, available through the National Criminal Justice Reference Service, 1–800–851–3420.

[4] Layden, J., Domestic Violence, Headliners, 1994.

[5] Men can be the victims of abuse, and women can be perpetrators. However, the vast majority of victims of domestic violence are women. In addition, it is much less common for men to receive injuries as a result of their abuse and less likely for men to become entrapped in relationships where they cannot leave for fear of extreme bodily harm to themselves or their children. For these reasons, victims are referred to as women and perpetrators as men throughout these proposed regulations. See Stets, J.E. and Straus, M.A., Gender Differences in Reporting Marital Violence and its Medical and Psychological Consequences (Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families, Straus, M.A. and Gelles, R.J. eds. 1990).

of an officer who is trying to determine whether to make an arrest, and help him or her ensure the safety of the victim and other family members.

Beyond providing information about the criminal history of the perpetrator, responding officers also would benefit greatly from communication systems that could inform them about the frequency of past calls to the same location, prior weapons use, the presence of children at the residence and past need for medical emergency services. Tracking and other advanced information systems also could provide responding officers with a description of the alleged perpetrator and places he historically has frequented if he is not found at the scene.

Just as police officers need more information to respond effectively, so do prosecutors, judges and other criminal justice professionals. Access to centralized information on prior incidents or convictions, prior issuance of protection orders, other matters involving the same family pending before the court, and the availability of community resources and services for the victim would be extremely beneficial to prosecutors seeking convictions, to judges who must impose a sentence and to probation and parole officials responsible for providing community supervision. *Interstate* and *intrastate* communication and tracking systems for use by police officers and criminal justice professionals throughout a state or region of the country also would contribute to enhancing the safety of victims.

The Need for a Coordinated, Integrated Approach Involving All Criminal Justice Professionals

If arrest policies are to be effective, police, pre-trial service professionals, prosecutors, judges, probation officers, parole officers and victim advocates need to respond with effective collaborative strategies that will enhance the safety of victims and result in appropriate sanctions for offenders. Specifically, prosecutors, judges and other criminal justice professionals need the training, tools and resources that will enable them to respond to domestic violence as a serious crime. For example, in those jurisdictions where mandatory or pro-arrest policies have been instituted, individual prosecutors may be overwhelmed with domestic violence cases, resulting in a severe lack of resources and time needed to prosecute each case effectively. To help alleviate the backlog of domestic violence cases, many prosecutors work with victim advocates during both the pending prosecution and the sentencing phase of a case. These advocates are critical to the effective prosecution of domestic violence cases. In addition to being effective legal advocates, they assist in safety planning with the victim, providing the court with information needed to determine risk and lethality assessment as well as proposed conditions of probation or parole for the offender.

Training for all criminal justice professionals should include informative and experiential continuing education sessions designed to provide insight into the phenomenon of domestic violence and information on community resources available to assist the victim and respond appropriately to the batterer. Prosecutors need to understand the psychology of domestic violence victims (e.g., why they may be reluctant to prosecute and the risks to their safety if they decide to prosecute). Judges need to craft effective protection orders and they need the information and skills necessary to tailor sentences to individual perpetrators (e.g., ordering protective conditions for victim safety, incarceration, community service, restitution, intensive probation or parole, mandatory participation in batterer intervention programs and/or drug and alcohol treatment, or all of the above, as appropriate). Victim advocates need to acquire an enhanced understanding of how the criminal justice system works. They also need to learn how they can be more effective in working directly with all criminal justice professionals, exploring new partnerships with community policing units that apply the ''problem-solving'' approach to ending violence; increasing their availability to victims by establishing a presence (as independent and/or agency-sponsored advocates) in prosecution agencies, the courts and probation and parole departments. All professionals in the system need to work together to explore and develop new, innovative and coordinated approaches to reduce and prevent domestic violence.

Conclusion

While strong, clear arrest policies are needed to guide the actions of police officers, the rest of the criminal justice system also must be directed to respond similarly in ways that will break the cycle of violence. Without aggressive, system-wide coordination, arrest alone will not stop domestic violence. Most importantly, as a jurisdiction assesses its response to domestic violence, prioritizing victim safety within the policies and practices of the entire criminal justice system is essential. In conclusion:

■ Police departments need to develop clear policies and procedures mandating or encouraging arrest for perpetrators of domestic violence and for the violation of protection orders, including protocols, procedures, and firearms policies that respond to the complex problems with respect to police officers against whom protection orders have been issued or who have been arrested for probable cause of domestic violence.

■ Specialized education and training programs for police, prosecutors, judges, probation and parole officers, victim advocates and other criminal justice professionals need to be developed and implemented or replicated from existing curricula. Components of these programs might encourage criminal justice professionals to obtain direct experience with victims by providing opportunities for them to work in shelters for battered women or in a comparable setting.

■ Police departments should be encouraged to develop specialized training on domestic violence which: provides guidance on the implementation of departmental arrest policies and related federal, state and local law; instructs officers on how to identify the primary aggressor in a domestic violence incident; provides information on improved techniques for gathering evidence at the scene of a domestic violence incident; explains how to conduct more thorough follow-up investigations that incorporate lethality assessment methods; and develops sensitivity to the complexity of domestic violence cases and the diverse cultural values, language barriers, and experience that influence the response of the victim.

■ Police departments need resources to develop guidelines for the arrest of perpetrators and investigation of domestic violence. They also need to establish sanctions for officers and officials who do not follow or enforce official protocols. In addition, they need to establish special investigation or detective units, and procedures to ensure coordination with other parts of the criminal justice system.

■ Police, probation and parole departments need access to lethality assessment tools (developed collaboratively by victim service and law enforcement agencies) in order to investigate cases and supervise perpetrators of domestic violence more effectively.

■ Prosecutors need to develop effective strategies for working with the police. They also need the tools and resources to investigate domestic violence cases aggressively and

thoroughly in collaboration with the police.

■ Police departments need the resources to develop advanced communication, information and tracking systems to enable them to respond more effectively to domestic violence incidents, to track the history of perpetrators (including outstanding orders of protection, previous arrests and pending charges) and to prevent future violence that could result in aggravated assault and homicide.

■ Jurisdictions need to develop methods and technologies that will promote improved communication and coordination among law enforcement, prosecution, the judiciary and other parts of the criminal justice and social service systems to improve the entire system's response to domestic violence. In addition, jurisdictions need to develop centralized, automated information systems that will track the domestic violence history of involved parties, including outstanding orders of protection, previous arrests and pending charges against perpetrators.

■ Procedures to expedite requests for protection orders need to be developed by police departments, prosecution units, and the courts.

■ Judges need to convey clearly to batterers the gravity of their offenses by imposing appropriate sentences.

■ Probation and parole departments need to establish protocols and procedures for the intensive supervision of batterers.

■ Victims and their children need access to a full range of services, including legal advocacy and assistance in planning for their long- and short-term safety, that ensures they will be kept informed about the progress of their case.

■ Multi-agency fatality review teams made up of criminal justice professionals and non-profit, non-governmental victim service providers need to be established to determine where and how death may have occurred in a domestic violence case and to examine what constructive steps can be taken to prevent future fatal incidents.

■ Research needs to be conducted to assess the effectiveness of arrest and other legal sanctions for domestic violence in communities that have adopted a system-wide, coordinated response to domestic violence.

The Violence Against Women Act of 1994

The Violence Against Women Act reflects a firm commitment towards working to change the criminal justice system's response to violence that occurs when any woman is threatened or assaulted by someone with whom she has or has had an intimate relationship, with whom she was previously acquainted, or who is a stranger. By committing significant Federal resources and attention to restructuring and strengthening the criminal justice response to women who have been, or potentially could be, victimized by violence, the safety of all women can be more effectively ensured.

Fiscal Year 1996 Grants To Encourage Arrest Policies

For FY 1996, Congress has appropriated $28 million to the United States Department of Justice Office of Justice Programs for Grants to Encourage Arrest Policies. Additionally, Part U of the Violence Against Women Act of 1994 authorizes $33 million for FY 1997 and $59 million for FY 1998. States, Indian tribal governments, and units of local government are eligible to receive grants subject to the requirements of the statute and these regulations, as well as assurances and certifications specified in the application kit.

Section 2101 of the Violence Against Women Act, 42 U.S.C. 3796hh (1994), enumerates the following six purposes for which Grants to Encourage Arrest Policies may be used:

(1) To implement mandatory arrest or pro-arrest programs and policies in police departments, including mandatory arrest programs and policies for protection order violations;

(2) To develop policies and training programs in police departments to improve tracking of cases involving domestic violence;

(3) To centralize and coordinate police enforcement, prosecution, or judicial responsibility for domestic violence cases in groups or units of police officers, prosecutors, or judges;

(4) To coordinate computer tracking systems to ensure communication between police, prosecutors, and both criminal and family courts;

(5) To strengthen legal advocacy service programs for victims of domestic violence; and

(6) To educate judges in criminal and other courts about domestic violence and improve judicial handling of such cases.

A Coordinated and Integrated Approach to the Problem

By definition, a coordinated and integrated approach suggests a partnership among law enforcement, prosecution, the courts, victim advocates and service providers. The goal of this Program is to treat domestic violence as a serious violation of the criminal law. A consistent criminal justice system response to domestic violence requires that professionals in the various components of the system have a shared vision that prioritizes the safety and well-being of the victim. The creation and implementation of that vision necessitates collaboration among police, prosecutors, the courts, and victim service providers. Thus, the Program requires that jurisdictions incorporate the experience of nonprofit, nongovernmental domestic violence service providers into the project planning and implementation process as well as police, prosecutors, and the courts. Examples of innovative approaches include:

■ Creating centralized units of police officers, prosecutors, judges and probation and parole officers to investigate and handle domestic violence cases, based on a comprehensive plan developed by representatives from the criminal justice system and the advocacy community.

■ Implementing and testing the effectiveness of domestic violence arrest policies for violations of protection orders in the context of a coordinated criminal justice and community response to domestic violence by forming a multi-disciplinary coordinating council that assigns priority to the safety of the victim and by holding the offender accountable for his violent actions.

■ Delivering comprehensive, experiential training programs for police officers, prosecutors, probation and parole officers and the judiciary that address the technical issues associated with policies that encourage or mandate arrest for domestic violence; address the phenomenon of domestic violence; stress collaboration and shared responsibility for ensuring the safety of the victim; seek to change attitudes that have traditionally prevented professionals in the criminal justice system from responding to domestic violence as a serious violation of criminal law; and provide information on improved methods for tracking domestic violence cases.

■ Developing information systems, automated registries, education and training programs and technical assistance efforts that facilitate enforcement of protection orders within a single jurisdiction; within a single State; and from State to State.

■ Linking automated information and tracking systems to enhance communication among police departments, prosecution agencies, and criminal and family courts to ensure that all of the system components have access to consistent and complete

information about an individual's domestic violence history.

■ Establishing and expanding advocacy services for domestic violence victims from the time an abuse report is filed through the post-sentencing of the offender, including any time during which the offender is subject to probation or parole supervision.

Eligibility Requirements

To be eligible to receive grants under this Program, States, Indian tribal governments, and units of local government must certify that their laws or official policies (1) encourage or mandate arrest of domestic violence offenders based on probable cause that an offense has been committed and (2) encourage or mandate arrest of domestic violence offenders who violate the terms of a valid outstanding protection order. Omnibus Act § 2101(c), 42 U.S.C. 3796hh(c) (1994). A jurisdiction need not have pre-existing policies encouraging or mandating arrest to meet this eligibility requirement. However, in its application for funding through this Program, a State, Indian tribal government, or unit of local government must identify the type of policy that it intends to develop, and specify the process by which the policy will be developed and enacted by the statutory deadline. The policy development process must involve a coordinated effort by criminal justice personnel and non-profit, private, domestic violence or sexual assault programs, including State coalitions.

Eligible applicants also must demonstrate that their laws, policies, or practices and their training programs discourage dual arrests of an offender and victim. Omnibus Act § 2101(c)(2), 42 U.S.C. 3796hh(c)(2) (1994).

In addition, States, Indian tribal governments, and units of local governments seeking grant funds through this Program must certify that their laws, policies, or practices prohibit the issuance of mutual restraining orders of protection, except in cases in which both spouses file a claim and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense. Omnibus Act § 2101(c)(3), 42 U.S.C. 3796hh(c)(3) (1994).

Eligible applicants also must certify that their laws, policies, or practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the victim bear the costs associated with the filing of criminal charges or the service of such charges on an abuser, or costs associated with the issuance or service of a warrant, protection order, or witness subpoena (arising from the incident that is the subject of arrest or criminal prosecution). Omnibus Act § 2101(c)(4), 42 U.S.C. 3796hh(c)(4) (1994).

If the laws, policies, or practices required by Section 2101(c) of the Violence Against Women Act are not currently in place, States, Indian tribal governments, and local units of government must provide assurances that they will be in compliance with these requirements by the date on which the next session of the State or Indian Tribal legislature ends, or September 13, 1996, whichever is later. Omnibus Act § 2102(a)(1) (A)–(B), 42 U.S.C. 3796hh–1(a)(1) (A)–(B) (1994).

Award Priority

The Office of Justice Programs is required by the Violence Against Women Act to give priority to applicants that (1) do not currently provide for centralized handling of cases involving domestic violence by police, prosecutors, and courts; and (2) demonstrate a commitment to strong enforcement of laws, and prosecution of cases, involving domestic violence. Omnibus Act § 2102(b) (1)–(2), 42 U.S.C. 3796hh–1(b) (1)–(2) (1994). Commitment may be demonstrated in a number of ways including: strict enforcement of arrest policies; clear communication from top officials and managers throughout the criminal justice system that domestic violence prevention is a priority; innovative approaches to supervision of police officers, prosecutors, probation officers and other criminal justice professionals who handle domestic violence matters; acknowledgment of police officers who consistently enforce domestic violence arrest policies and sanctions for those who do not; implementation of procedures that respond to the complex problem of police officers who batter; education and training for all criminal justice professionals on enforcement of domestic violence arrest policies and the phenomenon of domestic violence; and creation of special units within criminal justice agencies which collaborate to investigate and monitor spousal and partner abuse cases.

Technical Assistance and Training/ Evaluation

The Office of Justice Programs will set aside a small portion of the funds provided through this Program to provide specialized training and technical assistance to help grant recipients develop and implement effective arrest policies in the context of an integrated and coordinated criminal justice and community response to domestic violence.

In addition, the Office of Justice Programs will set aside a small portion of the overall funds authorized for this Program to enable the National Institute of Justice (NIJ) to conduct evaluations and studies of projects funded through this Program. Past research on the effectiveness of arrest policies for domestic violence has focused primarily on the police response and has not measured the response of victim service agencies and other parts of the criminal justice system, such as pretrial services agencies, prosecution units, the courts, and probation and parole departments. Additional research is needed to assess the effectiveness of arrest and other legal sanctions for domestic violence in communities that have adopted a system-wide, coordinated response to domestic violence. Recipients of funds for this Program must agree to cooperate with NIJ-sponsored research and evaluation studies of their projects. Grant recipients also are required to report to the Attorney General on the effectiveness of their project(s). Omnibus Act § 2103, 42 U.S.C. 3796hh–2 (1994). Recipients therefore are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of their programs. Applicants therefore should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice for this purpose.

Regulatory Flexibility Act

The Assistant Attorney General, Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this Final Rule and, by approving it, certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This Final Rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Justice Programs has determined that this Final Rule is not a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this Interim Rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 90

Crime, Grant programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 28, Chapter 1, Part 90 of the Code of Federal Regulations is amended as follows:

PART 90—VIOLENCE AGAINST WOMEN

1. The authority continues to read as follows:

Authority: 42 U.S.C. 3711 et. seq.

2. A new Subpart D, consisting of §§ 90.60—90.67 is added to read as follows:

Subpart D—Arrest Policies in Domestic Violence Cases

Sec.
90.60 Scope.
90.61 Definitions.
90.62 Purposes.
90.63 Eligibility.
90.64 Application content.
90.65 Evaluation.
90.66 Review of applications.
90.67 Grantee reporting.

§ 90.60 Scope.

This subpart sets forth the statutory framework of the Violence Against Women Act's sections seeking to encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law.

§ 90.61 Definitions.

For purposes of this subpart, the following definitions apply.

(a) *Domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the eligible State, Indian tribal government, or unit of local government that receives a grant under this subchapter.

(b) *Protection order* includes any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(c) *Unit of local government* means any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and the Trust Territory of the Pacific Islands.

§ 90.62 Purposes.

(a) The purposes of this program are:

(1) To implement mandatory arrest or pro-arrest programs and policies in police departments, including mandatory arrest programs or pro-arrest programs and policies for protection order violations;

(2) To develop policies and training programs in police departments and other criminal justice agencies to improve tracking of cases involving domestic violence;

(3) To centralize and coordinate police enforcement, prosecution, probation, parole or judicial responsibility for domestic violence cases in groups or units of police officers, prosecutors, probation and parole officers or judges;

(4) To coordinate computer tracking systems to ensure communication between police, prosecutors, and both criminal and family courts;

(5) To strengthen legal advocacy service programs for victims of domestic violence; and

(6) To educate judges, and others responsible for judicial handling of domestic violence cases, in criminal, tribal, and other courts about domestic violence and improve judicial handling of such cases.

(b) Grants awarded for these purposes must demonstrate meaningful attention to victim safety and offender accountability.

§ 90.63 Eligibility.

(a) Eligible grantees are States, Indian tribal governments, or units of local government that:

(1) Certify that their laws or official policies—

(i) Encourage or mandate the arrest of domestic violence offenders based on probable cause that an offense has been committed; and

(ii) Encourage or mandate the arrest of domestic violence offenders who violate the terms of a valid and outstanding protection order;

(2) Demonstrate that their laws, policies, or practices and their training programs discourage dual arrests of offender and victim;

(3) Certify that their laws, policies, or practices prohibit issuance of mutual restraining orders of protection except in cases where both spouses file a claim and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense; and

(4) Certify that their laws, policies, or practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, that the abused bear the costs associated with filing criminal charges or the service of such charges on an abuser, or that the abused bear the costs associated with the issuance or service of a warrant, protection order, or witness subpoena (arising from the incident that is the subject of arrest or criminal prosecution).

(b) If these laws, policies, or practices are not currently in place, States, Indian tribal governments, and units of local government must provide assurances that they will be in compliance with the requirements of this section by the date on which the next session of the State or Indian Tribal legislature ends, or September 13, 1996, whichever is later. Omnibus Act 2102(a)(1) 42 U.S.C. 3796hh–1(a)(1).

(c) For the purposes of this Program, a jurisdiction need not have pre-existing policies encouraging or mandating arrest to meet the eligibility requirements listed in this section. However, in its application for funding through this Program, a State, Indian tribal government, or unit of local government must identify the type of policy that it intends to develop, and specify the process by which the policy will be developed and enacted. The policy development process must involve a coordinated effort by criminal justice personnel and non-profit, private, domestic violence or sexual assault programs, including State coalitions.

§ 90.64 Application content.

(a) Format. Applications from States, Indian tribal governments and units of local government must be submitted on Standard Form 424, Application for Federal Assistance, at a time designated by the Office of Justice Programs. The Violence Against Women Grants Office of the Office of Justice Programs will develop and disseminate to States, Indian tribal governments, local governments and other interested parties a complete Application Kit which will include a Standard Form 424, a list of assurances to which applicants must agree, and additional guidance on how to prepare and submit an application for grants under this subpart. To receive a complete

Application Kit, please contact: The Violence Against Women Grants Office, Office of Justice Programs, Room 442, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Telephone: (202) 307–6026.

(b) Programs. Applications must set forth programs and projects that meet the purposes and criteria of the Grants to Encourage Arrest program set out in §§ 90.62 and 90.63 of this part.

(c) Requirements. Applicants in their applications shall, at a minimum:

(1) Describe plans to further the purposes stated in § 90.62 of this part;

(2) Identify the agency or office or groups of agencies or offices responsible for carrying out the program. Examples of these agencies or offices include police departments, prosecution agencies, courts and probation or parole departments; and

(3) Include documentation from nonprofit, private sexual assault and domestic violence programs demonstrating their participation in developing the application, and explain how these groups will be involved in the development and implementation of the project.

(d) Certifications. (1) As required by Section 2102(a) of the Omnibus Act, 42 U.S.C. 3796hh–1(a), each State, Indian tribal government or unit of local government must certify in its application that it has met the eligibility requirements set out in § 90.63 of this part.

(2) Each State, Indian tribal government or unit of local government must certify that all the information contained in the application is correct. All submissions will be treated as a material representation of fact upon which reliance will be placed, and any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§ 90.65 Evaluation.

(a) The National Institute of Justice will conduct evaluations and studies of programs funded through this Program. The Office of Justice Programs will set aside a small portion of the overall funds authorized for the Program for this purpose. Recipients of funds must agree to cooperate with such federally-sponsored research and evaluation studies of their projects. In addition, grant recipients are required to report to the Attorney General on the effectiveness of their project(s). Section 2103, codified at 42 U.S.C. 3796hh–2.

(b) Recipients of program funds are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of their programs. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice for this purpose.

§ 90.66 Review of applications.

(a) Review criteria. (1) The provisions of Part U of the Omnibus Act and of the regulations is this subpart provide the basis for review and approval or disapproval of applications and amendments in whole or in part. Priority will be given to applicants that

(i) Do not currently provide for centralized handling of cases involving domestic violence by police, probation and parole officers, prosecutors, and courts; and

(ii) Demonstrate a commitment to strong enforcement of laws, and prosecution of cases, involving domestic violence. Omnibus Act § 2102(b)(1)–(2), 42 U.S.C. 3796hh–1(b)(1)–(2) (1994).

(2) Commitment may be demonstrated in a number of ways including: Clear communication from top departmental management that domestic violence prevention is a priority; strict enforcement of arrest policies; innovative approaches to officer supervision in domestic violence matters; acknowledgment of officers who consistently enforce domestic violence arrest policies and sanctions for those who do not; education and training for all officers and supervisors on enforcement of domestic violence arrest policies and the phenomenon of domestic violence; and the creation of special units to investigate and monitor spousal and partner abuse cases.

(3) Priority also will be given to applicants who provide evidence of meaningful attention to victims' safety and those who demonstrate a strong commitment to provide victims with information on the status of their cases from the time the complaint is filed through sentencing.

(b) Intergovernmental review. This program is covered by Executive Order 12372 (Intergovernmental Review of Federal Programs) and implementing regulations at 28 CFR part 30. A copy of the application submitted to the Office of Justice Programs should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.67 Grantee reporting.

Each grantee receiving funds under this subpart shall submit a report to the Attorney General evaluating the effectiveness of projects developed with funds provided under this subpart and containing such additional material as the Assistant Attorney General of the Office of Justice Programs may prescribe.

Dated: July 30, 1996.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 96–19758 Filed 8–5–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC13

Royalty Relief for Producing Leases and Certain Existing Leases in Deep Water

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for interim rule.

SUMMARY: This notice extends to September 30, 1996, the deadline for the submission of comments on the interim rule governing royalty relief for producing leases and certain existing leases in deep water that was published May 31, 1996.

DATES: MMS will consider all comments we receive by September 30, 1996. We will begin reviewing comments at that time and may not fully consider comments we receive after September 30, 1996.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Chief, Engineering and Standards Division.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Economic Evaluation Branch, telephone (703) 787–1536.

SUPPLEMENTARY INFORMATION: The MMS has been asked to extend the deadline for respondents to submit comments to the interim regulations governing royalty relief on producing and certain existing leases in deep water that were published May 31, 1996 (61 FR 27263). The request explains that more time is needed to allow respondents time to work on certain aspects and problem areas of the interim rule and guidelines for royalty relief for existing deep water leases.

Dated: July 30, 1996.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 96–19949 Filed 8–5–96; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SPATS No. WY–022]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Wyoming regulatory program (hereinafter, the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of addition and revision of statutes and rules pertaining to shrub density stocking requirements and wildlife habitat. The amendment was intended to revise the Wyoming program to be consistent with SMCRA and the corresponding Federal regulations.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Casper Field Office, Telephone: (307) 261–5824, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, Federal Register (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By letter dated November 29, 1995, Wyoming submitted a proposed amendment to its program (administrative record No. WY–031–1) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the proposed amendment in response to the required program amendments at 30 CFR 950.16(q) and (bb) through (hh). The provisions of the Wyoming Environmental Quality Act that Wyoming proposed to revise were: Wyoming Statute (W.S.) 35–11–103, definitions, and W.S. 35–11–402, establishment of reclamation standards. The provisions of the coal rules and regulations of the Department of Environmental Quality, Land Quality Division, that Wyoming proposed to revise were: chapter I, section 2, definitions; chapter II, section 2, permit application requirements for surface coal mining operations; chapter IV, section 2, general environmental protection performance standards for surface coal mining operations; chapter X, section 4, coal exploration and reclamation performance standards; chapter XI, section 5, self-bonding; chapter XIII, section 3, notice and opportunity for public hearing on surface coal mining permit revisions; chapter XVII, section 1, definitions for designation of areas unsuitable for surface coal mining; and appendix A, vegetation sampling methods and reclamation success standards for surface coal mining operations.

OSM announced receipt of the proposed amendment in the December 18, 1995, Federal Register (60 FR 65048), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY–31–02). Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to the proposed provisions of the rule at chapter I, section 2(v), critical habitat for threatened and endangered species; the rules at chapter I, sections 2(ac) and (bc)(xi), and chapter IV, section 2(d)(x)(E)(I), definitions for ''eligible land'' and ''treated grazingland'' and reclamation success standard for shrub density: the rule at chapter II, section 2(a)(vi)(G)(II), consultation by the Wyoming Land Quality Division on critical habitat; W.S. 35–11–402(b) and the rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), approval of reclamation standards by the Wyoming Game and Fish Department; the rules at chapter II, section 2(b)(vi)(B)(III) and chapter IV, sections 2(c)(xi)(F)(II) and 2(r), permit application requirements and performance standards for protection of important and crucial habitats for fish and wildlife; the rule at chapter X, section 4(e), disturbance of important habitat by exploration operations; the rule at chapter XIII, section 2(b), notice and opportunity for public hearing on permit revision; appendix A, section VIII.E. and the rule at chapter IV, section 2(d)(x)(E)(I), programwide or permit-specific consultation and approval by the Wyoming Game and Fish Department; and appendix A, appendix IV, plant species of special concern. OSM notified Wyoming of the concerns by letter dated March 8, 1996 (administrative record No. WY–31–17).

Wyoming responded by letter on April 9, 1996, to each of the issues (administrative record No. WY–31–18). For some of the issues, Wyoming submitted specific revisions that it intends to pursue in the State rulemaking process. This process is expected to produce a formal amendment that would be submitted to OSM by mid-1997. OSM acknowledges these revisions but, because they have not yet been promulgated, does not in the following findings make determinations on their effectiveness.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program amendment submitted by Wyoming on November 29, 1995, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with additional requirements, the proposed amendment.

1. Substantive Revisions to Wyoming's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Wyoming proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

Chapter I, section 2(bc)(viii) (30 CFR 701.5), land use definition for ''fish and wildlife habitat,'' and

Chapter XI, section 5(a) (30 CFR 800.23(g)), substitution of a surety bond for a self-bond.

Because these proposed Wyoming rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

2. W.S. 35–11–103(e)(xxviii), Definition for ''Agricultural Lands''

On January 24, 1994, OSM at 30 CFR 950.16(bb) required Wyoming to delete its definition for ''agricultural lands'' at W.S. 35–11–103(e)(xxviii) or provide an interpretation of the definition that would make it no less stringent than SMCRA and no less effective than the Federal regulations (finding No. 1, 59 FR 3521). Wyoming proposed to delete the definition.

This deletion satisfies the required amendment and does not make Wyoming's regulatory program less stringent than SMCRA and less effective than the Federal regulations. Therefore, the Director approves the proposed deletion of the definition for ''agricultural lands'' at W.S. 35–11–103(e)(xxviii) and removes the required amendment at 30 CFR 950.16(bb).

3. W.S. 35–11–103(e)(xxix) and Rule at Chapter I, Section 2(v), Definition for ''Critical Habitat''

On January 24, 1994, OSM at 30 CFR 950.16(cc) (finding No. 2, 59 FR 3521, 3521–2) required Wyoming to delete its definition for ''critical habitat'' at W.S. 35–11–103(e)(xxix) or revise it to make the term applicable to animal and plant species habitats that have been designated by the Secretary of the Interior as critical habitats under section 3 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

In response to the required amendment, Wyoming proposed to delete the definition for ''critical habitat'' at W.S. 35–11–103(e)(xxix) but to add a similar definition for this term in its rules at chapter I, section 2(v). In this rule, Wyoming proposed that ''critical habitat'' means ''those areas essential to the survival and recovery of species listed by the Secretary of the Interior or Commerce as threatened or endangered (50 CFR, parts 17 AND 226).''

50 CFR part 226 pertains to habitat for marine mammals, fish, and reptiles designated as critical by the National Oceanic and Atmospheric Administration under the jurisdiction of the Secretary of Commerce. 50 CFR Part 17 pertains to critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543), but it is also in 30 CFR 17.2(b), through its reference of subpart B, lists threatened and endangered wildlife and plant species completely under the jurisdiction of the Department of Commerce and other such species jointly under the jurisdiction of the Departments of the Interior and Commerce.

There is no counterpart definition for ''critical habitat'' in SMCRA or the Federal regulations. However, the surface and underground mining permit application regulations at 30 CFR 780.16(a) and (b) and 784.21(a) and (b) require resource information and protection and enhancement plans for listed or proposed endangered or threatened species of plants or animals or their ''critical habitats'' listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Also, the performance standards at 30 CFR 816.97(b) and 817.97(b) require that no surface or underground mining activity shall be conducted that is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior or that is likely to result in the destruction or adverse modification of designated ''critical habitats'' of such species in violation of the Endangered Species Act of 1973, as amended.

Wyoming's referencing of the Secretary of Commerce's regulations at 50 CFR Part 226 has no relevance to the Wyoming regulatory program, because the State has no mammals, fish, and reptiles that spend at least part of their lives in a marine environment. Wyoming's referencing of these regulations does not itself make its rule less effective than the Federal regulations, but OSM indicated in the January 24, 1994, Federal Register notice that Wyoming's protection of critical habitat designated by the Secretary of the Interior *or* Commerce could be interpreted to allow Wyoming to choose to protect the critical habitat designated by one of the departments, but not both. OSM reasoned that Wyoming could choose to protect critical habitat designated by the Department of Commerce (for which there is none in Wyoming) and not protect critical habitat designated by the Secretary of the Interior.

In its April 9, 1996, response to OSM's issue letter, Wyoming stated that the Secretary of Commerce's regulations at 50 CFR part 226 have no relevance in the State.

On the basis of this clarification, OSM finds that Wyoming's proposed deletion of the definition for ''critical habitat'' at W.S. 35–11–103(e)(xxix) and the proposed addition of a definition for this term in its rule at chapter I, section 2(v) are no less effective than the Federal regulations at 30 CFR 780.16(a) and (b), 784.21(a) and (b), 816.97(b), and 817.97(b). Therefore, the Director approves the proposed deletion and addition, and removes the required amendment at 30 CFR 950.16(cc). However, to avoid confusion by someone who reads Wyoming's rules but has not read this finding, OSM recommends that Wyoming in a future amendment delete in the rule at chapter I, section 2(v) the references to the Secretary of Commerce and the regulations at 50 CFR part 226.

4. W.S. 35–11–103(e)(xxx) and Rules at Chapter I, Sections 2(ax) and (w), Definitions for ''Important Habitat'' and ''Crucial Habitat''

On January 24, 1994, OSM at 30 CFR 950.16(dd) (finding No. 3, 59 FR 3521, 3522) required Wyoming to delete its definition for ''important habitat or crucial habitat'' at W.S. 35–11–103(e)(xxx) or revise it so that it did not exclude ''agricultural lands,'' which were defined at W.S. 35–11–103(e)(xxviii) as ''cropland, pastureland, hayland, or grazingland,'' from lands that could also have to be protected as ''important habitats or crucial habitats.''

In response to the required amendment, Wyoming proposed to delete the definition for ''important habitat or crucial habitat'' at W.S. 35–11–103(e)(xxx) but to add separate definitions for ''important habitat'' and ''crucial habitat'' in the rules at chapter I, sections 2(ax) and (W).

Wyoming proposed that ''important habitat'' means

> that habitat which, in limited availability, supports or encourages a maximum diversity of wildlife species or fulfills one or more living requirements of a wildlife species. Examples of important habitat include, but are not limited to, wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

It also proposed that ''crucial habitat''means ''those areas, designated as such by the Wyoming Game and Fish Department, which determine a population's ability to maintain and reproduce itself at a certain level over the long term.''

There is no counterpart definition for ''important habitat'' or ''crucial habitat'' in SMCRA or the Federal regulations. However, the surface mining permit application regulations at 30 CFR 780.16 (a) and (b) require resource information and protection and enhancement plans for ''habitats of unusually high value for fish and wildlife'' such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas. Also, the performance standards at 30 CFR 816.97(f) require that surface mining activities shall avoid

disturbances to, enhance where practicable, or restore ''habitats of unusually high value for fish and wildlife.''

As described in 30 CFR 780.16(a)(2)(ii), ''habitats of unusually high value for fish and wildlife'' include ''important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas.'' This description coincides with Wyoming's proposed definition for ''important habitat'' at chapter I, proposed section 2(ax), which states that ''important habitat'' includes ''wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.''

Wyoming's proposed rule definitions for ''important habitat'' and ''crucial habitat'' at chapter I, sections 2(ax) and (w) are not inconsistent with (1) the surface mining permit application regulations at 30 CFR 780.16 (a) and (b), which require resource information and protection and enhancement plans for ''habitats of unusually high value for fish and wildlife'' and (2) the performance standards at 30 CFR 816.97(f), which require that operators of surface coal mining activities shall avoid disturbances to, enhance where practicable, or restore ''habitats of unusually high value for fish and wildlife.'' Therefore, the Director approves Wyoming's proposed rule definitions for ''important habitat'' and ''crucial habitat'' at chapter I, sections 2 (ax) and (w).

Also, because Wyoming deleted its statutory definition for ''important habitat or crucial habitat'' at W.S. 35–11–103(e)(xxx) and because its proposed rule definitions for ''important habitat'' and ''crucial habitat'' at chapter I, sections 2 (ax) and (w) do not exclude ''agriculture lands,'' which was defined at W.S. 35–11–103(e)(xxviii) but which has now been deleted (see finding No. 2), the Director removes the required amendment at 30 CFR 950.16(dd).

5. W.S. 35–11–402(b) and Rules at Chapter II, Section 2(b)(iv)(C), and Chapter IV, Sections 2(d)(x)(E) and (E)(III), Establishment of Reclamation Standards for Fish and Wildlife Habitat and Grazingland

On January 24, 1994, OSM at 30 CFR 950.16(ee) (finding No. 4, 59 FR 3521, 3522–3) required Wyoming to repeal the part of W.S. 35–11–402(b) that provides direction to the Wyoming Environmental Quality Council to use the statutory definitions for ''agricultural lands,'' ''critical habitat,'' and ''important habitat or crucial habitat'' at W.S. 35–11–103(e)(xviii), (xxix), and (xxx) in establishing reclamation standards for fish and wildlife habitat that are required by Federal law or regulations to be approved by State Wildlife agencies. OSM placed this requirement on the Wyoming program because OSM had disapproved the three definitions on the basis that they were less stringent than SMCRA and less effective than the Federal regulations (finding Nos. 1, 2, and 3, 59 FR 3521, 3521–2).

As indicated in finding Nos. 1, 2, and 3, Wyoming proposed to delete the statutory definitions for ''agricultural lands,'' ''critical habitat,'' and ''important habitat or crucial habitat'' at W.S. 35–11–103(e)(xviii), (xxix), and (xxx), and the Director approved these deletions. At W.S. 35–11–402(b), Wyoming proposed to delete the references to these statutory definitions. Wyoming's proposed deletion of the statutory definitions satisfies the required amendment at 30 CFR 950.16(ee). Therefore, the Director removes the required amendment.

W.S. 35–11–402(b).-At existing W.S. 35–11–402(b), Wyoming requires that, to the extent required by federal law or regulations, the Wyoming Game and Fish Department's approval has to be obtained for reclamation standards established for ''fish and wildlife habitat'' as defined at W.S. 35–11–103(e)(xxvi). As additional requirements at W.S. 35–11–402(b) (i) and (ii), Wyoming proposed that the Wyoming Game and Fish Department's approval would have to be obtained for standards established for ''grazingland,'' as defined at W.S. 35–11–103(e)(xxvii), if the grazingland includes critical habitat designated by the U.S. Fish and Wildlife Service or if it includes crucial habitat designated by the Wyoming Game and Fish Department prior to submittal of the initial permit application or any subsequent amendments to the permit application. An amendment to a permit application is, as set forth in Wyoming's existing rule at chapter I, section 2(e), a permit application adding new lands to a previously approved permit area, as allowed by W.S. 35–11–406(a)(xii).

Although unstated, the standards addressed by the proposed provision are revegetation standards for which the Wyoming Land Quality Division would have to obtain the Wyoming Game and Fish Department's approval on a permit-specific basis.

This proposed State statute does not have any direct counterpart in SMCRA, but it does in part have a counterpart in the Federal regulations. The Federal regulation at 30 CFR 816.116(b)(3)(i) requires for areas to be developed for fish and wildlife habitat, that success of vegetation, which is to be based upon tree and shrub stocking and vegetative ground cover parameters, be specified by the regulatory authority after consultation with and approval by the State agency responsible for the administration of the wildlife program.

The existing provision at proposed W.S. 35–11–402(b) requires Wyoming Game and Fish Department approval of revegetation standards for land to be reclaimed to fish and wildlife habitat. This provision is consistent with the corresponding Federal regulation at 30 CFR 816.116(b)(3)(i), which requires the State wildlife agency's approval of the revegetation standards for areas to be reclaimed for fish and wildlife habitat.

The proposed provision at W.S. 35–11–402(b)(i) requires Wyoming Game and Fish Department approval of revegetation standards for grazingland including critical habitat. As discussed in finding No. 10, the Federal regulation at 30 CFR 780.16(a)(2)(i) requires Wyoming to obtain the approval of the U.S. Fish and Wildlife Service, not the State wildlife agency, on any critical habitat that could be affected by mining operations. Although Wyoming does not indicate in the proposed provision at W.S. 35–11–402(b)(i) that it must obtain U.S. Fish and Wildlife Service approval, this does not make the provision less effective than the Federal regulation at 30 CFR 780.16(a)(2)(i), because Wyoming has narrowly worded the provision in such a way as to only apply to Wyoming Game and Fish Department approvals. This does not, however, relieve Wyoming of the responsibility to require such U.S. Fish and Wildlife Service approval through its rule at chapter II, section 2(a)(vi)(G)(II). Although the Federal regulations do not require State wildlife agency approval for critical habitat, Wyoming's proposal to do so amounts to an additional requirement that odes not render the proposed provision at W.S. 35–11–402(b)(i) less effective than the Federal regulation at 30 CFR 780.16(a)(2)(i).

The proposed provision at W.S. 35–11–402(b)(ii) requires Wyoming Game and Fish Department approval of revegetation standards for grazingland, as defined at W.S. 35–11–103(e)(xxvii), which was designated by the Wyoming Game and Fish Department as crucial habitat prior to submittal of the initial permit application or any subsequent amendments to the permit application. As set out in Wyoming's definitions, grazingland is a different and separate land use from fish and wildlife habitat. Therefore, grazingland with crucial habitat on it, regardless of when the crucial habitat was designated, is not

fish and wildlife habitat. ''Fish and wildlife habitat,'' as defined at W.S. 35–11–103(e)(xxvi), is ''land *dedicated* wholly or partially to the protection, protection or management of species of fish or wildlife'' (emphasis added). ''Grazingland,'' as defined at W.S. 35–11–103(e)(xxvii) ''includes rangelands and forestlands where the indigenous native vegetation is actively managed for grazing, browsing, occasional hay production, and *occasional use by wildlife*'' (emphasis added). In its April 9, 1996, letter response to OSM's issue letter, Wyoming implicitly acknowledged this difference when it stated that there is ''very little habitat which is *dedicated* wholly or partially to the production, protection or management of species of fish or wildlife'' (emphasis in the original, page 3 of Wyoming's letter, item No. 4.B). In its proposed provision at W.S. 35–11–402(b)(ii), the Wyoming Land Quality Division requires Wyoming Game and Fish Department approval of revegetation standards for certain ''grazingland.'' To the extent that the corresponding Federal regulation at 30 CFR 816.116(b)(3)(i) only requires State wildlife agency approval of revegetation standards for ''fish and wildlife habitat,'' the proposed provision at W.S. 35–11–402(b)(ii) goes beyond the requirements of the Federal regulation.

For the reasons discussed above, the Director finds that proposed W.S. 35–11–402(b)(i) and (ii) are no less stringent than SMCRA and no less effective than the Federal regulation at 30 CFR 816.116(b)(3)(i). The Director approves these statutory provisions.

Rules at chapter II, section 2(b)(iv)(C), and chapter IV, sections 2(d)(x)(E) and (E) (III).—Wyoming's revegetation plan requirements for surface coal mining permit applications are in its rule at chapter II, section 2(b)(iv)(C). Wyoming proposed to revise the rule to require consultation with the Wyoming Department of Agriculture on cropland and erosion control techniques. The Federal permitting regulation at 30 CFR 780.18(b)(5) requires a plan for revegetation as required in 30 CFR 816.111 through 816.116. The Director finds that consultation with the Wyoming Department of Agriculture would potentially result in a permit that affords greater environmental protection to lands developed for cropland. This proposed revision to the rule at chapter II, section 2(b)(iv)(C) is not inconsistent with the intent of the Federal regulation at 30 CFR 780.18(b)(5).

Some of Wyoming's revegetation performance standards are in its rules at chapter IV, section 2(d)(x)(E). Wyoming proposed at section 2(d)(x)(E) that the postmining density, composition, and distribution of shrubs shall be based upon site-specific evaluation of premining vegetation and wildlife use. The Federal regulation at 30 CFR 816.116(a)(2) requires that standards for revegetation success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. The Director finds that this proposed revision to the rule at chapter IV, section 2(d)(x)(E) is not inconsistent with the Federal regulation at 30 CFR 816.116(a)(2).

Wyoming proposed to further revise the rule at chapter II, section 2(b)(iv)(C) to (1) require, for crucial and critical habitats, consultation with and approval by the Wyoming Game and Fish Department on minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover and (2) require, for important habitats, consultation with the Wyoming Game and Fish Department on minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover. Wyoming proposed at chapter IV, section 2(d)(x)(E) (III) to (1) require, for areas containing designated critical or crucial habitats, consultation with and approval by the Wyoming Game and Fish Department on minimum stocking and planting arrangements of shrubs, including species composition, and (2) require, for areas containing important habitats, consultation with the Wyoming Game and Fish Department to obtain recommended minimum stocking and planting arrangements of shrubs, including species composition, that may exceed the preceding programmatic standard (the standard at section 2(d)(x)(E)(I), which requires that, except where a lesser density is justified from premining conditions in accordance with appendix A, at least 20 percent of the eligible lands shall be restored to shrub patches supporting an average density of one shrub per square meter). With two exceptions, these proposed consultation and approval requirements and consultation-only requirements are the same as the proposed statutory requirements for W.S. 35–11–402(b) that are addressed above.

The first exception is that the rules indicate that consultation with and approval by the Wyoming Game and Fish Department need occur on crucial habitat (i.e., all crucial habitat regardless of when it is designated), whereas the statute indicates that the approval by the Wyoming Game and Fish Department need only occur on those crucial habitats that are designated prior to the submittal of the initial permit application or any subsequent permit application amendments. To the extent that the proposed rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), require Wyoming Game and Fish Department approval of certain crucial habitats not required by the statute at W.S. 35–11–402(b)(ii), the proposed rules and statute are not consistent. Therfore, the Director is requiring Wyoming to (1) revise the rules at chapter II, section 2(b)(iv)(C) and chapter IV, section 2(d)(x)(E)(III) to require Wyoming Game and Fish Department approval of revegetation standards for grazingland that was designated by the Wyoming Game and Fish Department as crucial habitat prior to submittal of the initial permit application or any subsequent amendments to the permit application, or (2) to revise the statute at W.S. 35–11–402(b)(ii) to remove the phrase ''prior to submittal of the initial permit application or any subsequent amendments to the permit application.''

The second exception is that the rules do not require consultation and approval on all surface mined lands to be reclaimed for a ''fish and wildlife habitat'' land use, whereas the statute does. The rules require consultation and concurrence on critical habitat and crucial habitat, but they do not require consultation and concurrence on lands to be reclaimed for the fish and wildlife habitat land use. The Federal regulations at 30 CFR 816.116(b)(3)(i) require, for areas to be developed for the fish and wildlife habitat land use, consultation and concurrence by the State agency responsible for the administration of the wildlife program on minimum stocking and planting arrangements for tree and shrub stocking. To the extent that the rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), do not require consultation with and approval by the Wyoming Game and Fish Department on minimum stocking and planting arrangements for tree and shrub stocking on lands to be reclaimed for the fish and wildlife habitat land use, they are less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i). Therefore, the Director approves the rules at chapter II, section 2(b)(iv)(C) and chapter IV, section 2(d)(x)(E)(III) but requires Wyoming to revise them to require consultation with and approval by the Wyoming Game and Fish Department of tree and shrub standards for all lands to be reclaimed for the fish and wildlife habitat land use.

In conclusion, the Director finds, for the reasons discussed above, that the proposed rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), are less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i). The Director approves the proposed rules but requires Wyoming to revise them.

6. W.S. 35–11–402(c), Establishment of Shrubs on Grazingland

On January 24, 1994, OSM at 30 CFR 950.16(ff) (finding No. 5, 59 FR 3521, 3523) required Wyoming to either delete W.S. 35–11–402(c) (which required reestablishment of shrubs on grazingland to a density of one shrub per 9 square meters, or to the premining density, whichever was less) or to submit documentation that the shrub density requirement was consistent with SMCRA and no less effective than the Federal regulations.

In response to the required amendment, Wyoming proposed to delete the shrub density for grazingland from W.S. 35–11–402(c). This deletion satisfies the required amendment at 30 CFR 950.16(ff), and the Director is removing the required amendment. (Note, however, that Wyoming has now proposed shrub density standards elsewhere in its rules. For a discussion of the effectiveness of those rules, see finding No. 7.)

At W.S. 35–11–402(c), Wyoming also proposed, for the reclamation of grazingland, that native shrubs be reestablished. It also stipulated that no shrub species shall be required to be more than one-half of the shrubs in the postmining standard.

Section 515(b)(19) requires that surface coal mining and reclamation operations establish on regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land affected.

Wyoming's proposed W.S. 35–11–402(c) is no less stringent than section 515(b)(19) of SMCRA in that it requires the use of native species and, through its requirement that no shrub species shall be more than one-half of the shrubs in the postmining standard, promotes a diverse vegetative cover.

For the above stated reasons, the Director approves proposed W.S. 35–11–402(c).

7. Rules at Chapter I, Section 2(ac); Chapter IV, Section 2(d)(x)(E)(I) and (II); and Appendix A: Definition for ''Eligible Land'' and Reclamation Success Standards for Shrub Density

On January 24, 1994, OSM at 30 CFR 950.16(gg) (finding No. 6, 59 FR 3521, 3524) required Wyoming to amend the rule at chapter IV, section 2(d)(X)(E) and appendix A to include shrub density requirements that are in compliance with SMCRA and the Federal regulations. In response to the required amendment, Wyoming proposed the following revisions to its rules.

At chapter I, section 2(ac), Wyoming proposed that ''eligible land'' means

> all land to be affected by a mining operation after the shrub standard set forth at chapter IV, section 2.(d)(x)(E) is approved by the Office of Surface Mining. Cropland, pastureland or *treated grazingland* approved by the Administrator which is to be affected by a mining operation after the shrub standard set forth at *chapter IV, section 2.(d)(x)(E)* is approved by the Office of Surface Mining is not ''eligible land''

(emphasis added).

In its rule at chapter IV, section 2(d)(x)(E) (I) and (II), Wyoming proposed that

> (I) Except where a lesser density is justified from premining conditions in accordance with Appendix A, at least 20 percent of the *eligible land* shall be restored to shrub patches supporting an average of one shrub per square meter. Patches shall be no less than .05 acres each and shall be arranged in a mosaic that will optimize habitat interspersion and edge effect. Criteria and procedures for establishing the standard are specified in Appendix A. This standard shall apply upon approval by OSM to all lands affected thereafter.
>
> (II) Approved shrub species and seeding techniques shall be applied to all remaining grazingland. Trees shall be returned to a density equal to the premining conditions

(emphasis added).

Appendix A of Wyoming's rules contains vegetation sampling methods and reclamation success standards for surface coal mining operations. In the following sections of appendix A, Wyoming proposed revisions that restate the above-discussed rules and detail the vegetation analyses that must be made by operators to implement the rules: II.C.3, detailed qualitative and quantitative sampling procedures, suggested sampling procedures for shrub habitat characteristics; VII.F, developing a revegetation plan, restoration of shrubs, subshrubs, and trees; and VIII.E, testing adequacy of reclamation, summary. Also, in the following sections of appendix A, Wyoming proposed other miscellaneous related revisions: Table 1, values for use in sample adequacy formula; table 2 and IV.D. minimum and maximum sample sizes for various sampling methods; and appendix VII, glossary terms ''dominant'' and ''primary shrub species.'' The effect of these proposed rules is that, with respect to lands to be reclaimed for a grazingland use or a fish and wildlife habitat land use, there is one shrub reclamation standard that applies to lands disturbed prior to the date of OSM's approval of the rules, and there is a different one that applies to lands disturbed after the date of OSM's approval of the rules.

For those lands disturbed prior to the date of OSM's approval, the requirements of the existing rule at chapter IV, section 2(d)(x)(E) applies. It sets a reclamation goal of one shrub per square meter in shrub patches on 10 percent of the affected land. For those lands disturbed after the date of OSM's approval, the requirements of the new definition for ''eligible land'' at chapter I, section 2(ac), the revised rules at chapter IV, section 2(d)(x)(E) (I) and (II), and the revised appendix A for the rules apply. They require that, except where a lesser density is justified from premining conditions in accordance with appendix A, at least 20 percent of the affected land be restored to shrub patches supporting an average of one shrub per square meter.

For both the pre-approval and post-approval affected lands, the operator must seed the areas outside the shrub patches with an approved seeding mixture that includes shrubs. The existing rule at chapter IV, section 2(d)(x)(E) specifies this when it states that ''(a)pproved shrub species and seeding techniques shall be applied to all remaining surfaces used jointly by livestock and wildlife.'' The proposed rule at chapter IV, section 2(d)(x)(E)(II) specifies this when it states that ''(a)pproved shrub species and seeding techniques shall be applied to all remaining grazingland.''

The Federal regulation at 30 CFR 816.116(a)(1) requires the State regulatory authority to select standards for success and statistically valid sampling techniques for measuring success and to include them in an approved regulatory program. The standards proposed by Wyoming and discussed above constitute such standards and techniques.

30 CFR 816.116(b)(3) requires, for areas developed for fish and wildlife habitat, success of vegetation to be determined on the basis of tree and shrub stocking and vegetative ground cover. As further required at 30 CFR 816.116(b)(3)(i), minimum stocking and planting arrangements must be specified by the State regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agency responsible for the administration of the wildlife program. By letter dated March 28, 1996, the Wyoming Game and Fish Department concurred with the

proposed shrub density standards (administrative record No. WY–31–18).

Because Wyoming has proposed shrub reestablishment success standards and statistically valid sampling techniques that should ensure a vegetative stand which is effective in implementing the grazingland and fish and wildlife habitat land uses, and because the State wildlife agency has concurred with the standards for the fish and wildlife habitat land use, the Director finds that Wyoming's proposed definition for ''eligible land'' at chapter I, section 2(ac), the revised rules at chapter IV, section 2(d)(x)(E) (I) and (II), and the revised appendix A, meet the requirements of 30 CFR 816.116(a)(1) and 816.116(b)(3). Accordingly, the Director approves the proposed rules, and the appendix to the rules, and removes the required amendment at 30 CFR 950.16(gg).

8. Rule at Chapter I, Section 3(bc)(iii), Definition for ''Grazingland''

On July 8, 1992, OSM at 30 CFR 950.16(q) required Wyoming to revise its definition for ''grazingland'' in its rules at chapter I, section 2(ba)(iii) to clarify that Wyoming's rule requires that land managed for grazing must also receive consideration for wildlife use (finding No. 2, 57 FR 30121, 30123–5). Wyoming proposed to satisfy this required amendment by adding the phrase ''and occasional use by wildlife'' to its land use definition for ''grazingland'' at chapter I, recodified section 2(bc)(iii). With the addition of this phrase, this rule definition is substantively identical to the statue definition for grazingland at W.S. 35–11–103(e)(xxvii), which OSM approved in the above-cited 1992 Federal Register notice. The Director finds that Wyoming's proposed ''grazingland'' definition at chapter I, recodified section 2(bc)(iii), is no less effective than the corresponding Federal land use definition of ''grazingland'' at 30 CFR 701.5. Therefore, the Director approves the proposed definition and removes the required amendment at 30 CFR 950.16(q).

9. Rule at Chapter I, Section 2(bc)(xi), Definition for ''Treated Grazingland''

In its process of adopting the shrub reestablishment standards included in this amendment, Wyoming realized that there might be an incentive for operators to mechanically or chemically treat areas to be permitted in the future. If allowed to do so, the operators could reduce premining shrub densities so that fewer shrubs would have to be established on reclaimed lands. At the same time, Wyoming recognized that removal of shrubs from rangeland is a common management tool. With these things in mind, Wyoming created the term ''treated grazingland'' as a compromise between these two concerns (administrative record No. WY–31–18).

At chapter I, section 2(bc)(xi), Wyoming proposed that ''treated grazingland'' means

> grazingland which has been altered to reduce or eliminate shrubs provided such treatment was applied at least five years prior to submission of the state program permit application. However, grazingland altered more than five years prior to submission of the state program permit application on which full shrubs have reestablished to a density of at least one per nine square meters does not qualify as treated grazingland.

In effect, the proposed definition for ''treated grazingland'' creates three classes of grazingland: (1) Grazingland that is affected after the date of OSM's approval and that was treated less than 5 years prior to the submission of the permit application; (2) grazingland that is affected after the date of OSM's approval and that was treated 5 or more years prior to the submission of the permit application where the premining shrub density is *equal to or greater* than one shrub per 9 square meters; (3) grazingland that is affected after the date of OSM's approval and that was treated 5 or more years prior to the submission of the permit application where the premining shrub density is *less* than one shrub per 9 square meters.

In order to determine the shrub reestablishment standard that applies to each of these three classes of grazingland, one must apply the proposed definition for ''treated grazingland'' in conjunction with the proposed definition for ''eligible land'' at chapter I, section 2(ac); the proposed rule at chapter IV, section 2(d)(x)(E); and appendix A to the rules at section VIII.E. A discussion of the shrub reestablishment standards for each of these classes of grazingland follows.

For the reasons discussed, the Director, approves the proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), because the shrub standards set by Wyoming for treated grazingland strikes a reasonable balance between agricultural interests and wildlife habitat needs that is not inconsistent with the intent of SMCRA and the Federal regulations. However, the Director is requiring Wyoming to clarify the revegetation standard for grazingland that is affected after the date of OSM's approval and that was treated less than 5 years prior to the submission of the permit application.

Grazingland that is affected after the date of OSM's approval and that was treated less than 5 years prior to the submission of the permit application. As set forth in the proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), grazingland that is disturbed after the date of OSM's approval of these rules and that was treated less than 5 years prior to the submission of the permit application is not ''treated grazingland.'' Because it is not ''treated grazingland,'' it is ''grazingland.'' As set forth in the definition for ''eligible land'' at chapter I, section 2(ac), this grazingland is eligible land that is subject to the shrub standard set forth at chapter IV, section 2(d)(x)(E), which at subsection (I) states that ''*[e]xcept where a lesser density is justified from premining conditions* in accordance with appendix A, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average of one shrub per square meter'' (emphasis added).

Given Wyoming's rationale that it wanted to take away any incentive for an operator permining shrub densities so that fewer shrubs would have to be established on reclaimed grazinglands, it is not likely that Wyoming intended that the postmining shrub reestablishment standard could be a lesser density that was based on the premining, treated condition. Even so, the language of the rules could be interpreted to allow this. Alternatively, it's possible that Wyoming intended that any operator treating grazingland less than 5 years prior to the submission of the permit application would than automatically have to reclaim to the maximum standard of at least one shrub per square meter on 20 percent of the eligible land.

There is no direct counterpart definition for ''treated grazingland'' in the Federal regulations. However, 30 CFR 816.116(b)(1) requires that standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, for areas developed for use as grazingland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area of ''such other success standards approved by the regulatory authority.''

Because Wyoming's rules are unclear as to the shrub reestablishment standard for grazingland that is affected after the date of OSM's approval and that was treated less than 5 years prior to the submission of the permit application, the Director finds that Wyoming's proposed definition for ''treated grazingland'' at chapter I, section

2(bc)(xi), as applied in conjunction with the proposed definition for ''eligible land'' at chapter I, section 2(ac), the proposed rule at chapter IV, section 2(d)(x)(E)(I), and appendix A to the rules at section VIII.E, does not clearly satisfy for this class of grazingland the Federal regulation at 30 CFR 816.116(b)(1) that requires the regulatory authority to set standards of revegetation success for areas developed for grazingland. Therefore, the Director is requiring Wyoming to revise the definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), to otherwise revise its rules, or to provide OSM with a policy statement, clarifying the shrub standard for grazingland that is affected after the date of OSM's approval and that was treated less than 5 years prior to the submission of the permit application.

Grazingland that is affected after the date of OSM's approval and that was treated 5 or more years prior to the submission of the permit application where the premining shrub density is equal to or greater than one shrub per 9 square meters.—As set forth in the proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), grazingland that is disturbed after the date of OSM's approval of these rules, was treated more than 5 years prior to the submission of the permit application, and supports a premining shrub density equal to or greater than one shrub per 9 square meters is not ''treated grazingland.'' Because it is not ''treated grazingland,'' it is ''grazingland.'' As set forth in the definition for ''eligible land'' at chapter I, section 2(ac), this grazingland is eligible land that is subject to the shrub standard set forth at chapter IV, section 2.(d)(x)(E), which at subsection (I) states that ''[e]xcept where a lesser density is justified from premining conditions in accordance with appendix A, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average of one shrub per square meter.'' Thus, the postmining shrub standard for this class of grazingland is no more than one shrub per square meter on 20 percent of the land, and possibly less depending upon the premining shrub density.

The Director finds that Wyoming's proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), as applied in conjunction with the proposed definition for ''eligible land'' at chapter I, section 2(ac), the proposed rule at chapter IV, section 2(d)(x)(E)(I), and appendix A to the rules at section VIII.E, satisfies, for this class of grazingland, the Federal regulation at 30 CFR 816.116(b)(1) that requires the regulatory authority to set standards of revegetation success for areas developed for grazingland.

Grazingland that is affected after the date of OSM's approval and that was treated 5 or more years prior to the submission of the permit application where the premining shrub density is less than one shrub per 9 square meters (treated grazingland).—As set forth in the proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), grazingland that is disturbed after the date of OSM's approval of these rules, was treated more than 5 years prior to the submission of the permit application, and supports a premining shrub density of less than one shrub per 9 square meters in ''treated grazingland.'' Because it is ''treated grazingland,'' it is *not* ''eligible land'' as defined at chapter I, section 2(ac) and is *not* subject to the shrub standard set forth at chapter IV, section 2(d)(x)(E). For this treated grazingland, the operator is required to reclaim the land in accordance with chapter IV, section 2(d)(x)(E)(II), which requires that ''(a)pproved shrub species and seeding techniques shall be applied to all remaining grazingland.'' Thus, no postmining shrub standard is set for treated grazingland, but the operator is required to seed for shrubs using approved species and techniques.

The Director agrees with Wyoming that the shrub standard set by Wyoming for treated grazingland strikes a reasonable balance between agricultural interest and grazingland habitat needs that is not inconsistent with the intent of SMCRA and the Federal regulations. Therefore, the Director finds that Wyoming's proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), as applied in conjunction with the proposed definition for ''eligible land'' at chapter I, section 2(ac), and the proposed rule at chapter IV, section 2(d)(x)(E)(II), satisfies, for this class of grazingland, the Federal regulation at 30 CFR 816.116(b)(1) that requires the regulatory authority to set standards of revegetation success for areas developed for grazingland.

10. Rule Chapter II, Section 2(a)(vi)(G)(II), Consultation by the Wyoming Land Quality Division On Critical Habitat

In its permit application requirements rule at chapter II, section 2(a)(vi)(G)(II), Wyoming proposed that the Wyoming Game and Fish Department must be contacted by the Wyoming Land Quality Division if the disruption of critical habitat is likely. At chapter I, section 2(v), Wyoming proposed to define ''critical habitat'' to mean the habitat of those threatened and endangered species listed by the Secretary of the Interior or Commerce in accordance with 50 CFR 17 parts and 226.

Wyoming's existing performance standard rule at chapter IV, section 2(r)(i)(E) requires an operator to promptly report to the Wyoming Land Quality Division any threatened or endangered species or critical habitat of such species, which was not reported or investigated in the permit application. Upon such notification, the Administrator of the Wyoming Land Quality Division is required to consult with the Wyoming Game and Fish Department *and* the U.S. Fish and Wildlife Service.

The Federal regulations at 30 CFR 780.16(a) require the regulatory authority to consult with State and Federal agencies with responsibilities for fish and wildlife. 30 CFR 780.16(a)(2)(i) requires site-specific resource information for listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The U.S. Fish and Wildlife Service is responsible for listing, recovery, administration, and prohibitions associated with threatened and endangered species designated under this Act. Therefore, 30 CFR 780.16(a) and (a)(2)(i) require the regulatory authority to consult with the Fish and Wildlife Service on critical habitat for Federally-listed threatened and endangered species.

Because Wyoming's proposed rule at chapter II, section 2(a)(vi)(G)(II) does not require consultation with the U.S. Fish and Wildlife Service on critical habitat, it is not consistent with its existing rule at chapter IV, section 2(r)(i)(E) and is less effective than the Federal regulations at 30 CFR 780.16(a) and (a)(2)(i). Therefore, the Director approves the proposed rule at chapter II, section 2(a)(vi)(G)(II) but requires Wyoming to revise it to require consultation with the U.S. Fish and Wildlife Service on critical habitat.

11. Rule at Chapter X, Section 4(e), Disturbance of Critical, Crucial, and Important Habitats by Exploration Operations

In its rule at chapter X, section 4(e), Wyoming proposed to prohibit coal exploration operations on critical habitat and crucial habitat, but to allow coal exploration operations on important habitat after consultation with the Wyoming Game and Fish Department.

The Federal regulations at 30 CFR 815.15(a) prohibit the disturbance of ''habitats of unusually high value for fish [and] wildlife'' by coal exploration operations. As described in 30 CFR 780.16(a)(2)(ii), these habitats include ''important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas.'' This description coincides with Wyoming's proposed definition for ''important habitat'' at chapter I, section 2(ax), which states that ''important habitat'' includes ''wetlands, riparian areas, rimrocks, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.'' Therefore, Wyoming's ''important habitat'' is a ''habitat of unusually high value'' as described in the Federal regulations.

Because Wyoming's proposed rule at chapter X, section 4(e) does not prohibit the disturbance of ''important habitat'' by coal exploration operations it is less effective than the corresponding Federal regulation at 30 CFR 815.15(a). The Director approves the proposed rule but requires Wyoming to revise it to prohibit the disturbance of ''important habitat'' by coal exploration operations.

12. Rules at Chapter XIII, Section 3(a), Notice and Opportunity for Public Hearing on Permit Revision

At chapter XIII, section 3(a), Wyoming proposed that the applicant's newspaper notice for a significant permit revision shall contain the information required by W.S. 35–11–406(j), the permit number and date approved, and a general description of the proposed revision. W.S. 35–11–406(j) requires the notice to contain information regarding the identity of the applicant, the location of the proposed operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location at which information about the application may be obtained, and the location and final date for filing objections to the application.

In setting forth in corresponding Federal notice requirements for significant permit revisions, 30 CFR 774.13(b)(2) references 30 CFR 773.13. 30 CFR 773.13(a)(1) itemizes the information that must be included in an applicant's newspaper notice.

Proposed chapter XIII, section 3(a) includes some notice requirements that are not included in the corresponding Federal regulations at 30 CFR 774.13(b)(2) and 773.13(a)(1). These include: The proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the permit number and date approved, and a general description of the proposed revision. These additional requirements are not inconsistent with 30 CFR 774.13(b)(2) and 773.13(a)(1). Aside from these requirements, proposed chapter XIII, section 3(a) also includes, with two exceptions, all of the requirements of the counterpart Federal requirements at 30 CFR 774.13(b)(2) and 773.13(a)(1). The exceptions are that the proposed State rule does not include counterparts to 30 CFR 773.13(a)(1)(v) and (vi) respectively concerning notice of permit request to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, and permit request for experimental practice. Although proposed chapter XIII, section 3(a) does not include these requirements, it need not do so because they are included elsewhere in Wyoming's regulations at chapter XII, section 1(a)(v)(D) and chapter XII, section 1(a)(ii)(B). For these reasons, Wyoming's proposed newspaper notice requirements for permit revisions at chapter XIII, section 3(a) are no less effective than the corresponding notice requirements of the Federal regulations at 30 CFR 774.13(b)(2) and 773.13(a)(1).

At chapter XIII, section 3(a), Wyoming also proposed that the operator shall mail a copy of the application mine plan map the Wyoming Oil and Gas Commission.

As previously discussed, the Federal regulations at 30 CFR 774.13(b)(2) require for significant permit revisions that the regulatory authority comply with the notice requirements at 30 CFR 773.13. The Federal regulations at 30 CFR 773.13(a)(3) require the regulatory authority, upon receipt of a significant revision to a permit under 30 CFR 774.13, to issue a written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. It further requires the regulatory authority to send the notification to all State governmental agencies with an interest in the proposed operation.

The proposed State requirement at chapter XIII, section 3(a) differs from the Federal requirements at 30 CFR 774.13(b)(2) and 773.13(a)(3) in that the permit revision applicant, rather than the regulatory authority, is required to notify the interested State agency. Although this difference is substantive, it does not make the proposed State rule less effective than the Federal regulations, because the Federal requirement for notifying the interested State agency are met.

In conclusion, for the aforementioned reasons, Wyoming's proposed rule at Chapter XIII, section 3(a) is no less effective than the corresponding Federal regulations at 30 CFR 774.13(b)(2), 773.13(a)(1), and 773.13(a)(3). Therefore, the Director approves the proposed revisions to the rule.

13. Rule at Chapter XVII, Section 1(a), Lands Unsuitable for Mining and Definition for ''Fragile Lands''

Wyoming proposed to revise its definition for ''fragile lands'' in its rule at chapter XVII, section 1, which pertains to the designation of areas unsuitable for surface coal mining. Wyoming proposed to add crucial or important habitats for fish or wildlife to the list of lands that constitute ''fragile lands.'' It also proposed that ''critical habitats for endangered species,'' rather than just ''critical habitats for endangered species *of plants,*'' (emphasis added) are ''fragile lands.''

The corresponding Federal definition for ''fragile lands'' at 30 CFR 762.5 states that ''valuable habitats for fish or wildlife'' are examples of fragile lands. Instead of using this term, Wyoming uses the term ''crucial or important habitat.'' Because ''crucial habitat'' and ''important habitat,'' as defined by Wyoming in its rules at chapter I, sections 2(ax) and (w) (see findings No. 4), are ''valuable habitats for fish or wildlife'' as used in the Federal definition, Wyoming's listing of these habitats in its proposed definition for ''fragile land'' is consistent with the Federal definition for ''fragile land.''

The Federal definition for ''fragile lands'' at 30 CFR 762.5 further states that ''critical habitats for endangered *or threatended* species *of animals or plants*'' (emphasis added) are examples of fragile lands. In its proposed definition for ''fragile lands,'' Wyoming does not use the emphasized words ''threatened'' and ''of animals or plants.'' However, as defined by Wyoming at chapter I, section 2(v), ''critical habitat'' means ''those areas essential to the survival and recovery of species listed by the Secretary of the Interior or Commerce as *threatended* or endangered'' (emphasis added, see finding No. 3). Therefore, by using the term ''critical habitat'' in its proposed definition for ''fragile lands,'' Wyoming protects critical habitats of threatened species in its process for designating lands unsuitable for mining. Also, by using the term ''critical habitat'' in its proposed definition for ''fragile lands,'' Wyoming protects critical habitats of both plant and animal species, because

the Secretaries of the Interior and Commerce protect both plant and animal threatened or endangered species.

For these reasons, Wyoming's proposed definition for ''fragile lands'' at chapter XVII, section 1(a) is no less effective than the corresponding Federal definition for ''fragile lands'' at 30 CFR 762.5. Therefore, the Director approves the proposed definition.

14. Required Amendment at 30 CFR 950.16(hh)

By letters dated February 28, 1994, and September 1, 1994, Wyoming submitted a description of required amendments, a timetable for enactment of the amendments, and a request for additional time to complete the rulemaking associated with the required amendments at 30 CFR 950.16 (aa) through (gg). By final rule Federal Register notice dated December 23, 1994, OSM extended until November 30, 1995, the deadline for Wyoming to submit an amendment addressing the required amendments. OSM codified this deadline extension at 30 CFR 950.16(hh). Wyoming submitted the amendment, which is the subject of this notice, on November 29, 1995. Because Wyoming has submitted the amendment, the Director is removing the required amendment at 30 CFR 950.16(hh).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

National Wildlife Federation, Wyoming Wildlife Federation, and Wyoming Outdoor Council.—By letter dated January 16, 1996 (administrative record No. WY–31–09), the National Wildlife Federation, Wyoming Wildlife Federation, and Wyoming Outdoor Council jointly commented on W.S. 35–11–402(b)(ii). In this statutory provision, the Wyoming Land Quality Division proposed that, to the extent required by federal law or regulations, it would have to obtain the approval of the Wyoming Game and Fish Department for reclamation standards for ''grazingland'' as defined at W.S. 35–11–103(e)(xxvii), if the grazingland includes crucial habitat designated by the Wyoming Game and Fish Department ''prior to submittal of the initial permit application or any subsequent amendments to the permit application.''

The commenters started that the quoted part of the provisions places a restriction on the protection of crucial habitat that is not consistent with section 515(b)(2) of SMCRA, which requires that all surface coal mining operations shall at a minimum ''restore the land affected *to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses* * * *'' (emphasis added by commenters). They argue that there can be no restoration to the land's prior wildlife capabilities if the Wyoming Game and Fish Department cannot update crucial habitat areas after the initial permit application.

The commenters also cited section 515(b)(24), which requires that mine operators ''to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.'' The commenters stated that this provision cannot be carried out if the Wyoming Game and Fish Department cannot add to crucial habitat maps after the initial permit application.

In addition, the Wyoming Outdoor Council (Council) by letter dated January 22, 1996 (administrative record No. WY–31–13), stated that, although most big game crucial ranges in Wyoming are well defined, the Wyoming Game and Fish Department has not, because of only having three nongame biologists for all of Wyoming's 98,000 square miles, identified crucial habitats for a broad range of species, including raptors, sage and sharp tail grouse, and ''state priority species.'' The Council stated that it is conceivable that a permit applicant's baseline wildlife information could reveal crucial habitats previously unrecognized by the Wyoming Game and Fish Department. The Council stated that the proposed statutory provision makes the collection of wildlife baseline data trivial if these data cannot be used to make certain resource determinations and then base management prescriptions on these determination (i.e., wildlife data included in permit application cannot be used as a basis for designating, protecting, and enhancing crucial habitat).

The Council cited 30 CFR 780.16(a), which requires that

> [e]ach application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information * * * shall be sufficient to design the protection and enhancement plan required under (b) of this section.

Referenced 30 CFR 780.16(b), at subsection (2), requires that

> [e]ach application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife. * * * This description shall—apply at a minimum to species and habitats identified under paragraph (a) of this section.

The Council concluded that the restriction that proposed W.S. 35–11–402(b)(ii) places on the protection and enhancement of crucial habitat is a violation of 30 CFR part 780.

OSM considered these comments in its review of proposed W.S. 35–11–402(b)(ii). For the reasons discussed in finding No. 5 and below, OSM does not agree that proposed W.S. 35–11–402(b)(ii) is less effective than SMCRA and the Federal regulations.

Wyoming's permit application rules at chapter II, section 2(a)(vi)(D)(require studies of wildlife and their habitats in the level of detail as determined by the Wyoming Land Quality Division, after consultation with the Wyoming Game and Fish Department. The purpose of these baseline studies is to identify valuable wildlife habitats so that the permit applicant can be required to plan mining and reclamation operations to minimize wildlife impacts. If these studies reveal valuable wildlife habitat on grazingland, the permit applicant would be required to accordingly plan mining and reclamation operations to minimize wildlife impacts, regardless of whether the Wyoming Game and Fish Department subsequently (after initial permit or amendment application) designated the valuable habitat as critical habitat. If the crucial habitat designation on grazing land did occur after initial permit or amendment application, the Wyoming Land Quality Division would not under W.S. 35–11–402(b)(ii) have to obtain Wyoming Game and Fish Department approval of shrub revegetation standards, but, assuming that the habitat was at least important habitat, it would still have to solicit the Wyoming Game and Fish Department's recommendations. The Wyoming Land Quality Division has an obligation to afford good-faith considerations to all Wyoming Game and Fish Department recommendations regarding protection, restoration, and enhancement of wildlife resources, regardless of the postmining land use.

In addition to the aforementioned permitting requirements, the permit applicant would not be relieved of the responsibility to meet the performance

standards in Wyoming's rules at chapter IV, section 2(r), which requires an operator, to the extent possible using the best technology currently available and consistent with the approved postmining land use, minimize disturbance, and where practicable, enhance wildlife resources.

University of Wyoming.—The Head of the Department of Plant, Soil, and Insect Sciences, University of Wyoming, responded but had no comments on the amendment (administrative record No. WY–31–16).

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Wyoming program.

U.S. Bureau of Mines.—By letter dated December 21, 1995, the U.S. Bureau of Mines, Division of Environmental Technology, responded that it had no comments on the amendment (administrative record No. WY–31–06).

U.S. Army Corps of Engineers.—By letter dated December 27, 1995, the U.S. Army Corps of Engineers responded that it found the amendment to be satisfactory (administrative record No. WY–31–07).

U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).—By letter dated January 12, 1996, NRCS responded with comments (administrative record No. WY–31–10).

NRCS recommended that the proposed land use definition of ''grazingland'' at chapter I, section 2(bc)(iii) be revised to read: ''Grazingland includes rangelands and forest lands where the indigenous native vegetation is actively managed for grazing, browsing, occasional mechanical forage harvesting, and may also be used by wildlife.'' OSM made Wyoming aware of this recommendation, but it did not require Wyoming to revise the proposed definition because, as discussed in finding No. 8, it is no less effective than the corresponding Federal land use definition for ''grazingland'' at 30 CFR 701.5.

NRCS commented on the proposed rule at chapter II, section 2(b)(iv)(C), which includes requirements for permit application revegetation plans. The existing, unrevised language of this rule indicates that the ''[t]he standards and specifications adopted by the State Conservation Commission for mine reclamation shall be considered by the applicant during the preparation of the reclamation plan whenever practicable.'' NRCS stated that the State Conservation Commission is no longer in existence and that the State Board of Agriculture now has this former Commission's responsibilities; it also stated that the rule should indicate where the referenced standards and specifications can be obtained. In its March 8, 1996, issue letter, OSM notified Wyoming of this comment. In its April 9, 1996, response, Wyoming confirmed that the State Conservation Commission has disbanded and been replaced by the State Board of Agriculture. Wyoming stated that this Board does not have the responsibility for setting standards and specifications for mine reclamation. Therefore, Wyoming indicated it would in the future propose to OSM that the above-quoted sentence be deleted from the rule. Wyoming noted that another provision of the rule, which requires consultation with the Wyoming Department of Agriculture on croplands, will be retained because the Federal regulations at 30 CFR 780.23(a)(2)(ii) require consultation with such State agricultural agencies.

Bureau of Land Management.—By letter dated January 18, 1996, the Bureau of Land Management, Rock Springs District Office (BLM–RSDO), responded with comments (administrative record No. WY–31–12). Those comments that relate to proposed amendment revisions are discussed below. Other comments that relate to rules that are not proposed for revision in this amendment have been included in the administrative record for Wyoming's future consideration.

BLM–RSDO commented that the land use definition for ''grazingland'' in the proposed rule at chapter I, section 2(bc)(iii), should be revised by deleting the proposed phrase ''and occasional use by wildlife.'' In making this comment, BLM–RSDO was apparently unaware that Wyoming was adding the phrase ''and occasional use by wildlife'' in response to the required amendment at 30 CFR 950.16(q) that OSM placed on the Wyoming program. For a discussion of the required amendment and proposed definition, which the Director is approving, see finding No. 8.

BLM–RSDO commented that the revisions proposed in the land use definition for ''fish and wildlife habitat'' in the proposed rule at chapter I, section 2(bc)(viii) should not be made and that the definition should remain unchanged. As discussed in finding No. 1, the Director is approving the proposed definition because it is substantively identical to the corresponding Federal land use definition for ''fish and wildlife habitat'' at 30 CFR 701.5.

BLM–RSDO submitted comments on appendix A, section VIII.E (testing of adequacy of reclamation, evaluation of shrub density) questioning why treated grazingland was not subject to the standard of one shrub per square meter on the 20 percent of the affected area that is set forth in the rules at chapter IV, section 2(d)(x)(E). As discussed in finding No. 9 and as set forth in the proposed definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), grazingland that is disturbed after the date of OSM's approval of these rules, was treated more than 5 years prior to the submission of the permit application, and supports a premining shrub density of less than one shrub per 9 square meters is ''treated grazingland.'' As discussed in the finding, the Director agrees with Wyoming that the shrub standard set by Wyoming for treated grazingland strikes a reasonable balance between agricultural interests and wildlife habitat needs that is not inconsistent with the intent of SMCRA and the Federal regulations.

Lastly, BLM–RSDO commented that the list of plant species of special concern in appendix A, appendix IV, should be updated with 1995 data from the Wyoming Natural Diversity Database. OSM included this comment in its March 9, 1996, issue letter to Wyoming. In response, Wyoming stated that it would, through the rulemaking process and in some future amendment, remove the list from appendix A and instead refer the reader to the Wyoming Natural Diversity Database Office for a current list of plant species of special concern.

By letter dated January 18, 1996, BLM, Wyoming State Office (BLM–WSO), responded with a comment on the proposed rule at chapter XIII, section 3(a) (administrative record No. WY–31–15). Wyoming proposed to revise the rule to require coal operators to mail copies of significant permit revision maps to the Wyoming Oil and Gas commission, rather than owners of record, in accordance with W.S. 35–11–406(j). BLM–WSO recommended that the rule be revised to require coal operators to mail pertinent maps to all oil and gas operators within the permit area. OSM did not require Wyoming to make this recommended revision because the Federal regulations at 30 CFR 774.13(b)(2) and 773.13(a)(3) do not require it. As discussed in finding No. 12, the Director is approving the proposed rule on the basis that it is no less effective than the corresponding Federal regulations.

U.S. Fish and wildlife Service (FWS).—By letter dated January 19,

1996, FWS responded with comments (administrative record No. WY–31–11).

FWS commented that the rules in several places require consultation with the Wyoming Game and Fish Department on minimum stocking and planting arrangements of trees and shrubs on critical habitats, which Wyoming defines as those areas essential to the survival and recovery of species listed by the Secretaries of the Interior and Commerce as threatened or endangered. FWS stated that consultation on Federally designated critical habitats must occur with FWS and cannot be delegated to a State agency.

OSM agreed with FWS's comment and notified Wyoming in the March 8, 1996, issue letter that, to be no less effective than the Federal permit application at 30 CFR 780.16(a) and (a)(2)(i), Wyoming must revise its proposed rule at chapter II, section 2(a)(vi)(G)(II) to require consultation with FWS on critical habitat. In its April 9, 1996, response to the issue letter, Wyoming acknowledged the need to revise the rule, and it will do so in the future. As discussed in finding No. 10 of this notice, the Director finds that Wyoming's proposed rule at chapter II, section 2(a)(vi)(G)(II) is less effective than the Federal regulations at 30 CFR 780.16(a) and (a)(2)(i). Therefore, the Director is requiring Wyoming to revise the rule to require consultation with FWS on critical habitat.

FWS also commented that Wyoming's Enrolled Act No. 8, which limits some alterations to crucial habitat designations by the Wyoming Game and Fish Department, seems to conflict with the intent of SMCRA and could affect habitats of value to migratory birds and other species of high Federal interest. For a response to this general comment on W.S. 35–11–402(b)(ii), see the above responses to the comments on this section of the Wyoming's statute from the National Wildlife Federation, Wyoming Wildlife Federation, and Wyoming Outdoor Council.

Mine Safety and Health Administration.—By letter dated January 24, 1996, the Mine Safety and Health Administration responded but had no comments on the amendment (administrative record No. WY–31–14).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Wyoming proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. WY–31–03). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. WY–31–04). By letter dated January 4, 1996, the SHPO indicated he had no objections to the proposed amendment (administrative record No. WY–31–08). ACHP did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Wyoming's proposed amendment as submitted on November 29, 1995.

The Director approves, as discussed in:

Finding No. 1, revision of the land use definition for ''fish and wildlife habitat'' at chapter I, section 2(bc)(viii), and revision of chapter XI, section 5(a), substitution of a surety bond for a self-bond;

Finding No. 2, deletion of the definition for ''agricultural lands'' at W.S. 35–11–103(e)(xxviii);

Finding No. 3, deletion of the definition for ''critical habitat'' at W.S. 35–11–103(e)(xxix) and revision of the definition for ''critical habitat'' at chapter I, section 2(v);

Finding No. 4, deletion of the definition for ''crucial habitat'' at W.S. 35–11–103(e)(xxx), addition of the definition for ''crucial habitat'' at chapter I, section 2(w), and revision of the definition for ''important habitat'' at chapter I, section 2(ax);

Finding No. 6, revision of W.S. 25–11–402(c), establishment of shrubs on grazingland;

Finding No. 7, addition of the definition for ''eligible land'' at chapter I, section 2(ac), and revision of chapter IV, section 2(d)(x)(E) (I) and (II), and appendix A, reclamation success standards for shrub density;

Finding No. 8, revision of the land use definition for ''grazingland'' at chapter I, section 2(bc)(iii);

Finding No. 12, revision of chapter XIII, section 3(a), notice and opportunity for public hearing on permit revision; and

Finding No. 13, revision of the definition for ''fragile lands'' at chapter XVII, section 1(a), with respect to designation of lands unsuitable for mining.

With the requirement that Wyoming further revise its rules and/or statute, the Director approves, as discussed in:

Finding No. 5, revision of W.S. 35–11–402(b), chapter II, section 2(b)(iv)(C), and chapter IV, sections 2(d)(x)(E) and (E)(III), establishment of reclamation standards for fish and wildlife habitat and grazingland;

Finding No. 9, addition of the land use definition for ''treated grazingland'' at chapter I, section 2(bc)(xi);

Finding No. 10, revision of chapter II, section 2(a)(vi)(G)(II), consultation by the Wyoming Land Quality Division on critical habitat; and

Finding No. 11, revision of chapter X, section 4(e), disturbance of critical, crucial, and important habitats by exploration operations.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 1996.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.15 is amended by adding paragraph (x) to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(x) The following statutes and rules, as submitted to OSM on November 29, 1995, are approved effective August 6, 1996: Deletion of W.S. 35–11–103(e)(xxviii), definition for ''agricultural lands;'' W.S. 35–11–103(e)(xxix) and the rule at chapter I, section 2(v), definition for ''critical habitat;'' W.S. 35–11–103(e)(xxx) and the rules at chapter I, sections 2(ax) and (w), definitions for ''important habitat'' and ''crucial habitat;'' W.S. 35–11–402(b), reclamation standards for fish and wildlife habitat and grazingland; W.S. 35–11–402(c), establishment of shrubs on grazingland; rules at chapter I, section 2(ac), chapter IV, section 2(d)(x)(E)(I) and (II), and appendix A, definition for ''eligible land'' and reclamation success standards for shrub density; rule at chapter I, section 2(bc)(iii), definition for ''grazingland;'' rule at chapter I, section 2(bc)(viii), land use definition for ''fish and wildlife habitat;'' rule at chapter I, section 2(bc)(xi), definition for ''treated grazingland;'' rule at chapter XI, section 5(a), substitution of a surety bond for a self-bond; rule at chapter XIII, section 3(a) notice and opportunity for public hearing on permit revision; rule at chapter XVII, section 1(a), lands unsuitable for mining and definition for ''fragile lands;'' the rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), establishment of reclamation standards for fish and wildlife habitat and grazingland; rule at chapter II, section 2(a)(vi)(G)(II), consultation by the Wyoming Land Quality Division on critical habitat; and rule at chapter X, section 4(e), disturbance of important habitat by exploration operations.

3. Section 950.16 is amended by removing and reserving paragraphs (q) and (bb) through (hh) and adding paragraphs (ii) though (ll) to read as follows:

§ 950.16 Required program amendments.

* * * * *

(ii) By May 30, 1997, Wyoming shall

(1) Revise the rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), to be consistent with the statute at W.S. 35–11–402(b)(ii) by requiring Wyoming Game and Fish Department approval of revegetation standards for grazingland that was designated by the Wyoming Game and Fish Department as crucial habitat prior to submittal of the initial permit application or any subsequent amendments to the permit application; or revise the statute at W.S. 35–11–402(b)(ii) to be consistent with the rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III) by deleting the phrase ''prior to submittal of the initial permit application or any subsequent amendments to the permit application;'' and

(2) Revise the rules at chapter II, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), to require consultation with and approval by the Wyoming Game and Fish Department of tree and shrub standards for all lands to be reclaimed for the ''fish and wildlife habitat'' land use.

(jj) By May 30, 1997, Wyoming shall revise the definition for ''treated grazingland'' at chapter I, section 2(bc)(xi), otherwise revise its rules, or provide OSM with a policy statement, clarifying the shrub standard for grazingland that is affected after the date of OSM's approval and that was treated less than 5 years prior to the submission of the permit application.

(kk) By May 30, 1997, Wyoming shall revise the rule at chapter II, section 2(a)(vi)(G)(II), or otherwise modify its program, to require consultation with the U.S. Fish and Wildlife Service on critical habitat.

(ll) By May 30, 1997, Wyoming shall revise the rule at chapter X, section 4(e), or otherwise modify its program, to prohibit the disturbance of important habitat by coal exploration operations.

[FR Doc. 96–19735 Filed 8–5–96; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–51; RM–8591]

Radio Broadcasting Services; Shingletown, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Shingletown, California, as that community's second local FM transmission service, in response to a petition for rule making filed by Mark C. Allen. *See* 60 FR 22022, May 4, 1995. Coordinates used for Channel 241A at

Shingletown are 40–29–36 and 121–53–12. With this action, the proceeding is terminated.

DATES: Effective September 9, 1996. The window period for filing applications will open on September 9, 1996, and close on October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 241A at Shingletown, California, should be addressed to the Audio Services Division,(202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–51, adopted July 19, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 241A at Shingletown.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–19876 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 90

[PR Docket No. 92–235, DA 96–1173]

Type Acceptance of Private Land Mobile Radios

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension of effectiveness of compliance date.

SUMMARY: On June 15, 1995, the Commission adopted a *Report and Order (R&O)* to promote more efficient use of the private land mobile radio spectrum. This *R&O* established a narrowband channel plan and a transition schedule which facilitates the transition to narrowband technology through the type acceptance process rather than by requiring users to replace existing systems. Specifically, the Commission's rules state that on or after August 1, 1996, type acceptance only will be granted for equipment capable of operating on a channel bandwidth of 12.5 kHz or less or equipment that operates on a channel bandwidth of up to 25 kHz if certain narrowband efficiency standards are met. The Commission has received twenty-four petitions for reconsideration and clarification of rules adopted in the *R&O*. Several petitioners ask for reconsideration of the rules relating to the type acceptance dates. The Commission has not yet ruled on these petitions for reconsideration. Therefore, the Commission, on its own motion and in the public interest, is suspending the effectiveness of the August 1, 1996, transition date pending action on the petitions for reconsideration filed in this proceeding.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0616.

SUPPLEMENTARY INFORMATION:

Adopted: July 22, 1996.

Released: July 23, 1996.

1. On June 15, 1995, the Commission adopted a *Report and Order (R&O)* in the above-captioned proceeding to promote more efficient use of the private land mobile radio spectrum in the 150–174 MHz VHF band, and in the 421–430 MHz, 450–470 MHz, and 470–512 MHz UHF bands (60 FR 37152, July 19, 1995). In this *R&O*, the Commission, among other things, adopted a narrowband channel plan and a transition schedule. This transition schedule does not require users to replace existing systems. Rather, it facilitates the transition to narrowband technology through the type acceptance process. Specifically, Section 90.203(j) of the Commission's rules, 47 CFR § 90.203(j), states that on or after August 1, 1996, type acceptance only will be granted for equipment capable of operating on a channel bandwidth of 12.5 kHz or less or equipment that operates on a channel bandwidth of up to 25 kHz if certain narrowband efficiency standards are met. This Order suspends the August 1, 1996, compliance date in Section 90.203(j) of the Commission's rules.

2. The Commission has received twenty-four petitions for reconsideration and clarification of various decisions and technical rules adopted in the *R&O*. Several petitioners asked for reconsideration of the rules relating to the type acceptance implementation dates. The Commission has not yet ruled on these petitions for reconsideration.

3. Should the Commission ultimately decide to modify the rules relating to the type acceptance implementation dates, some licensees could be irreparably harmed by application of Section 90.203(j) of the Commission's rules prior to our action on reconsideration. Therefore, on our own motion and in the public interest, we are issuing a temporary stay of the effectiveness of the scheduled August 1, 1996 transition date. By this action, we will not require compliance with Section 90.203(j) of the Commission's rules until the Commission acts on the pending petitions for reconsideration. Until further notice from the Commission, type acceptance for equipment designed to operate on a channel bandwidth up to 25 kHz will continue to be granted.

4. Accordingly, it is hereby ordered, pursuant to the authority delegated in Sections 0.131 and 0.331 of the Commissions rules 47 CFR §§ 0.131 and 0.331, that the effectiveness of the compliance date in Section 90.203(j) of the Commission's rules, which require radios type accepted after August 1, 1996, to be capable of operating on a channel bandwidth of 12.5 kHz or less or meet certain narrowband efficiency standards is suspended pending Commission action on the petitions for reconsideration filed in this proceeding.

List of Subjects in 47 CFR Part 90

Communications equipment, Federal Communications Commission, Radio.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–20014 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 073096A]

Groundfish of the Bering Sea and Aleutian Islands Area; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1996 prohibited species bycatch mortality allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI.

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), July 31, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1996 prohibited species bycatch mortality allowance of Pacific halibut for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 679.21(e)(3)(iv)(B)(2), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 730 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(7)(iv), that the 1996 prohibited species bycatch mortality allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Therefore, NMFS is prohibiting the directed fishery for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19895 Filed 7–31–96; 4:28 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 152
Tuesday, August 6, 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

Foreign Agricultural Service

7 CFR PART 1530

Sugar to be Imported and Re-exported in Refined Form or in Sugar Containing Products or Used for the Production of Polyhydric Alcohol

AGENCY: Foreign Agricultural Service (FAS), USDA.

ACTION: Proposed rule.

SUMMARY: The Foreign Agricultural Service (FAS) proposes revising the regulations governing the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program and the Polyhydric Alcohol Program. The regulations permit entry of imported raw cane sugar exempt from the sugar tariff-rate quota for re-export in refined form or in a sugar containing product or for the production of certain polyhydric alcohols. The proposed rule will conform the regulations for the programs to the United States' international obligations and would also reduce the paperwork burden on program participants.

DATES: Interested parties are invited to submit written comments by or before October 7, 1996.

ADDRESSES: Comments should be mailed or delivered to the Team Leader, Sugar Team, Import Policies and Programs Division, Foreign Agricultural Service, Room 5531, South Agriculture Building, U.S. Department of Agriculture, Washington, D.C. 20250 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, DC 20503. Comments received may be inspected at Room 5531, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW, Washington, D.C. between 9 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Team Leader, Sugar Team) at telephone number 202–720–1061.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under USDA procedures implementing E.O. 12866 and Departmental Regulation 1512–1 and the OMB and has been classified as ''not significant.'' In conformity with this designation, except for requirements under the Paperwork Reduction Act of 1995, the rule has not been reviewed by the OMB. The Administrator, FAS, has determined that the provisions of this proposed rule will not: (1) result in an annual effect on the economy of $100 million or more; (2) 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; or (3) regulate issues of human health, human safety, or the environment. Further, the Administrator has determined that the rule does not (1) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (2) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients; or (3) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on a substantial number of small entities. Participation in the programs is voluntary. Direct and indirect costs are small as a percentage of revenue and in terms of absolute costs. The minimal regulatory compliance requirements are scaled to impact large and small businesses equally, and the programs improve businesses' cash flow and liquidity.

Paperwork Reduction Act

The paperwork and recordkeeping requirements imposed by these programs have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (approval number 0551–0015). An Information Collection Request (IRC) has been prepared for this rule by the USDA, and a copy may be obtained from Pam Hopkins, Compliance Review Staff, USDA, 14th and Independence Ave. S.W., Washington, D.C., 20250 or by calling (202) 720–6713.

The IRC explains the necessity, quantity and burden of information collection.

Need: This rule permits the entry of raw sugar, exempt from the tariff-rate quota for other raw sugar imports and the related requirements, on the condition that an equivalent amount of refined sugar be exported or used in the production of polyhydric alcohol. Compliance is assured through the accurate records and reports maintained and submitted by program participants. Without such records and reporting the FAS could not properly implement the programs.

Quantity: Information collection occurs at three (3) points: initial licensing; the acquiring of sugar via import (for refiners) or transfer (for sugar containing products manufacturers and producers of polyhydric alcohol); and, the disposition of sugar via transfer (for refiners), export (for refiners and sugar containing product manufacturers) and use (for producers of polyhydric alcohol).

Persons desiring to participate in one of the programs must apply for a license. Licensees may be refiners, sugar containing product manufacturers or producers of polyhydric alcohol. Once licensed, under the current regulations, each licensee notifies FAS of each import, transfer, use or export of sugar on a transaction by transaction basis.

Under the proposed rule, licensees would report all transactions in quarterly reports. The reports would contain specific information, in chronological order, on imports, exports, transfers, use, loss adjustments and a license balance. The information would be submitted in electronic format with a certification as to the accuracy of the report. Credits are effective on the date of export rather than when recorded by the Licensing Authority. This means licensees must keep track of their balance to stay within their license

balance or time limits or be subject to civil penalties.

Estimate of Burden: (1) ''application for a license'' would require 10 hours per response; (2) ''regular reporting'' would require between 10 and 15 minutes per transaction. The number of transactions per respondent will vary.

Respondents: Sugar refiners, manufacturers of sugar containing products and producers of polyhydric alcohol.

Estimated Number of Respondents: 250.

Estimated Total Burden Hours on Respondents: 3866.

	Refiners	SCP	PhA
Burden per transaction (minutes): [1]			
New License	N/A	10(hrs)	10(hrs)
Import	10	N/A	10
Transfer	10	10	N/A
Exports	15	15	N/A
Use	N/A	N/A	10
Transactions:			
New License	0	20	1
Imports	72	N/A	23 [3]
Transfer	5170	2300 [2]	N/A
Exports	6371	4610 [2]	N/A
Use	N/A	N/A	120
Annual Burden Hours (multiply the cells of the above tables):			
New License	0	200	10
Imports	12	0	3.85
Transfers	861.66	383.33	0
Exports	1592.75	1152.5	0
Use	0	0	20

[1] Unless otherwise indicated numbers are for fiscal year 1994.

[2] Numbers are for the calendar year 1995. Transfers are different between refiners and manufacturers because of different accounting methodologies: refiners generally report each shipment as a distinct transfer where sugar containing products manufacturers will aggregate shipments from a single refiner to a single manufacturer.

[3] Under the current regulations polyhydric alcohol producers have an import license which is used by refiners, on behalf of the polyhydric alcohol producer, to import raw sugar. Under the proposed regulations sugar polyhydric alcohol producers would not have refiners import and refine their sugar. Instead, they would be issued transfer licenses which would work similarly to those of the sugar containing product manufacturers. Consequently, this number would remain the same, but would be a burden resulting from transfers accepted, not imports.

Impact: The proposed rule will decrease the burden on program participants in three ways. First, it will reduce reporting and result in some reduction in information collection. Second, it will decrease the government's burden of entering data manually, thereby permitting more time for program support and compliance review. Third, it will simplify self-tracking of license balances so that program participation happens in real-time, instead of licensees waiting on action by government employees.

The agency has submitted a copy of the proposed rule to OMB in accordance with section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)) for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including (1) An evaluation of whether the proposed collection of information ensures that the collection of information is necessary for the proper performance of the functions of the agency; (2) an evaluation of the accuracy of the agency's estimate of burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Team Leader, Sugar Team, Import Policies and Programs Division, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice of Proposed Rulemaking, but must be submitted no later than 60 days from the date of publication to be assured of consideration.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant affect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders Nos. 12372 and 12875 and the Unfunded Mandates Reform Act (P.L. 104–4)

These Orders require intergovernmental review of programs. Neither the Refined Sugar Re-export Program, the Sugar Containing Products Program nor the Polyhydric Alcohol Program impose an unfunded mandate or any other requirement on State, local or tribal governments. Further, the programs are national in scope and involve a power delegated to the United States by the Constitution. Accordingly, these programs are not subject to the provisions of either Executive Order No. 12372 or No. 12875 or the Unfunded Mandates Reform Act.

Executive Order No. 12612

Executive Order No. 12612 requires implications of ''federalism'' be considered in the development of regulations. The Administrator certifies that this proposed rule has been reviewed in light of E.O. 12612 and that it is consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Executive Order. The Administrator further certifies that this rule would impose no additional cost or burden on the states, nor affect the state's abilities to

discharge traditional State governmental functions.

Executive Order No. 12606

Executive Order No. 12606 requires that government action include consideration of maintaining stability and strengthening the family. The FAS has determined, under the principles and criteria established in E.O. 12606, that this rule will have no effect on the family.

Executive Order No. 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in E.O. 12630.

Background

On October 12, 1990, the Department of Agriculture published an interim rule (55 FR 41487) to revise three programs for imports of raw cane sugar exempt from the tariff-rate quota: ''Sugar To Be Re-exported in Refined Form'' (7 CFR 1530.100 et seq.), ''Sugar To Be Re-exported in Sugar Containing Products'' (7 CFR 1530.200 et seq.), and ''Sugar for the Production of Polyhydric Alcohol'' (7 CFR 1530.300 et seq.). A final rule, published on July 8, 1991 (56 FR 30857) adopted the interim rule as final with modifications to various provisions. Since the promulgation of the final rule, the results of multilateral trade negotiations require the modification of certain provisions of the regulations. Some additional proposed revisions in the regulations result from program management and efficiency considerations.

Requirements of the North American Free Trade Agreement

North American Free Trade Agreement Implementation Act of 1993 (Public Law No. 103–182, 107 Stat. 2057), Presidential Proclamation No. 6641 of December 15, 1993 (58 FR 66867), implemented the North American Free Trade Agreement (NAFTA). Paragraph 22(a) of Section A of Annex 703.2 of the NAFTA provides for the duty-free entry of raw cane sugar from Mexico for refining in the United States and re-export to Mexico and for the duty-free entry of refined sugar from Mexico that has been refined from raw sugar produced in the United States (NAFTA U-turn provision). U.S. note 17(b) to subchapter VI of chapter 99 of the HTS incorporates this provision into U.S. statutory law.

The two noteworthy sections of this rule are (1) That sugar imported under this provision must be re-exported in refined form, and not as a sugar containing product, within 18 months of the date of entry, and; (2) sugar entered under this provision will have no affect on the refiner's license balance.

The Foreign Agricultural Service proposes amending the current rules to permit the Sugar Team to implement the NAFTA U-turn provision.

Changes in Chapter 17 of the HTS

Presidential Proclamation No. 6763 of December 23, 1994 (60 FR 1007) amended the HTS, effective January 1, 1995, in order to carry out the tariff modifications provided for by the Uruguay Round Agreements Act. Former tariff subheading 1701.11.02, which provided for the quota-exempt sugar entries and is cited repeatedly in the regulations, was replaced by a new subheading 1701.11.20. Moreover, former additional U.S. note 3(c) was replaced by a revised additional U.S. note 6, which now reads as follows:

> Raw cane sugar classifiable in subheading 1701.11.20 shall be entered only to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and reexported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The Secretary of Agriculture may issue licenses for such entries and may promulgate such regulations (including any terms, conditions, certifications, bonds, civil penalties, or other limitations) as are appropriate to ensure that sugar entered under this subheading is used only for such purposes.

Authorization of civil penalties is a new provision.

The President's Regulatory Reinvention Initiative, Memorandum of March 4, 1995, obliges department heads, including the Secretary of Agriculture, to incorporate flexibility into the administration of civil penalties. Current regulations use liquidated damages to protect the domestic sugar program against injury from unauthorized use of the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program or the Polyhydric Alcohol Program. However, the liquidated damages currently in the regulations provide no flexibility in the assessment of damages. Presidential Proclamation No. 6763 grants the Secretary of Agriculture the authority to institute civil penalties for non-compliance with the re-export program. Civil penalties could be imposed for certifying inaccurate information to the Licensing Authority or violating the terms of the license, including the license balance limit.

Under the proposed rule, civil penalties will be imposed in the following situations, in ascending order of severity: (1) for failure to submit quarterly reports in a timely manner; (2) for submitting reports with incorrect information; (3) for exceeding the license limits on charges or credits; (4) for exceeding the time limits within which licensees must credit their license. The latter two require that the licensee maintain its balance within the license limits at all times.

The availability of civil penalties as an enforcement mechanism reduces the need to require that a licensee post a bond. Combined with changes in license limits outlined below the bond requirement is no longer necessary; accordingly, FAS proposes to remove the bond requirements.

Thus, FAS proposes amending the regulations (1) to change references to additional U.S. note 3 and subheading 1701.11.02 to references to additional U.S. note 6 and subheading 1701.11.20, respectively, (2) to convert from liquidated damages to civil penalties as a means of enforcement of the regulatory requirements, and (3) to eliminate the bond requirement.

Changes in Drawback

Section 404(e)(5) of the Uruguay Round Agreements Act amended section 313 of the Tariff Act of 1930 to provide, in a new subsection (w), that ''no drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1).'' This provision will prevent the drawback of over-quota import duties in all cases except where imported sugar is re-exported without any substitution or processing. Accordingly, FAS proposes eliminating all references to customs duty drawback in the current regulations.

Transitional Provisions

Current regulations provided transitional provisions for the period during which the former absolute import quota was converted to a tariff-rate quota and licenses were replaced. Since these provisions no longer have any relevance, FAS proposes deleting them.

Polyhydric Alcohol Program

FAS proposes converting the licenses of polyhydric alcohol manufacturers from import licenses into ''transfer'' licenses under which licensees would contract with refiners for transfers of refined sugar rather than import foreign sourced raw sugar directly. This change

would enable licensees to receive the benefits of polarity adjustments, and it would extend the time period for use of program sugar by moving the start of the period from the date of entry of the imported raw sugar to the later date of transfer of the refined sugar. The change would also facilitate program administration.

Other Changes

FAS is proposing changes in the current maximum license balance amounts. The changes to increase the credit limit and reduce the maximum limit on charges will alleviate the need for bonds. In addition, FAS is proposing the creation of a consolidated license that would cover both a parent corporation and its wholly-owned subsidiaries under one license. The proposed rule authorizes the use of co-packers in certain circumstances; the licensees would be responsible for license transactions and activities of co-packers acting on their behalf.

FAS would also welcome comments on whether quantities of sugar transferred by a refiner to sugar containing products manufacturers and polyhydric alcohol producers should be counted against the refiner's maximum license balance limit.

List of Subjects in 7 CFR Part 1530

Sugar, Agriculture, Agricultural trade, International trade, Exports, Imports.

Accordingly, FAS is proposing to revise 7 CFR part 1530 to read as follows:

PART 1530—REFINED SUGAR RE-EXPORT PROGRAM, THE SUGAR CONTAINING PRODUCTS RE-EXPORT PROGRAM AND THE POLYHYDRIC ALCOHOL PROGRAM

1530.100 General statement.
1530.101 Definitions.
1530.102 Nature of the license.
1530.103 License eligibility.
1530.104 Application for a license.
1530.105 Terms and conditions.
1530.106 License charges and credits.
1530.107 Expiration or surrender of licenses.
1530.108 Reporting and certification.
1530.109 Records and documentation.
1530.110 Enforcement and penalties.
1530.111 Administrative appeals.
1530.112 Waivers.
1530.113 Paperwork Reduction Act assigned number.

Authority: Additional U.S. note 6 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202); 19 U.S.C. 3314; Proc. 6641, 58 FR 66867, 3 CFR, 1994 Comp., p. 172; Proc. 6763, 60 FR 1007, 3 CFR, 1995 Comp., p. 146.

§ 1530.100 General statement.

Under the provisions of the regulations of this part, raw sugar may be imported unrestricted by the quantitative limit established for the tariff-rate quota for importation of raw cane sugar and not subject to the certificate of quota eligibility requirements provided for in 15 CFR part 2011, as long as an equivalent quantity of refined sugar is exported, either as refined sugar or as an ingredient in a sugar containing product, or is used in the production of certain polyhydric alcohols. A raw cane sugar refiner may receive a license to import raw sugar under the provisions of these regulations, which becomes program sugar and is charged against the refiner's license balance. Refiners may receive credit to their license balance by selling sugar in the world market or by transferring sugar to a licensed manufacturer of a sugar containing product or licensed producer of polyhydric alcohol. A manufacturer of a sugar containing product may receive a license to accept transfers of refined program sugar from licensed refiners which will be charged against its license balance. A manufacturer may receive credit to its license balance for exports of program sugar in sugar containing products. A producer of polyhydric alcohol may receive a license to accept transfers of refined program sugar from licensed refiners which will be charged against its license balance. A producer may receive credit to its license balance for use of sugar in the production of certain polyhydric alcohols. For all licensees, credits shall be made within the time-limits and the balance shall be within the quantity limits set forth in this part. For the purposes of these programs, program sugar and non-program sugar are substitutable.

§ 1530.101 Definitions.

Additional U.S. note 6 means additional U.S. note 6 to chapter 17 of the HTS.

Affiliated person means two or more persons where one or more of said persons directly or indirectly control or have the power to control the other(s), or, a third person controls or has the power to control the rest. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.

Certain polyhydric alcohols means any polyhydric alcohol, except polyhydric alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food.

Date of entry means the date of entry on the relevant U.S. Customs Service entry form.

Date of export means (1) The on-board date of an ocean going carrier bill of lading or an airway bill of lading; (2) if export occurs by rail or truck, the date on the inland bill of lading; or (3) if exported to a foreign trade zone, the date of entry shown on the U.S. Customs Service form designating the product as restricted for export.

Date of transfer means the date of shipment on a relevant inland bill of lading or the date of a relevant warehouse receipt.

Day means calendar day.

Enter or *entry* means importation into the U.S. customs territory, or withdrawal from warehouse, for consumption, as those terms are used by the U.S. Customs Service.

HTS means the Harmonized Tariff Schedule of the United States.

Licensing Authority means the Team Leader, Sugar Team, Import Policies and Programs Division, Foreign Agricultural Service, USDA, or the Team Leader's designee.

Manufacturer of a sugar containing product means a person who owns and operates a food processing facility that is used in the manufacture of a sugar containing product.

Materially incorrect includes mistakes in reporting the customs entry number or information required from the bill of lading, or errors that affect the license balance.

Notice of transfer means a document certifying transfer of a specified quantity of program sugar, in form and substance satisfactory to the Licensing Authority.

Person means any individual, partnership, corporation, association, estate, trust or any other business enterprise or legal entity.

Polyhydric Alcohol Program means the licensing program provided for in this part for manufacturers of polyhydric alcohols, including all of the terms conditions and requirements applicable to such licensees.

Program sugar means sugar that has been imported, transferred, exported, either in refined form or as an ingredient in a sugar containing product, or used in the production of certain polyhydric alcohols in conformity with the provisions of this part.

Program transaction means an appropriate entry, export, either in refined form or as an ingredient in a sugar containing product, transfer, acceptance of transfer or production of certain polyhydric alcohols.

Refined sugar means any product that is produced by a refiner by refining raw cane sugar and that can be marketed as commercial, industrial or retail sugar.

Refined Sugar Re-export Program means the licensing program provided for in this part for refiners of raw cane sugar, including all of the terms conditions and requirements applicable to such licensees.

Refiner means any person in the U.S. customs territory that refines raw sugar through:

(1) Affination or defecation;

(2) Clarification; and

(3) Further purification by absorption or crystallization.

Sugar containing product means any product, other than those products normally marketed by cane sugar refiners, that is produced from refined sugar or to which refined sugar has been added as an ingredient.

Sugar Containing Products Re-export Program means the licensing program provided for in this part for manufacturers of sugar containing products, including all of the terms conditions and requirements applicable to such licensees.

Transfer means the transfer of physical possession or legal title of program sugar from a licensed refiner to a licensed manufacturer of a sugar containing product or a licensed producer of polyhydric alcohol.

USDA means the United States Department of Agriculture.

§ 1530.102 Nature of the licenses.

(a) A person who wants to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program must obtain a license from the USDA, through the Licensing Authority.

(b) A license granted to a refiner under the Refined Sugar Re-export Program permits the refiner to receive entries of imported raw cane sugar under subheading 1701.11.20 of the HTS, which are not subject to the quantitative limitations or certificate of quota eligibility requirements of the tariff-rate quota for imports of raw cane sugar. Such license requires a refiner licensee to refine raw sugar within the U.S. customs territory and export or transfer a quantity of refined sugar equivalent to the quantity of raw sugar imported within the required time-frames.

(c) A license granted to a manufacturer of a sugar containing product under the Sugar Containing Products Re-export Program permits the manufacturer to receive transfers of refined sugar from licensed refiners. Such license requires a manufacturer licensee to export an equivalent quantity of sugar as an ingredient in a sugar containing product that has been manufactured in the U.S. customs territory within the required time-frames.

(d) A license granted to a producer of polyhydric alcohol under the Polyhydric Alcohol Program permits the producer to receive transfers of refined sugar from licensed refiners. Such license requires the producer licensee use an equivalent quantity of sugar in the production of certain polyhydric alcohols in the U.S. customs territory within the required time-frames.

(e) Program participants may use sugar to produce certain polyhydric alcohols, transfer sugar, or export sugar, whether in refined form or as an ingredient in a sugar containing product, in anticipation of future purchases of program sugar as long as such transactions maintain license balances within permitted license limits.

§ 1530.103 License eligibility.

(a) Any refiner with a facility within the U.S. customs territory is eligible for a license to participate in the Refined Sugar Re-export Program.

(b) Any manufacturer of a sugar containing product with a facility within the U.S. customs territory is eligible for a license to participate in the Sugar Containing Products Re-export Program.

(c) Any producer of certain polyhydric alcohol with a facility within the U.S. customs territory is eligible for a license to participate in the Polyhydric Alcohol Program.

(d) No person may apply for or hold more than one license including a license held by an affiliated person.

(e)(1) Notwithstanding paragraph (d) of this section, a corporation which owns one or more wholly-owned subsidiary corporations that would otherwise qualify for an individual license is eligible for a consolidated license to cover the program transactions and other program activities of both the parent corporation and the subsidiary corporation(s).

(2) For purposes of the regulations in this part, the program transactions and other program activities of the subsidiary corporations covered by a consolidated license will be treated as the activities of the corporation holding the consolidated license.

(3) The maximum license balance limits for a consolidated license will be two times larger than the limits provided for in § 1530.105(g).

§ 1530.104 Application for a license.

(a) A person seeking a license may apply in writing to the Licensing Authority and shall submit the following information:

(1) The name and address of the applicant;

(2) The address at which the applicant will maintain the records required under § 1530.108;

(3) The address(es) of the applicant's processing plant(s), including those of any co-packers;

(4) A description of the applicant's product(s), and

(i) In the case of a refined sugar product, the polarity of the product and the formula proposed by the refiner for calculating the raw value of the product;

(ii) In the case of a sugar containing product, the percentage of refined sugar (100 degree polarity), on a dry weight basis, contained in such product(s); or

(iii) In the case of polyhydric alcohol, the quantity of refined sugar used producing such polyhydric alcohol; and

(5) A certification that the applicant is not affiliated to any other licensee.

(b) If any of the information required by paragraph (a) of this section changes, the licensee shall promptly apply to the Licensing Authority to amend the application including such changes.

§ 1530.105 Terms and conditions.

(a) A refiner who holds a license under the Refined Sugar Re-export Program shall, not later than 18 months after the entry of a quantity of raw cane sugar under subheading 1701.11.20 of the HTS:

(1) export an equivalent quantity of refined sugar; or

(2) transfer an equivalent quantity of refined sugar to a licensed manufacturer of a sugar containing product or to a licensed producer of polyhydric alcohol.

(b) A manufacturer of a sugar containing product who holds a license under the Sugar Containing Products Re-export Program shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a licensed refiner, export an equivalent quantity of refined sugar as an ingredient in a sugar containing product.

(c) A producer of polyhydric alcohol who holds a license under the Polyhydric Alcohol Program shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a licensed refiner, use an equivalent quantity of refined sugar in the production of certain polyhydric alcohols.

(d) Notwithstanding paragraphs (a) through (d) of this section, licensees

may receive credit for the exportation or transfer of refined sugar, the exportation of a sugar containing product or the production of certain polyhydric alcohols prior to the corresponding date of entry of raw cane sugar or the date of transfer of refined sugar to a manufacturer of a sugar containing product or to a producer of certain polyhydric alcohols.

(e) Transfers between licensees require a notice of transfer.

(1) A licensed refiner that transfers program sugar to a manufacturer of a sugar containing product or a producer of polyhydric alcohol shall send two signed copies of the notice of transfer to the transferee within 7 days of the date of transfer.

(2) A licensed manufacturer of a sugar containing product or producer of polyhydric alcohol that accepts a transfer of program sugar shall retain one copy of the notice of transfer and shall endorse and return the other copy to the transferring refiner not later than one month from date of transfer.

(3) Refiners shall retain the returned notice of transfer.

(f) At any given time, charges to a license pursuant to § 1530.106 shall not be greater than or less than credits to the license pursuant to such section by more than the following limits:

(1) For refiners, except for entries of raw sugar from Mexico for refining and re-export to Mexico:

(i) Credits shall not exceed charges by more than 75,000 metric tons; and

(ii) Charges shall not exceed credits by more than 25,000 metric tons;

(2) For manufacturers of a sugar containing product:

(i) Credits shall not exceed charges by more than 15,000 short tons; and

(ii) Charges shall not exceed credits by more than 5,000 short tons; and

(3) For producers of polyhydric alcohol:

(i) Credits may not exceed charges by more than 15,000 short tons, and

(ii) Charges shall not exceed credits by more than 5,000 short tons.

(g) For the purposes of the programs governed by this part, sugar is fully substitutable. The refined sugar exported or transferred does not need to be the same sugar produced by refining the raw sugar entered under subheading 1701.11.20 of the HTS, and the sugar used in the production of sugar containing products or polyhydric alcohol does not need to be the same sugar that was transferred by a licensed refiner.

(h) A licensee may use an agent to carry out the requirements of participation in the program. Agents may include brokers, shippers, freight forwarders, expediters and co-packers.

(i) A license may be assigned only with the written permission of the Licensing Authority and subject to such terms and conditions as the Licensing Authority may impose.

(j) The Licensing Authority may impose such conditions, limitations or restrictions in connection with the use of a license at such time and in such manner as the Licensing Authority, in his or her discretion, determines to be necessary or appropriate to achieve the purposes of the relevant program.

(k) Measuring time for complying with license obligations: The date of completion for complying with an obligation under this part is the same numbered day in the later month from which the obligation is measured; except that where there is not the same numbered day in the later month, the final date for completion shall be the last day of the later month. Where the final date for completion falls on a weekend or on a federal holiday, the obligation may be completed on the next business day.

§ 1530.106 License charges and credits.

(a) A refiner's license shall be charged for the quantity of raw cane sugar entered, and credited for the quantity of refined sugar exported or transferred.

(b) A manufacturer of a sugar containing product's license shall be charged for the quantity of refined sugar accepted as a transfer, and credited for the quantity of sugar exported as an ingredient in a sugar containing product.

(c) A polyhydric alcohol producer's license shall be charged for the quantity of refined sugar accepted as a transfer, and credited for the quantity of sugar used in the production of certain polyhydric alcohols.

(d) All charges and credits will be made on a 100° polarity refined sugar, dry weight basis. Quantities of sugar not on that basis will be adjusted, for the purpose of calculating charges and credits, using the formulae set forth in paragraph (f) of this section.

(e) Charges and credits will be effective as of the following dates:

(1) charges for entries, as of the date of entry;

(2) charges and credits for transfers, as of the date of transfer;

(3) credits for exports, as of the date of export; and

(4) credits for production of certain polyhydric alcohols, as of the date of production.

(f)(1) Quantities of raw cane sugar entered shall be adjusted to a 100°, Refined Sugar, dry weight basis as follows:

(i) Determine the quantity, on a raw value basis, of the imported sugar by multiplying the polarity, on a dry weight basis, by 0.0175; by subtracting 0.68 from the resulting product; and then by multiplying the resulting difference by the weight of the imported sugar; and

(ii) Divide the quantity of sugar, raw value basis, determined in paragraph (f)(1)(i) of this section by 1.07.

(2) Quantities of transferred sugar, or sugar exported by refiners, shall be adjusted to a 100°, 100% sucrose or sucrose equivalent-refined, dry weight basis.

(3) Quantities of sugar exported by manufacturers of a sugar containing product shall be adjusted to a 100°, 100% sucrose or sucrose equivalent-refined, dry weight basis.

(4) Quantities of sugar used by producers of certain polyhydric alcohols shall be adjusted to a 100°, 100% sucrose or sucrose equivalent-refined, dry weight basis.

(g) Credits for exports of sugar as refined sugar or as an ingredient in a sugar containing product that are subsequently returned to the U. S. customs territory without a substantial transformation will be revoked.

§ 1530.107 Expiration or surrender of licenses.

(a) A license will expire:

(1) If there have been no charges or credits on the license in any consecutive 18 month period; or

(2) Upon written notice by the Licensing Authority.

(b) A licensee may surrender a license at any time if credits exceed charges or, if charges exceed credits, only on terms and conditions acceptable to the Licensing Authority.

§ 1530.108 Reporting and certification.

(a) A licensee shall submit a quarterly report to the Licensing Authority not later than three months after the close of the reporting period.

(1) Each report shall be certified as true and correct and shall certify that the charges and credits are made pursuant to § 1530.106 and documented pursuant to § 1530.109.

(2) The certification shall contain the licensee's name, address, and license number and be signed by a person acting on behalf of the licensee.

(3) Reports shall be submitted in electronic format acceptable to the Licensing Authority. Applicants unable to submit a report in electronic format may seek a waiver permitting them to submit the report in hard copy.

(4) Reports may be submitted in person, by U.S. mail, by private courier, or by other method acceptable to the Licensing Authority. Reports will be

deemed submitted when sent, as identified by postmark or other appropriate date stamp, with sufficient postage affixed. Certified postal receipt or private courier receipt are acceptable as proof of filing.

(5) Initial reporting periods will be determined by the Licensing Authority.

(b)(1) The report shall be in an integrated spreadsheet format with all program transactions in chronological order including, as appropriate, entries of raw cane sugar, transfers of refined sugar, exports of refined sugar or a sugar containing product, and the production of certain polyhydric alcohols. A copy of this format may be obtained from the Licensing Authority;

(2) Reports from a refiner shall identify the date and type of each program transaction, the license balance (keeping a separate balance for sugar imported from Mexico that will be refined and re-exported to Mexico) resulting from such transaction, and the following data, as appropriate:

(i) For entries:

(A) Quantity of program sugar entered (commercial weight—MT);

(B) Polarization;

(C) Refined sugar equivalent, 100 degree, dry weight basis (MT);

(D) Customs entry number;

(E) Warehouse release number where applicable;

(F) Port of entry; and

(G) Country of origin.

(ii) For transfers:

(A) Quantity of refined program sugar transferred (pure sugar, dry weight basis—cwt);

(B) Sugar content or polarity;

(C) Commercial weight (cwt);

(D) Notice of transfer number; and

(E) Transferee's license number.

(iii) For exports:

(A) Quantity exported (refined sugar, 100 degree, dry weight basis—MT);

(B) Sugar content or polarity;

(C) Commercial weight (MT);

(D) Port of export;

(E) Country of destination;

(F) Export carrier;

(G) Vessel name;

(H) On-board ocean-going or airway bill of lading number; or where exports are to Canada or Mexico by rail or truck, inland bill of lading number; or where exports are to a foreign trade zone, U.S. Customs Service entry number;

(I) Container number, where the export is by sea;

(J) Name of the freight forwarder or non-vessel operating common carrier;

(K) Bill of lading number on the bill of lading issued by the agent identified in paragraph (b)(2)(iii)(J) of this section; and

(L) Consignee or foreign customer.

(3) Reports from a manufacturer of a sugar containing product shall identify the date and type of each program transaction, the license balance resulting from such transaction, and the following data, as appropriate:

(i) For transfers:

(A) Quantity of program sugar transferred (pure sugar, dry weight basis—cwt);

(B) Sugar content or polarity;

(C) Commercial weight (cwt);

(D) Notice of transfer number; and

(E) Refiner's license number.

(ii) For exports:

(A) Quantity exported (pure sugar, dry weight basis—lbs.);

(B) Percentage sugar contained in the sugar containing product;

(C) Commercial weight of the exported sugar containing product;

(D) Description of the product;

(E) Port of export;

(F) Country of destination;

(G) Export carrier;

(H) Vessel name;

(I) On-board ocean-going or airway bill of lading number; or where exports are to Canada or Mexico by rail or truck, inland bill of lading number; or where exports are to a foreign trade zone, U.S. Customs Service entry number;

(J) Container number, where the export is by sea;

(K) Name of the freight forwarder or non-vessel operating common carrier;

(L) Bill of lading number on the bill of lading issued by the agent identified in paragraph (b)(3)(ii)(K) of this section; and

(M) Consignee or foreign customer.

(4) Reports from a producer of polyhydric alcohol shall identify the date and type of each program transaction; the license balance resulting from such transaction; and the following data, as appropriate:

(i) For transfers:

(A) Quantity of program sugar transferred (pure sugar, dry weight basis—cwt);

(B) Sugar content or polarity;

(C) Commercial weight (cwt);

(D) Notice of transfer number; and

(E) Refiner's license name and number.

(ii) For use in the production of polyhydric alcohol:

(A) Quantity of sugar used (pure sugar, dry weight basis—lbs.);

(B) Percentage sugar contained in the polyhydric alcohol product;

(C) Quantity of product produced (lbs.); and

(D) description of the polyhydric product.

(c) Licensees have an affirmative and continuing duty to maintain the accuracy of previously certified reports. Upon discovery, licensees shall immediately charge back erroneously claimed credits and promptly notify the Licensing Authority. Charge backs shall be as of the date of the erroneously claimed credit.

§ 1530.109 Records and documentation.

(a) Obtaining license credit requires that a licensee obtain and maintain in their possession the following records pertaining to a program transaction for thirty-six (36) months from the date of such program transaction:

(1) For entries:

(i) The U.S. Customs Service entry form; and

(ii) The laboratory polarity and weight out-turn tests used by the raw sugar seller and the refiner to adjust for polarity.

(2) For transfers: a notice of transfer.

(3) For use of sugar in the production of polyhydric alcohol: company accounts and records relating to the production of certain polyhydric alcohol and the use of sugar in such production, including the sugar content per unit of production and logs identifying total production.

(4) For exports:

(i) Sales invoice, purchase order, or sales contract identifying the consignee or foreign purchaser; and

(ii) on-board ocean-going or airway bill of lading; or where exports are to Canada or Mexico by rail or truck, the inland bill of lading and foreign country entry document; or where exports are to a foreign trade zone, U.S. Customs entry form. The Licensing Authority will maintain a list of acceptable Mexican or Canadian entry documents.

(b) Refiners shall retain, where feasible, the U.S. Customs Service Form 7512.

(c) The licensee shall, upon request, make the records covered by this section available for inspection and copying by the Licensing Authority, the Compliance Review Staff of the Foreign Agricultural Service, USDA, the Office of the Inspector General, USDA, or the Department of Justice.

§ 1530.110 Enforcement and penalties.

(a) The Licensing Authority will impose civil penalties for late reports, materially incorrect reports, exceeding a maximum license balance limit, or exceeding an applicable time-frame. The Licensing Authority may also revoke credits granted on a license.

(b) The Administrator of the Foreign Agricultural Service, USDA, may suspend or revoke a license. Suspension of a license will be governed by 7 CFR part 3017, subpart D and debarment will be governed by 7 CFR part 3017, subpart

C. Suspension or revocation of a license will apply to an individual human being as well as the corporation or other person who held the license, such that an individual may not simply form a new corporation or partnership and obtain a new license.

(c) The imposition of civil penalties is not exclusive, and licensees may be liable for criminal sanctions in the event that criminal statutes are violated.

(d) Reports not submitted in a timely manner will subject the licensee to civil penalties. The civil penalties for reports submitted after the proper filing date will be:

(1) Fifty (50) dollars, if the report is submitted within the first month after the applicable deadline; and

(2) If more than one month late, an additional fifty (50) dollars for each week after the end of the first month.

(e) Reports that are incorrect subject the licensee to civil penalties. The civil penalty for:

(1) Incorrect reports, where the error is not material, will be $50.00;

(2) The first materially incorrect report submitted will be $300.00; and

(3) Subsequent materially incorrect reports, where the prior materially incorrect submission occurred in the last 12 months, will be $500.00.

(f) Exceeding license limits will subject licensees to loss of credit or civil penalties.

(1) Where license credits are greater than license charges by more than the maximum license balance limit, licensees shall forfeit credit in excess of the maximum license balance limit.

(2) Where license charges are greater than license credits by more than the license balance, licensees shall pay a civil penalty of 15 cents per pound.

(g) Not crediting a license against prior charges within the time limits set forth in §§ 1530.102 (c), (d) and (f) will subject the licensee to civil penalties of 15 cents per pound.

§ 1530.111 Administrative appeals.

(a) This section provides for administrative appeal of a determination by the Licensing Authority to revoke a credit on a license, or impose civil penalties. The decision on such appeal shall be made by the Director, Import Policies and Programs Division, Foreign Agricultural Service (''Director''), or his or her designee. Appeals for suspension and debarment will be governed by § 3017.515 of this title.

(b) The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director. The appeal may be filed in the office of the Director, or by mail with a postmark dated, not later than 30 days after the date of the Licensing Authority's determination. The licensee should submit a written argument in support of its position at the time it files its appeal. If the licensee does not make a timely appeal, any license credit revocation, civil penalty, or other proposed administrative determination will take effect in accordance with the Licensing Authority's determination. If the licensee seeks an informal hearing, it shall so request in its notice of appeal. The licensee may request that the informal hearing be scheduled within 30 days of the filing date of its notice of appeal.

(c)(1) Ordinarily, informal hearings will be held only at the request of the licensee. If no informal hearing is requested, the Director will make his or her determination on the basis of the written submission and any other available information. The hearing shall be held at the place and time determined by the Director, except that it shall be held within 30 days of the filing date of the notice of appeal if the licensee so requests.

(2) Hearings will be conducted by the Director in a manner as informal as practicable, consistent with the principles of fundamental fairness.

(3) The licensee may be represented by counsel.

(4) The licensee shall have a full opportunity to present any relevant evidence, documentary or testimonial, and to make arguments in support of its position. The Director may permit other individuals to present evidence at the hearing, and the licensee shall have an opportunity to question those witnesses.

(5) A verbatim transcript of the hearing may be made at the direction of the Director, or at the request of the licensee. If the licensee requests a transcript be made, it shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(d) The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis thereof. The determination on appeal exhausts the licensee's administrative remedies.

§ 1530.112 Waivers.

(a) Upon written application of the licensee or at the discretion of the Licensing Authority and for good cause, the Licensing Authority may extend the period for transfer or export, may temporarily increase the maximum license balance limit, may extend the period for submitting regularly scheduled reports and certifications, or may temporarily waive or modify any other requirement imposed by this part if the Licensing Authority determines that such a waiver will not undermine the purpose of the relevant program or adversely affect domestic sugar policy objectives. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

(b) Waivers of civil penalties will be disfavored and only issued under extraordinary circumstances.

§ 1530.113 Paperwork Reduction Act assigned number.

Licensees are not required to respond to requests for information unless the form for collecting information displays a currently valid Office of Management and Budget control number. The Office of Management and Budget has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35 and OMB number 0551–0015 has been assigned and will expire August 31, 1997.

Signed at Washington, DC on July 17, 1996.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 96–19521 Filed 8–5–96; 8:45 am]

BILLING CODE 3410–10–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 357

RIN 3064–AB08

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule and withdrawal of proposed rule.

SUMMARY: As part of the FDIC's systematic review of its regulations under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is amending its regulation on economically depressed regions to reflect changes in the marketplace, update and streamline the regulation, improve efficiency, and reduce unnecessary costs. The FDIC also is withdrawing a previous proposed amendment to the regulation which was published December 18, 1992.

The FDIC is required by statute to consider proposals for direct financial assistance by Savings Association Insurance Fund (SAIF) members having offices located in an economically depressed region and meeting certain other specified criteria, before grounds exist for the appointment of a conservator or receiver for the institution. The FDIC is proposing to amend this regulation, which designates certain economically depressed regions, by adding guidance to enable applicants to evaluate their situations before formally applying for assistance. Rather than periodically designating specific regions in light of current economic conditions, the proposed rule provides the criteria that the FDIC will use to determine which regions are economically depressed.

DATES: Comments must be received by October 7, 1996.

ADDRESSES: Send comments to Jerry L. Langley, Executive Secretary, FDIC, 550 17th Street, N.W., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, N.W., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m.; or sent by facsimile: (202) 898–3838; or by Internet: COMMENTS@FDIC.GOV. Comments may be inspected and photocopied in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, DC 20429, between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James L. Freund, Chief, Economic Analysis Section, Division of Research and Statistics, (202) 898–3960, FDIC, 550 17th Street, N.W., Washington, DC 20429; Michael Phillips, Counsel, Legal Division, (202) 898–3581, FDIC, 550 17th Street, N.W., Washington, DC 20429; or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street, N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed rule does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule *per se* does not impose regulatory compliance requirements on depository institutions of any size beyond that imposed by the underlying statute. Moreover, no institutions have filed assistance proposals since 1990 when the rule was first promulgated.

Discussion

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that part 357 of its rules and regulations (12 CFR part 357) should be amended to minimize the cost of implementing the regulation, make it more flexible regarding market standards, and give institutions more opportunity to establish that they are located in an economically depressed region.

The FDIC has authority under section 13(c) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1823(c)) to provide financial assistance to prevent the default of an insured depository institution. Under section 13(k)(5) of the FDI Act (12 U.S.C. 1823(k)(5)), the FDIC must consider proposals for eligible SAIF member institutions to receive assistance pursuant to section 13(c) before grounds exist for the appointment of a conservator or receiver for the institution. Section 13(k)(5) establishes nine criteria for such eligibility. One of the criteria is that an institution's offices must be located in an economically depressed region. In addition, for purposes of assistance proposals under section 13(k)(5), SAIF member applicants must separately meet the criteria set by the FDIC for purposes of section 13(c) assistance. However, assistance proposals with respect to SAIF member institutions under section 13(k)(5) that do not meet all nine of the criteria set forth in that section may nevertheless be submitted to the FDIC for consideration under section 13(c). Thus, institutions whose offices are not located in an economically depressed region under section 13(k)(5) are not precluded from proposing and receiving open institution assistance.

The term ''economically depressed region'' is defined in section 13(k)(5)(c) to mean any geographical region which the [FDIC] determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

On September 17, 1990, the FDIC issued a final rule (55 *FR* 38043) codified at 12 CFR 357.1, which determined that certain geographical regions were economically depressed regions for purposes of section 13(k)(5) of the FDI Act. In determining which regions were economically depressed, the FDIC considered the following factors: (1) The ratio of poor quality real estate assets to total assets in the portfolios of BIF members; (2) the ratio of poor quality real estate assets to total assets in the portfolios of SAIF members; and (3) unemployment figures. The statewide percentages of impaired real estate assets for BIF and SAIF members and unemployment rates were analyzed with reference to national levels. These factors are subject to periodic review and application by the FDIC in light of changing economic conditions.

The FDIC's final rule designated eight individual states as economically depressed regions for purposes of section 13(k)(5) of the FDI Act. They were: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

Two years later, having reexamined real estate and employment conditions based on the most recent information, the FDIC determined that the eight states previously designated as economically depressed regions should no longer receive that designation. The FDIC concluded that the following nine states and the District of Columbia should be classified as economically depressed regions: California, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. In December 1992, the FDIC published this list of states in a proposed rule (57 *FR* 60140, December 18, 1992). The FDIC had considered, as before, the ratio of poor quality real estate assets to total assets in the portfolios of BIF and SAIF members, and the labor market situation. The FDIC considered both the overall unemployment rate and non-farm employment growth trends.

The December 1992 proposed rule was never adopted, and will be withdrawn pursuant to an FDIC policy statement which provides that any proposed rule that has not been the subject of final Board action within nine months generally should be withdrawn.

Statement of Policy on Development

and Review of FDIC Rules and Regulations, 49 *FR* 7288 (Feb. 28, 1984).

Rather than periodically revisiting the criteria used to identify regions for designation as economically depressed regions, and listing regions so designated, the FDIC is proposing to revise part 357 to provide guidance to enable applicants to evaluate their situations before formally applying for assistance. The proposed rule provides the criteria the FDIC will use to determine which regions are economically depressed. Adoption of the rule would mean that the FDIC will no longer periodically designate specific regions in light of current economic conditions.

Under the proposed rule, for the purpose of determining economically depressed areas, the FDIC generally will consider states as the defined geographical unit. The FDIC will determine whether an institution qualifies as being located in an economically depressed region on a case-by-case basis. That determination will be based on four criteria: (1) high unemployment rates; (2) declines in non-farm employment; (3) high levels of problem real estate assets at insured depository institutions; and (4) where a sufficient number of observations are reported, evidence indicating declining real estate values from the FDIC's Survey of Real Estate Trends. All data used will be from statistical sources available to the public. A list of these data sources is provided in the attached Appendix. Because there are significant industrial and labor market structural differences across areas of the United States, national or state benchmarks are not provided with respect to each of the aforementioned four criteria. This enables the FDIC to more accurately determine whether a region is depressed based on specific criteria relevant to an institution's market area at any time. For example, the FDIC will consider relevant information provided by institutions on local real estate prices and on the institution's market area, whether limited to a part of a state or covering more than one state.

In consideration of the foregoing, the FDIC hereby withdraws the proposed rule published at 57 FR 60140, December, 18, 1992.

List of Subjects in 12 CFR Part 357

Bank deposit insurance, Grant programs—housing and community development, Savings associations.

For the reasons set forth in the preamble, part 357 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

1. The authority citation for part 357 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1823(k)(5).

2. Section 357.1 is amended by revising paragraph (b) to read as follows:

§ 357.1 Economically depressed regions.

* * * * *

(b) *Economically depressed regions.* (1) For the purpose of determining economically depressed areas, the FDIC in general shall consider states as the defined geographical unit. The FDIC shall determine whether an institution qualifies as being located in an economically depressed area on a case-by-case basis. That determination will be based on four criteria:

(i) High unemployment rates;

(ii) Significant declines in non-farm employment;

(iii) High delinquency rates of real estate assets at insured depository institutions; and

(iv) Where a sufficient number of observations are reported, evidence indicating declining real estate values from the FDIC's Survey of Real Estate Trends.

(2) All data sources used are in the public record. The appendix to this part contains a list of such data sources. In addition, the FDIC will consider relevant information provided by institutions on local real estate prices and on the institution's market area, whether limited to a part of a state or covering more than one state.

3. Appendix A to part 357 is added to read as follows:

Appendix A to Part 357—Data Sources Used by the FDIC To Determine ''Economically Depressed Regions''

1. *Non-farm employment and unemployment rates.* U.S. Department of Labor, Bureau of Labor Statistics, ''Employment and Earnings,'' Table B.7, Employees on Non-Farm Payrolls by State and Major Industry; ''Labor Force Status by State,'' Table C.2. Washington, DC (monthly).

2. *Problem real estate assets (noncurrent real estate loans and leases plus other real estate owned).* Federal Financial Institutions Examination Council, ''FFIEC Call Report.'' Washington, DC (quarterly).

3. *Regional real estate values.* Federal Deposit Insurance Corporation, ''Survey of Real Estate Trends.'' Washington, DC (quarterly).

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of July 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–19810 Filed 8–5–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 757 series airplanes. This proposal would require the replacement of certain discrepant ram air turbine (RAT) deployment actuator assemblies with units that have been modified and shipped in a specific fashion prior to installation. This proposal is prompted by reports that the RAT deployment actuators have failed to deploy upon command, due to interference in the actuator locking mechanism, which was caused by damage incurred during shipping of the actuator assembly. The actions specified by the proposed AD are intended to ensure that the RAT is deployed when commanded to do so. Failure of the RAT to deploy, specifically during a dual engine failure, would result in loss of hydraulic power, which would adversely affect the continued safe flight and landing of the airplane.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sheila Kirkwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2675; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

During maintenance tests on in-service Boeing Model 757 series airplanes, two ram air turbine (RAT) deployment actuators failed to deploy upon command. Additionally, during functional testing of airplanes in production, several actuators failed to deploy when commanded to do so. Investigation revealed that the lock pins and the piston head of the actuator unit were deformed at the point where the two come into contact with each other. The failure of the actuator to deploy was traced to the lock pins, which were peened at the ends, causing them to drag against the traveling cylinder and the piston head (lock rod), and prohibiting the movement of the lock rod.

The damage to the lock pins apparently occurred from impact loads on the rod or head end of the actuator during shipping. Since the actuator is shipped in the extended position, the locking mechanism is susceptible to damage from dropping or from other types of improper handling. This was confirmed by laboratory testing.

Additionally, a tolerance study showed that, under adverse conditions, the latch subassembly has the potential to interfere with the fixed end cap assembly. This situation can cause unlocking abnormalities.

Failure of the RAT to deploy upon command, specifically during a dual engine failure, could result in loss of hydraulic power. This condition, if not corrected, would adversely affect the continued safe flight and landing of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Arkwin Industries Service Bulletin 1211233–29–21–3, Revision 2, dated June 17, 1994. (Arkwin Industries, Inc., is the manufacturer of the subject RAT deployment actuator assemblies.) This service bulletin describes procedures for conducting a check to identify discrepant actuator assemblies. If a discrepant assembly is found, the service bulletin provides procedures for removal, repair, and reidentification of it. The service bulletin recommends that the repair and reidentification of the discrepant assemblies be performed by Arkwin Industries, since specialized equipment is needed to perform the work.

The FAA also has reviewed and approved Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994. This service bulletin describes procedures for proper identification of the necessary reusable shipping container and shipping sleeve assembly that should be used when transporting or shipping the RAT deployment actuator assembly. Use of this container and sleeve will prevent damage to the actuators during shipping.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the replacement of discrepant RAT deployment actuator assemblies with units that have been modified (repaired and reidentified) and shipped in a specific fashion prior to installation. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 631 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 389 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,832 per airplane. (If the unit is under warranty, the required parts would be provided by the actuator manufacturer at no cost to the operator.) Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,973,008, or $5,072 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that the proposed requirements of this AD already have been accomplished on approximately 13 airplanes of U.S. registry. Therefore, the future cost impact of this proposed AD on U.S. operators would be $1,907,072.

Regulatory Impact

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

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

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–12–AD.

Applicability: Model 757 series airplanes; equipped with ram air turbine (RAT) deployment actuators having Boeing part number (P/N) 1211233–04 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005), and serial number 00001 and subsequent; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the RAT to deploy when commanded to do so, accomplish the following:

(a) For airplanes equipped with a ram air turbine (RAT) deployment actuator, having serial number 00001 through 00631, inclusive, and without a suffix letter ''B'': Within 30 months after the effective date of this AD, remove the RAT deployment actuator and replace it with an actuator that meets the conditions specified in paragraphs (a)(1) and (a)(2) of this AD:

(1) The actuator has been modified (repaired and reidentified) in accordance with Arkwin Industries Service Bulletin 1211233–19–21–3, Revision 2, dated June 17, 1994; and

Note 2: Arkwin Industries Service Bulletin 1211233–19–21–3, Revision 2, dated June 17, 1994, recommends that the actuator unit be returned to Arkwin Industries for repair, since specialized equipment is needed to perform the rework of the unit.

(2) Prior to installation, the modified replacement actuator was shipped (i.e., to the place where installation is accomplished) in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994.

Note 3: Shipping records or tags may be reviewed to determine whether the actuator was shipped in accordance with Arkwin Industries Service Bulletin 1211233–29–1–4, Revision 2.

Note 4: Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994, provides procedures for proper identification of the necessary reusable shipping container and shipping sleeve assembly that is to be used when transporting or shipping the RAT deployment actuator assembly. Use of this container and sleeve will prevent damage to the assembly during shipping.

(b) For airplanes equipped with a RAT deployment actuator, having serial number 00632 and subsequent, which, prior to installation, was shipped in the extended position and not in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994: Within 30 months after the effective date of this AD, remove that RAT deployment actuator and replace it with an actuator that meets the conditions specified in paragraphs (b)(1) and (b)(2) of this AD:

(1) The actuator has been modified (repaired and reidentified) in accordance with Arkwin Industries Service Bulletin 1211233–19–21–3, Revision 2, dated June 17, 1994; or the actuator is a new actuator from Arkwin Industries, Inc.; and

(2) Prior to installation, the actuator was shipped (i.e., to the place where installation is accomplished) in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994.

(c) As of a date 30 months after the effective date of this AD, no person shall install on any airplane a RAT deployment actuator assembly, Boeing P/N 1211233–04 (Arkwin P/N 1211233–004) or Boeing P/N S271N102–5 (Arkwin P/N 1211233–005), serial number 00001 and subsequent; unless the conditions specified in both paragraphs (c)(1) and (c)(2) of this AD apply:

(1) The actuator assembly has been modified (repaired and reidentified) in accordance with Arkwin Industries Service Bulletin 1211233–19–21–3, Revision 2, dated June 17, 1994; or the actuator is replaced with a new actuator from Arkwin Industries, Inc.; and

(2) Prior to installation, the actuator was shipped (i.e., to the place where installation is accomplished) in accordance with Arkwin Industries Service Bulletin 1211233–29–21–4, Revision 2, dated June 17, 1994.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on July 30, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19893 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require repetitive x-ray inspections to detect cracks in stringers 4 through 7 of the lower skin of the wings, and modification or repair, if necessary. The proposed AD also would require modification of the stringers of the lower skin of the wings, which would terminate the repetitive inspections. This proposal is prompted by reports of fatigue cracking found in stringers 4 through 7 of the lower skin of the wings. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the wings.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–142–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises that it has received reports indicating that, during modification of the upper wing skin at stringers 4 through 7 (required by AD 94–26–08, amendment 39–9103 (60 FR 332, January 4, 1995)), cracking was found in certain stringers of the lower skin of the wing. Investigation revealed that such cracking, which started at the rivet holes of the rib-to-stringer connections, was caused by fatigue-related stress. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wings.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F27/57–70, dated May 17, 1993, which describes the following procedures:

1. Performing repetitive x-ray inspections to detect cracks in stringers 4 through 7, inclusive, at certain wing stations of the lower skin of the wings;
2. Modifying stringers 4 through 7, inclusive, at certain wing stations of the lower skin of the wings, which eliminates the need for the repetitive inspections; this modification will minimize the possibility of cracks developing in the subject area of the stringers of the lower skin of the wings;
3. Temporarily repairing the cracked stringer until the modification is accomplished.

In addition, the service bulletin permits further flight, under certain conditions, with stringers that are cracked within certain limits.

The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–094 (A), dated July 16, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive x-ray inspections to detect cracks of stringers 4 through 7, inclusive, at certain wing stations of the lower skin of the wings; and modification or repair, if necessary. The proposed AD also would require modification of certain stringers of the lower skin of the wings, which would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the stringers. The FAA has determined that, due to the safety implications and consequences associated with such cracking, the subject stringers that are found to be cracked must be repaired, and these stringers connections eventually must be modified. This repair and modification (in accordance with Fokker Service Bulletin F27/57–70, dated May 17, 1993) will ensure the structural integrity of the subject are of the wing.

Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 16 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $32,640, or $960 per airplane, per inspection cycle.

It would take approximately 400 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,365 per airplane.

Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $862,410, or $25,365 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 96–NM–142–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking of stringers of the lower skin of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Perform an x-ray inspection to detect cracks in stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, May 17, 1993, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 30,000 total flight cycles; or

(2) Within the next 2,000 flight cycles, or within 12 months after the effective date of this AD, whichever occurs first.

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. After accomplishment of the modification, no further action is required by this AD.

(2) Repair the crack in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. Within the next 2,000 flight cycles or 1 year following accomplishment of the repair, whichever occurs first, modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. After accomplishment of the modification, no further action is required by this AD.

(d) Prior to the accumulation of 30,000 flight cycles, or within 30 months after the effective date of this AD, whichever occurs later, modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

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

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

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

Issued in Renton, Washington, on July 30, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19892 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–248–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model 382 series airplanes. This proposal would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that the new landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by the proposed AD are intended to prevent

loss of brake effectiveness during a high energy RTO.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–248–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1988, a McDonnell Douglas Model DC–10 series airplanes was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) Determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Lockheed Aeronautical System Company has submitted, and the FAA has evaluated, the dynamometer test data and analyses concerning brakes installed on Model 382 series airplanes. The dynamometer test was completed in November 1990. Based on this data, the FAA has determined that the brake wear limits currently recommended in the Component Maintenance Manuals for Model 382 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values.

Explanation of Relevant Service Information

The FAA has reviewed and approved Hercules Alert Service Bulletin A382–32–47, dated March 1, 1995, which describes a new maximum brake wear limit approved by the FAA. The service bulletin describes procedures for performing an inspection of the main landing gear brakes, having part number 9560685, for wear. The service bulletin also describes procedures for replacement of any brake worn more than the maximum wear limit of 0.359 inch with a brake within that limit.

The FAA has determined that the actions described in this service bulletin must be taken in order to prevent loss of brake effectiveness during a high energy RTO, which can cause the airplane to leave the runway surface, possibly resulting in injuries to passengers and crew.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require (1) inspection of the main landing gear brakes, having part number 9560685, for wear, and replacement if the new wear limits are not met; and (2) incorporation of specified maximum wear limits into the FAA-approved maintenance inspection program. The inspection and replacement would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 112 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-

time change) is estimated to be $4,800 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $87,480, or $4,860 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive: *Lockheed:* Docket 95–NM–248–AD.

Applicability: All Model 382 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect the main landing gear brakes having the brake part number listed below for wear, in accordance with Hercules Alert Service Bulletin A382–32–47, dated March 1, 1995. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit, in accordance with the alert service bulletin.

Brake manufacturer	Brake part mumber	Maximum wear limit (inches)
Hercules	9560685	0.359

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

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

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

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

Issued in Renton, Washington, on July 30, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19891 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

[Department of the Treasury Circular, Public Debt Series No. 3–72]

Regulations Governing United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rule; correction.

SUMMARY: In the proposed rule, beginning on page 39227 in the issue of Friday, July 26, 1996, make the following correction:

On page 39228, in the first column, address section of the preamble, the Internet address of the Public Debt home page was incorrect. It should be changed to read: http//www.ustreas.gov/treasury/bureaus/pubdebt/pubdebt.html

Dated: July 31, 1996.

Van Zeck,

Deputy Commissioner.

[FR Doc. 96–19931 Filed 8–5–96; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 202

RIN 0790–AG31

Restoration Advisory Boards (RABs)

AGENCY: Department of Defense, Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup), DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes and requests public comments on regulations regarding the characteristics, composition, funding, and establishment of Restoration Advisory Boards (RABs). DoD has proposed these regulations in response to section 324 of the National Defense

Authorization Act for Fiscal Year 1996 (Pub. L. 104–106) that amended section 2705 of title 10, United States Code, and requires the Secretary of Defense to prescribe regulations regarding RABs.

The purpose of a RAB is to facilitate public participation in DoD environmental restoration activities at operating and closing DoD installations where local communities express interest in the program. The proposed regulations are based on DoD's current policies for establishing and operating RABs as well as DoD's experience in establishing RABs over the past two years.

DATES: Comments on this proposed rule must be submitted on or before November 4, 1996.

ADDRESSES: Comments on this proposal should be sent to the following address: Office of the Assistant Deputy Under Secretary of the Defense (Environmental Cleanup), 3400 Defense Pentagon, Washington, DC 20301–3400. The public must send a written original, two copies, and whenever possible, a 3.5 inch computer disk containing comments in a common word processing format such as WordPerfect version 5.1. This will expedite DoD's response to comments and reduce the associated costs.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Read, Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup), (703) 697–9793.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are proposed under the authority of section 2705 of title 10, United States Code, that was amended by section 324 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106).

II. Background

The Defense Environmental Restoration Program (DERP) was established in 1984 to promote and coordinate efforts for the evaluation and cleanup of environmental contamination at operating and closing DoD installations and formerly used defense sites (FUDS). Policy direction and oversight of DERP is the responsibility of the Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup). The DoD Components (Departments of Army, Navy, and Air Force, and the Defense Agencies) are responsible for program implementation.

DoD recognizes the importance of public involvement at military installations and FUDS that require environmental restoration. DoD has developed policies to ensure that local communities are provided the opportunity as early as possible to obtain information about and provide input to the decisions regarding the environmental restoration activities at military installations. It is DoD policy to provide such opportunity through the establishment of RABs.

DoD, as with all federal agencies, must comply with the statutory and regulatory requirements for community involvement found under the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Pub. L. 96–510) as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–550), National Environmental Policy Act (NEPA) (Pub. L. 91–190), and other applicable federal, state and local environmental laws and regulations. Section 211 of SARA (10 USC 2705(c)) and Executive Order 12580, entitled ''Superfund Implementation,'' require DoD, where possible and practical, to establish technical review committees (TRC) for reviewing technical documents and discussing progress in implementing and completing restoration activities.

Over the past several years, DoD has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). The FFERDC is a committee chartered under the Federal Advisory Committee (FACA). The committee includes stakeholders—representatives of federal, state, tribal, and local agencies, and of environmental, community, labor, and environmental justice organizations. The FFERDC develops consensus policy recommendations for improving decisions about environmental restoration at federal facilities. In February 1993, the FFERDC issued the ''Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes''. In that report, the FFERDC recommended that: (1) Federal agencies should be more proactive in providing information about restoration activities to stakeholders, and (2) citizen advisory boards should be established to provide advice to government agencies that conduct and regulate restoration at federal facilities. DoD carefully considered the recommendations of the FFERDC and, in response, strengthened its community involvement efforts including the RAB initiative under its environmental restoration program.

Following the release of the FFERDC Interim Report in 1993, the FFERDC expanded its membership to include representatives from the military services, local governments, and environmental justice organizations. In April 1996, the FFERDC issued its Final Report which includes chapters on community involvement and advisory boards. The Final Report affirms the value of RABs as a method for involving the public in the environmental restoration decision-making process and provides recommendations for establishing and implementing successful RABs.

In 1993, President Clinton announced a five-part plan to speed the economic recovery of communities in which bases are scheduled to close. Part of the Fast-Track Cleanup Program, which sprang from the President's plan, emphasized the early community involvement in the environmental restoration process as an important element of the program. On September 9, 1993, the Deputy Secretary of Defense issued a memorandum that outlined the policies for implementation of the Fast-Track Cleanup Program. One of the guidances called for the establishment of RABs at closing installations where property was available for transfer to communities for reuse. The RAB initiative, subsequently applied to operational installations, gives an opportunity for citizens living near military installations to obtain information about, and provide input to, the environmental restoration program.

DoD believes that working in partnership with local communities and addressing the concerns of those communities early in the restoration process will enhance its efforts under, and increase credibility of, the environmental restoration program. DoD remains committed to involving communities neighboring its installations in environmental restoration decisions that may affect human health and the environment. RABs have become a significant component of DoD's efforts to increase community involvement in DoD's environmental restoration program. RABs continuously provide a forum through which members of affected communities can provide input to an installation's ongoing environmental restoration activities.

On September 27, 1994, DoD and EPA jointly issued guidelines for the formation and operation of RABs (''Restoration Advisory Board Implementation Guidelines''). The guidelines describe how to implement the DoD RAB policy and identify the role each stakeholder can play in the RAB. The guidelines also state that existing TRCs or similar groups may be expanded or modified to become RABs rather than an installation creating a separate committee because RABs are designed to fulfill the statutory requirements for TRCs.

As of September 30, 1995, more than 200 RABs had been formed at more than 230 operating and closing installations that have restoration programs. It is important to note that the RAB is not a replacement for other types of community outreach and participation activities required by law, regulation, or policy.

In section 326(a) of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337, October 5, 1994), Congress directed that section 2705 of title 10, United States Code (CERCLA), be amended in the following manner, (''1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit establishment of a restoration advisory board in connection with any installation (or group of nearby installations) where the Secretary is planning or implementing environmental restoration activities.'' Thus, Congress granted DoD the authority to establish RABs instead of TRCs at installations undergoing environmental restoration.

On February 10, 1996, the President signed into law the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106) which contained several provisions addressing the establishment and operation of RABs. Section 324(a) of Pub. L. 104–106 amended section 2705 of title 10, United States Code, requiring the Secretary of Defense to ''prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards'' (amended section 2705(d)(2)(A)). Section 324(a) of Pub. L. 104–106 also stated that DoD's issuance of regulations shall not be a precondition to the establishment of RABs (amended section 2705(d)(2)(B)). Section 324(b) of Pub. L. 104–106 authorized DoD to enable the installation to pay for routine administrative expenses of a RAB, as well as allowing RABs or TRCs to obtain technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation using DERP and Base Realignment and Closure (BRAC) funding (amended sections 2705(d)(3), (e), and (g)). However, section 324(d) of Pub. L. 104–106 stated that funding for both administrative expenses and technical assistance may not be made after September 15, 1996, unless the Secretary publishes proposed final or interim final regulations for RABs (amended section 2705(g)(2)(B)).

Therefore, DoD proposes these regulations regarding the characteristics, composition, funding, and establishment of RABs. DoD recognizes that each RAB established will be a unique organization dealing with installation-specific issues. This proposal, developed consistent with the recommendations set forth in the FFERDC's Final Report, is consistent with existing DoD and EPA policy on RABs, and reflects over two years of experience in establishing and operating RABs throughout the United States. DoD has structured this proposal to maximize flexibility for RAB members and installations nationwide.

III. Summary of the Proposed Rule

DoD is proposing and requesting public comment on regulations regarding the establishment, characteristics, composition, and funding of RABs. This section of the preamble provides a summary of the proposed regulations in 32 CFR part 202.

A. General Requirements

In this section of the proposed rule, DoD discusses the purpose, scope, and applicability of the proposed regulations for RABs. DoD is required by revised section 2705(d)(2)(A) of title 10, United States Code, to issue regulations concerning the establishment, characteristics, composition, and funding of RABs. When issued as a final rule, the regulations will apply to all RABs regardless of when they were established.

In this proposal, DoD defines the purpose of a RAB as providing an expanded opportunity for stakeholder input into the environmental restoration process at operating and closing DoD installations. While a RAB will complement other community involvement efforts undertaken by the installation concerning environmental restoration, DoD that a RAB does not replace other types of community outreach and participation activities required by applicable federal and state laws.

DoD will require that a RAB be established at an installation when there is sufficient and sustained community interest and any of four specified criteria are met. The installation shall have the lead responsibility for forming and operating a RAB. Further, DoD proposes five minimum steps that the installation should take to determine if sufficient and sustained community interest exists in forming a RAB.

Prior to establishing a RAB, DoD is proposing that the installation should notify potential stakeholders of its intent to form a RAB. Stakeholders are defined as all parties that are actually or potentially affected by restoration activities at an installation. At closing installations, stakeholders should include members of the Local Redevelopment Authorities (LRA). The notification should describe the purpose of a RAB and discuss opportunities for membership.

This proposed rule contains guidelines regarding the composition of RABs. DoD proposes that each RAB should consist of representatives from DoD, EPA, state and local government, and members of the community. DoD. notes in the preamble (see section IV. A.4.a) that EPA's involvement on a RAB is discretionary depending on whether the installation is included on the National Priorities List (NPL) set forth in Title 40 Code of Federal Regulations part 300, appendix B. At closing installations, members of the BRAC Cleanup Team BCT) may serve on the RAB as DoD, EPA, or state representatives.

DoD is not proposing regulations for specific roles and responsibilities of RAB members, but is stating that the chairmanship of a RAB must be shared between the installation and community. In addition, DoD proposes that community members of a RAB shall not be compensated by DoD for their participation.

B. Operating Requirements

In this section of the proposed rule, DoD sets forth basic requirements for the operation of a RAB. DoD proposes that each RAB should develop a mission statement that describes its overall purpose and goals. DoD also specifies certain requirements regarding the selection process for co-chairs. DoD proposes that the installation's co-chair shall be determined by the installation's Commanding Officer (CO) or other DoD decision authority in accordance with military service-specific guidance. DoD is not specifying any required procedures for selection of the community co-chair or for community members of the RAB in general, only that the community members of the RAB will be responsible for selecting their co-chair.

DoD proposes that each RAB should develop a set of operating procedures. These procedures may address: Announcing meetings; attendance of members at meetings; frequency of meetings; addition or removal of RAB members; length of service for RAB members and co-chairs; methods for dispute resolution; review of responses to public comments; participation of the general public in RAB operations; and keeping the public informed about RAB proceedings.

DoD is not proposing specific requirements concerning the conduct of RAB meetings, because the meeting format of each RAB will vary and be dictated by the needs of the participants. However, DoD proposes that the installation should prepare meeting minutes summarizing the topics discussed at RAB meetings, and make them available in information repositories.

C. Administrative Support, Funding, and Reporting Requirements

In this section of the proposed rule, DoD sets forth requirements regarding administrative support for establishing and operating a RAB, funding for administrative support, and reporting requirements regarding the activities and administrative expenses associated with RABs. This section also references impending regulations governing how community members of RABs and TRCs may seek funding for obtaining technical assistance to interpret scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation.

Section 324 of Pub. L. 104–106 amended section 2705(d)(3), title 10, United States Code, authorizes the CO of an installation, or if there is no such commander, an appropriate DoD official, to pay for routine administrative expenses of a RAB established at an installation. To implement this provision, this proposed rule requires that the installation provide administrative support to establish and operate a RAB, subject to the availability of funds. The scope of this support corresponds to those activities that are eligible for DoD funding including:

- Establishing a RAB.
- Membership selection.
- Certain types of training.
- Meeting announcements.
- Meeting facility.
- Meeting facilitators, including translators.
- Preparation of meeting materials and minutes.
- Maintenance of a RAB mailing list and mailing of RAB materials.

Section 324(d) of Pub. L. 104–106 amended section 2705(g) title 10, United States Code, prescribes the level and allocation of funds earmarked for RAB administrative expenses. Accordingly, the proposed rule establishes these requirements and specifies that operating installations should pay for RAB administrative expenses using funds from their Component's Defense Environmental Restoration Account (DERA). At closing installations, DoD proposes that installations use BRAC funds to pay for eligible RAB administrative expenses.

Section 324(c) of Pub. L. 104–106 revised section 2705(e), title 10, United States Code, enables community members of a RAB or TRC to request DoD to obtain from the private sector, technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation.

Later this year, DoD will issue a rule addressing policies and procedures for obtaining technical assistance under section 2705(e). In this proposed rule, DoD states that community members of a RAB or TRC seeking technical assistance in interpreting information with regard to the restoration activities at an installation may obtain a grant through such programs as EPA's Technical Assistance Grant (TAG) program or Technical Outreach Services to Communities (TOSC) program. Upon DoD's promulgation of regulations implementing section 2705(e), Technical Assistance for Public Participation (TAPP), community members of a RAB or TRC may request the installation CO, or appropriate DoD official, to obtain from private sector sources technical assistance.

Section 324(f) of Pub. L. 104–106 amends section 2706(a)(2) of title 10, United States Code, by adding subsection (j) requiring DoD to report to Congress on the activities of TRCs and RABs. In order to fulfill this requirement, this proposed rule requires that the installation at which a RAB has been established document the activities of the RAB and track expenditures for administrative expenses of the RAB. This proposed rule does not prescribe specific procedures for the installation to follow as part of DoD's collecting this information when reporting to Congress. Rather, DoD will rely on existing internal reporting mechanisms within the Department and services to collect this information.

IV. Section-by-Section Analysis of the Proposed Rule

This section of the preamble presents an analysis of each section of the proposed rule.

A. General Requirements

1. Purpose, Scope, and Applicability

a. *Purpose and scope of responsibilities of a RAB.* To define the duties and responsibilities of a RAB, DoD is proposing that the purpose of a RAB is to provide an expanded opportunity for stakeholder input into the environmental restoration process at DoD installations. DoD considers stakeholders as parties that are actually or potentially affected by restoration

activities at an installation. At closing installations, the LRA, as defined under BRAC, are included as stakeholders.

This proposed rule does not list specific responsibilities of a RAB, but DoD considers the following types of activities within the scope of a RAB:

- Providing advice to the installation, EPA, state regulatory agency, and other government agencies on restoration activities and community involvement.
- Addressing important issues related to restoration, such as the scope of studies, cleanup levels, waste management, and remedial action alternatives.
- Reviewing and evaluating documents associated with restoration activities, such as plans and technical reports.
- Identifying restoration projects to be accomplished in the next fiscal year and beyond.
- Recommending priorities among sites or projects.
- Conducting regular meetings that are open to the public and scheduled at convenient times and locations.
- Interacting with the LRA or other land use planning bodies to discuss future land use issues relevant to environmental restoration decision-making.

By establishing a RAB, DoD hopes to ensure that interested stakeholders have a voice and can actively participate in a timely and thorough manner in the planning and implementation of the environmental restoration. A RAB will serve as a forum for the expression and careful consideration of diverse points of view.

While a RAB complements other community involvement efforts at DoD installations, DoD notes in the proposed rule that a RAB does not replace other types of community outreach and participation activities required by law, regulation, or policy. DoD installations will continue to be responsible for fulfilling all legally mandated public involvement requirements, such as those required under CERCLA, RCRA, NEPA, and applicable state environmental regulations.

b. *Applicability of regulations to existing RABs.* As directed by section 2705(d)(2)(A) of title 10, United States Code, DoD must prescribe regulations regarding the establishment, characteristics, composition, and funding of RABs. DoD intends that the final regulations will apply to all RABs, including RABs established prior to the effective date of the final rule. DoD does not consider that applying final regulations to RABs already established will pose any additional requirements or conflict, because the proposed regulations are based on existing DoD policy that has been implemented since September 1994.

2. Criteria for Establishment

a. *Determing If Sufficient Interest Warrants Establishing a RAB.* In this rule, RABs may only be established at operating or closing installations undergoing environmental restoration. In accordance with existing policy, DoD proposes that a RAB be established when there is sufficient and sustained community interest and any of the following criteria are met:

- The closure of an installation involves the transfer of property to the community.
- At least 50 local citizens petition for an advisory board.
- Federal, state, or local government representatives request formation of an advisory board, or
- The installation determines the need for an advisory board.

To clarify how an installation will determine the need for an advisory board, DoD proposes that the installation determine the level of interest within the community for establishing a RAB by:

- Reviewing correspondence files.
- Reviewing media coverage.
- Consulting community members.
- Consulting relevant government officials, and
- Evaluating responses to notices placed in local newspapers.

At the majority of installations that have an environmental restoration program, DoD expects that local communities will be interested in forming a RAB. If, however, outreach efforts reveal no interest within the community, a description of those efforts taken, a summary of the results, and plans for future efforts, must be documented as part of the installation's community relations plan (CRP). Under CERCLA (see 40 CFR 300.430(c)), an installation must prepare a formal CRP based on community interviews and other relevant information. The CRP specifies the community relations activities the installation expects to undertake during the restoration process.

DoD notes that installation efforts to identify the level of community interest in establishing a RAB should not be limited to a one-time assessment of the criteria discussed above. Although DoD is not proposing a specific requirement, DoD recommends that the installation reassess current community interest in the restoration program as part of the periodic update of its CRP.

b. Responsibility for forming and operating a RAB. Once the installation determines that a RAB must be established, DoD proposes that the installation have the lead responsibility for forming and operating the RAB. The installation should have lead responsibility because the RAB will be an integral part of the installation's community involvement and outreach programs. DoD recommends that installations involve, as appropriate, EPA, state, and local government in all phases of RAB planning and operation.

c. Converting existing Technical Review Committees (TRCs) to RABs. TRCs were established at more than 200 DoD installations to provide interested parties with a forum to discuss and provide input into environmental restoration activities. DoD recommends that, where there is sufficient and sustained interest, installations expand or modify existing TRCs or similar groups to become RABs rather than create a separate committee.

RABs will expand the TRC initiative in the following ways: (1) RABs will involve a greater number of community members than TRCs, thereby better incorporating the diverse needs and concerns of the community directly affected by environmental restoration activities; and (2) chairmanship of the RAB will be shared between the installation and community, promoting partnership and a strong commitment to incorporate the community's concerns into the decision-making process. In these situations, RABs will fulfill the statutory requirements for a TRC.

In order to convert a TRC to a RAB, several tasks must be accomplished. These tasks include: Increasing community representation; adding a community co-chair; and making meetings open to the public. The DoD installation should evaluate the diversity of the current membership of the TRC when converting to a RAB. DoD recommends that the installation should consult with EPA and the state, as appropriate, regarding the diversity of the current membership of the TRC. When formulating RABs, it is DoD's goal to ensure diversity and balance in membership of RABs. DoD believes that current TRC members should be given a preference for a seat on the RAB to preserve continuity and the ''institutional history'' of the environmental restoration process. However, DoD feels that this preference to include existing TRC members in RABs also should be balanced against the preeminent need to form a RAB truly representative of the community's diverse interests.

3. Notification of Formation of a RAB

a. Public notice and outreach. Prior to establishing a RAB, DoD proposes that installations should notify potential stakeholders of its intent to form a RAB, including those installations that may be converting TRCs to RABs. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss membership opportunities.

DoD recommends that every effort be made to ensure that a broad spectrum of individuals or groups representing the community's interests are informed about the RAB, its purpose, and membership opportunities. In some cases, it may be necessary that the installation directly solicit some groups or organizations, particularly groups traditionally underrepresented such as low-income and minority segments of the population. Installations should consult the existing TRC, state, and EPA for information or other comments before providing this notice.

b. *RAB information meeting.* While not required in the proposed rule, DoD suggests that an installation sponsor an informational meeting prior to establishing a RAB. The focus of this meeting will be to introduce the concept of RABs to the community and to begin the membership solicitation process.

4. Composition of a RAB

a. *Membership.* DoD's goal is that RAB membership be well balanced and reflect the diverse interests within the local community. Therefore, DoD proposes that each RAB should consist of representatives of DoD, EPA, state and local government, and members of the community.

b. *Government representation.* DoD proposes that DoD, EPA, and state and local governments should be represented on the RAB. Potential candidates may include the Remedial Project Manager (RPM) from the installation, EPA, and the state, as well as representatives from local government agencies. In the case of closing military installations, members of the BCT may serve on the RAB as DoD, EPA, and state representatives. It is important that any government representative chosen for RAB membership dedicate the time necessary, and have sufficient authority, to fulfill all RAB responsibilities.

EPA, state, and local regulatory agencies fulfill important roles on a RAB, because of their regulatory oversight of DoD environmental restoration activities. However, EPA stated in the September 27, 1994 Restoration Advisory Board Implementation Guidelines that its involvement on a RAB will vary based on whether the installation is on the National Priorities List (NPL) under the CERCLA. The NPL, set forth in Title 40 CFR part 300, appendix B, is a list of sites ranked in order of priority for hazardous waste restoration. EPA is committed to full involvement as the federal regulatory agency on RABs where EPA has received resources from DoD. For installations that are not included on the NPL, non-base closure or base closure installations where EPA has not been given resources from DoD, EPA's involvement will be at the discretion of the Regional Administrator of EPA's regional office. DoD has included EPA's discretionary involvement in RABs in the proposed rule.

Ideally, DoD believes that RABs should have only one representative from each government agency, so as to prevent an inordinate representation of government and DoD officials. While DoD encourages other government representatives to attend RAB meetings their role will be strictly one of providing information and support.

c. *Community representation.* RAB community members should live and/or work in the affected community or be affected by the installation's environmental restoration program. While DoD is not proposing specific procedures to be used for selecting community members of the RAB, DoD notes that one of the most sensitive issues facing installations that establish a RAB concerns the selection of community members. When members of the community feel the selection process for RAB members, particularly of community members, is conducted in a fair and unbiased manner, it enhances their perception that the RAB can be a credible forum for the discussion of their issues and concerns. If the selection of community members is not approached carefully, the result can be a loss of trust and failure to achieve dialogue.

DoD will not limit the ability of community RAB members who have business interests to compete for DoD contracts, if proper and appropriate assurances to avoid any potential conflicts of interest are issued.

d. *Roles and responsibilities of members.* DoD proposes that chairman ship of the RAB be shared between the installation and the community. DoD believes this will promote partnering between the two parties and reflect a strong commitment by DoD to incorporate the community's concerns into decisions about the environmental restoration process. Together, the installation and community co-chairs will jointly determine meeting agendas, run meetings, and ensure that issues related to the environmental restoration are raised and adequately addressed.

DoD also is specifying in the proposed rule that the community co-chair and community RAB members are expected to serve without compensation for their services. DoD considers community membership on a RAB to be voluntary, and therefore these members will not be paid by DoD for the time invested or services rendered.

DoD is not proposing specific requirements concerning the roles and responsibilities of individual members of a RAB. DoD considers the issuance of such regulations to be overly burdensome to the formation and operation of RABs, and therefore unnecessary. DoD recommends that installations consult previous guidance concerning the roles of individual members when forming and operating a RAB.

B. Operating Requirements

1. Creating a Mission Statement

DoD proposes that each RAB should develop a mission statement that articulates the overall purpose of the RAB. DoD considers this necessary to provide focus and goals for the group. In addition, when members of the RAB agree early on to their mission, it provides a framework for discussions. Without the framework, discussions may become hampered with issues that are not relevant to the environmental restoration process.

2. Selecting Co-Chairs

DoD proposes that the installation co-chair be selected by the installation's CO or as defined by military service-specific guidance, while the community members of the RAB will select the community co-chair. DoD considers it necessary for the community members to select their co-chair to ensure their active participation in the operation of the RAB and to enhance their perception that the RAB can be a credible forum for their issues and concerns.

3. Developing Operating Procedures

DoD considers a formal and agreed-upon set of operating procedures necessary to manage the business of RABs. While DoD will allow each RAB to customize or tailor its operating procedures as it sees fit, DoD proposes that each RAB develop operating procedures on:

- Announcing meetings.
- Attendance of members at meetings.

- Frequency of meetings.
- Additions or removals of RAB members.
- Length of service of members and co-chairs.
- Methods for dispute resolution.
- Review and responses to public comments.
- Participation of the public.
- Keeping the public informed.

With regards to keeping the public informed, DoD proposes that the installation prepare meeting minutes summarizing the topics discussed at the meeting. This is needed to ensure dissemination of the results to community members and interested parties. DoD also proposes that, at a minimum, the minutes should be distributed to the information repositories established under the installation's CRP. Although not required, DoD recommends that the installation consider mailing copies of the minutes to all community members who attended the meeting, existing TRC members, and/or to people identified on the installation's community relations mailing list.

4. Training RAB Members

DoD is not proposing a requirement for training members of the RAB. However, DoD believes that RAB members may need some initial orientation training to enable them to fulfill their responsibilities. DoD recommends that the installation should work with EPA, the state, and environmental groups to develop methods to quickly inform and educate the RAB members and to promote the rapid formation of a fully functioning RAB.[1]

DoD notes that under this proposed rule, only certain types of training will be considered within the scope of administrative support for RABs, and therefore, financed using funds allocated to the administrative expenses of RABs. DoD further discusses training in context of administrative support eligible for available funding in section C.1.b. of this preamble.

5. Conducting RAB Meetings

DoD believes the meeting format of each RAB will vary and be dictated by the needs of the participants. Therefore, DoD is not proposing specific procedures for conducting RAB meetings.[2]

Regarding the nature of discussions at RAB meetings, DoD will consider all advice provided by the RAB whether consensus in nature or provided on an individual basis, including advice given that represents the minority view of members. While voting or polling the members may facilitate RAB discussions, such votes should be advisory only and not binding on agency decisionmakers. Group consensus is not a prerequisite for RAB input; each member of the RAB should provide advice as an individual. At the same time, while group consensus is not required or asked of advisory board members, it is recognized that in the natural course of discussions, consensus may evolve.

C. Administrative Support, Funding, and Reporting Requirements

1. Administrative Support and Eligible Expenses

a. *Administrative support.* Section 324 of Pub. L. 104–106 amended section 2705(d)(3), title 10, United States Code, authorizes the CO of an installation, or if there is no such commander, an appropriate DoD official, to pay for routine administrative expenses of a RAB established at an installation. To implement this provision, this proposed rule requires that the installation provide administrative support to establish and operate a RAB, subject to the availability of funds. Securing ongoing administrative support is especially important for closing or closed installations.

DoD proposes to define the scope of activities that are unique to the establishment and operation of RABs, and therefore eligible for funds as RAB administrative expenses.

b. *Eligible administrative expenses.* In order for an activity to be considered as an eligible RAB administrative cost, the activity must be unique to and directly associated with establishing and operating the RAB. For example, producing a fact sheet as part of obtaining a hazardous waste storage permit under RCRA or hosting an installation open house as specified by the community relations plan under CERCLA, may not necessarily be relevant to a RAB's mission statement or operations. The costs incurred in preparing and distributing such a fact sheet or holding the open house would not be considered administrative support required for a RAB.

While DoD cannot identify all possible examples of activities unique to and directly associated with establishing and operating a RAB, DoD proposes to consider the following activities as typical of administrative support required for a RAB:

- RAB establishment.
- Membership selection.
- Certain types of training.
- Meeting announcements.
- Meeting facility.
- Facilitators, including translators.
- Preparation of meeting agenda materials and minutes.
- Maintenance of a RAB mailing list and mailing of RAB materials.

Which regards to training RAB members, DoD clarifies that in order for training to be considered an eligible administrative cost, it must mutually benefit the mission and all members of a RAB and be relevant to the environmental restoration activities occurring at the installation. For example, if the installation were to hold an orientation training for members of a RAB, costs incurred in preparing training manuals, slides, or other presentation materials would be considered an allowable administrative expense, because such training is unique to and mutually beneficial to the mission and members of the RAB.

A type of training that would not qualify as a RAB administrative support includes specialized training for an individual member of a RAB, such as an off-site workshop on building leadership capabilities. DoD does not consider such training to be unique to and mutually beneficial to the establishment and operation of a RAB. However, DoD notes that types of training that are not eligible for funding as a RAB administrative expense may qualify and be eligible for funding as technical assistance.

2. Funding

Section 324(d) of Pub. L. 104–106 amended section 2705(g) title 10, United States Code, prescribes the level and allocation of funds for RAB administrative expenses. Accordingly, DoD is proposing to establish these requirements as is. The proposed rule states that subject to available funding, operating installations should pay for RAB administrative expenses using funds from their Component's DERA. At closing installations, DoD proposes that installations use BRAC funds to pay for eligible RAB administrative expenses.

3. Technical Assistance to Community Members

Section 324(c) of Pub. L. 104–106 revised section 2705(e), title 10, United States Code, enables a RAB or TRC to request from the private sector, technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental

[1] Further guidance on training RAB community members may be found in ''Restoration Advisory Board Guidelines, DoD/EPA September 1994.''

[2] For further guidance on meeting formats see ''Restoration Advisory Board Implementation Guidelines, DoD/EPA September 1994.''

hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation.

This proposed rule states that community members of RABs or TRCs seeking technical assistance in interpreting information with regard to the restoration activities at an installation may request assistance from such programs as EPA's TAG and TOSC programs. Section 117(e) and 311(d) of CERCLA as amended by SARA, established the TAG and TOSC programs, respectively. These programs provide grants for groups of individuals to hire independent technical advisors who can help them understand technical information, findings, and recommendations related to a site. Regulations for EPA's TAG program are found in 40 CFR part 35 subpart M.

On May 24, 1995, DoD issued a Notice of Request for Comments (60 FR 27460), in which DoD requested comments on three options for technical assistance funding to citizens affected by environmental restoration activities at DoD installations (referred to as the Technical Assistance for Public Participation (TAPP) rulemaking). As the final TAPP rulemaking will specify the selected option for providing technical assistance for short-term training, attendance at workshops, and the procurement of technical consultants to interpret scientific and engineering issues with regard to the nature of environmental hazards at an installation and the restoration activities proposed for or conducted at the installation, DoD does not address these requirements in this proposed rule.

Upon DoD's promulgation of TAPP regulations, community members of RABs or TRCs may request the installation CO, or appropriate DoD official, to obtain from private sector sources technical assistance.

4. Documenting and Reporting Activities and Expenses

Section 324(f) of Pub. L. 104–106 amends section 2706(a)(2) of title 10, United States Code, by adding subsection (j) requiring DoD to report to Congress on the activities of TRCs and RABs. In order to fulfill this requirement, this proposed rule requires that the installation at which a RAB has been established document the activities of the RAB and track expenditures for administrative expenses of the RAB. With regards to tracking expenses, DoD recommends that installations tally costs according to the specific activities identified above (see section IV.C.1.b. of the preamble) that are typical of administrative support required for a RAB.

Although this proposed rule requires installations to document RAB activities and track expenditures, DoD is not prescribing specific procedures to accomplish this. In addition, DoD will use internal department and service-specific reporting mechanisms to obtain required information from installations on RAB activities and expenditures when reporting to the Congress.

V. Regulatory Analysis

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), DoD must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order.

DoD has determined that this proposed rule is not a ''significant regulatory action'' because it is unlikely to:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities;

(2) Create 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 program 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.

B. Regulatory Flexibility Act

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601 *et seq.* because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The primary effect of the proposed rule will be to increase community involvement in DoD's environmental restoration program.

C. Paperwork Reduction Act

It has been certified that the proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

VI. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, DoD must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year.

DoD has determined that this proposed rule will 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.

List of Subjects in 32 CFR Part 202

Administrative practice and procedure, Environmental protection—restoration, Federal buildings and facilities, Organization and functions (Government agencies).

Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is amended by adding part 202 to read as follows:

PART 202—RESTORATION ADVISORY BOARDS (RABs)

Subpart A—General Requirements

Sec.
202.1 Purpose, scope, and applicability.
202.2 Criteria for establishment.
202.3 Notification.
202.4 Composition of a Restoration Advisory Board (RAB).

Subpart B—Operating Requirements

202.5 Creating a mission statement.
202.6 Selecting co-chairs.
202.7 Developing operating procedures.

Subpart C—Administrative Support, Funding, and Reporting Requirements

202.8 Administrative support and funding.
202.9 Technical assistance to community members.
202.10 Documenting and reporting activities and expenses.

Authority: 5 U.S.C. 551 et seq. and 10 U.S.C. 2705.

Subpart A—General Requirements

§ 202.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish regulations regarding the characteristics, composition, funding and establishment of Restoration Advisory Boards (RABs).

(b) The regulations in this part apply to all RABs regardless of when the board was established.

(c) The purpose of a RAB is to provide an expanded opportunity for stakeholder input into the environmental restoration process occurring at operating and closing installations and at formerly used defense sites. Stakeholders are those parties that are actually or may be potentially affected by restoration activities at the installation.

(d) A RAB will complement other community involvement efforts

occurring at an installation; however it does not replace other types of community outreach and participation activities required by applicable laws and regulations.

§ 202.2 Criteria for establishment.

(a) A RAB should be established when there is sufficient and sustained community interest, and any of the following criteria are met:

(1) The closure of an installation involves the transfer of property to the community;

(2) At least 50 local citizens petition the installation for creation of an advisory board;

(3) Federal, state, or local government representatives request the formation of an advisory board; or

(4) The installation determines the need for an advisory board.

(b) To determine the need for establishing a RAB, an installation should:

(1) Review correspondence files;

(2) Review media coverage;

(3) Consult local community members;

(4) Consult relevant government officials; and

(5) Evaluate responses to notices placed in local newspapers.

(c) The installation shall have lead responsibility for forming and operating a RAB.

§ 202.3 Notification.

Prior to establishing a RAB, an installation should notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss opportunities for membership.

§ 202.4 Composition of a Restoration Advisory Board (RAB).

(a) *Membership.* At a minimum, each RAB should consist of representatives from the Department of Defense (DoD), the U.S. Environmental Protection Agency (EPA), state government, community, and local government. At closing installations, the representatives of the Base Realignment and Closure (BRAC) Cleanup Team (BCT) may also serve as the government representative(s) of the RAB. For non-closing installations, or installations where EPA has not been given support resources from DoD, EPA's involvement will be at the discretion of the Administrator of the appropriate EPA regional office.

(b) *Chairmanship.* Each RAB established shall have two cochairs; one representing the DoD installation and the other a community member. Co-chairs shall be responsible for directing and managing the operations of the RAB.

(c) *Compensation for Community Members of the Restoration Advisory Board.* The community co-chair and community members serve voluntarily, therefore they will not be compensated by DoD for their participation.

Subpart B—Operating Requirements

§ 202.5 Creating a mission statement.

Each RAB should develop a mission statement that describes its overall purpose and goals.

§ 202.6 Selecting co-chairs.

(a) *DoD Installation Co-Chair.* The DoD installation co-chair shall be selected by the installation's Commanding Officer or in accordance with military service-specific guidance.

(b) *Community Co-Chair.* The community co-chair shall be selected by the community members of the RAB.

§ 202.7 Developing operating procedures.

(a) Each RAB should develop a set of operating procedures. Areas that may be addressed in the procedures involve:

(1) Announcing meetings;

(2) Attendance of members at meetings;

(3) Frequency of meetings;

(4) Addition or removal of members;

(5) Length of service for members and co-chairs;

(6) Methods for dispute resolution;

(7) Review and responses to public comments;

(8) Participation of the public in operations of the RAB;

(9) Keeping the public informed about proceedings of the RAB.

(b) The installation and community co-chairs should prepare meeting minutes summarizing the topics discussed at meetings of the RAB. The installation should make the meeting minutes available in information repositories.

Subpart C—Administrative Support, Funding, and Reporting Requirements

§ 202.8 Administrative support and funding.

(a) Subject to the availability of funding, the installation shall provide administrative support to establish and operate a RAB.

(b) Allowable Administrative Expenses for a Restoration Advisory Board: The following activities unique to and directly associated with establishing and operating a RAB shall qualify as an administrative expense of a RAB:

(1) Establishment of the RAB;

(2) Membership selection;

(3) Certain types of training;

(4) Meeting announcements;

(5) meeting facility;

(6) Meeting facilitators, including translators;

(7) Preparation of meeting agenda materials and minutes;

(8) Maintenance of a mailing list for the RAB and mailings of materials developed and used by the RAB.

(c) Funding:

(1) At operating installations, administrative expenses for a RAB shall be paid for using funds from the Component's Environmental Restoration Accounts.

(2) At closing installations, administrative expenses for a RAB shall be paid using Base Realignment and Closure (BRAC) funds.

§ 202.9 Technical assistance to community members.

Community members of a RAB or TRC may request technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and restoration activities conducted, or proposed to be conduct at the installation.

§ 202.10 Documenting and reporting activities and expenses.

The installation, at which a RAB is established, shall document the activities and record the administrative expenses associated with the RAB.

Dated: July 31, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19886 Filed 8–5–96; 8:45 am]

BILLING CODE 5000–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–132; FCC 96–259]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: American Mobile Satellite Corporation (''AMSC'') is the only U.S. mobile satellite service (''MSS'') system currently authorized to operate in the upper L-band. However, international coordination has been extremely difficult and we do not believe we will be able to secure sufficient spectrum in the upper L-band for AMSC's operations. Therefore, the Commission

has proposed to assign the first 28 MHz of spectrum (14 MHz for Earth-to-space transmissions and 14 MHz for space-to-Earth transmissions) internationally coordinated in both the upper and lower portions of L-band to AMSC. This proposal will help to ensure that MSS becomes a reality in the L-band and AMSC, a licensed and partly operating satellite system, is able to provide service.

DATES: Comments must be submitted on or before September 3, 1996; reply comments must be submitted on or before September 23, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paula Ford, International Bureau, Satellite Policy Branch, (202) 418–0760; Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418–0753.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (''NPRM'') in IB Docket No. 96–132; FCC 96–259, adopted June 6, 1996 and released June 18, 1996. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Title: Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band.

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rule Making

1. In the course of international coordination, it has become clear that the U.S. will not be able to secure sufficient spectrum in the upper L-band for its only licensee in the band, AMSC. Never before have we been unable to secure sufficient spectrum to support a satellite system that already has been licensed, partly constructed, and operating. Therefore, the Commission proposes to limit eligibility for the first 14 MHz of spectrum coordinated for Earth-to-space transmissions and the first 14 MHz coordinated for space-to-Earth transmissions in the upper and/or lower L-bands to AMSC and proposes to modify AMSC's license accordingly.

2. Coordination in the L-band has been extremely difficult. In the entire L-band, there is 66 MHz of spectrum available for use by Inmarsat, Canada, Mexico, the Russian Federation, and the United States who, at the present time, are coordinating spectrum for a variety of MSS systems in the vicinity of North America. The United States has been at a disadvantage during this coordination because it began coordinating the upper L-band and only later began focusing on the lower L-band while Inmarsat and the other administrations have been coordinating spectrum throughout the entire L-band.

3. Furthermore, Inmarsat, the United States, and the other administrations have claimed requirements totalling significantly more than the 66 MHz available. Moreover, the current designs of mobile terminals for these MSS systems do not permit them to share frequencies in adjacent or similar geographic areas. Given this demand and the technical restrictions, we do not think it will be possible to secure for AMSC the 28 MHz of spectrum we have authorized it to use in the upper L-band. In fact, it is unlikely that we will be able to coordinate more than 10 to 12 MHz in the upper L-band. Such an amount appears insufficient to operate the satellite system we authorized AMSC to build.

4. We believe the public interest is best served by allowing AMSC to use spectrum in the lower L-band. The reasons for supporting MSS in the L-band are as valid today as they were in 1986. MSS can serve areas of the country that are too remote or sparsely populated to be served by terrestrial land mobile systems. It can generate a host of new services by providing communication between virtually any point in the country, irrespective of distance. MSS is uniquely suited for meeting the needs of the transportation, petroleum, and other vital industries. It can meet rural public safety needs and provide emergency communications to any area in times of emergencies and natural disasters. Moreover, the L-band is currently the only primary MSS band in which we have licensed geostationary MSS systems. Geostationary and non-geostationary MSS systems each have distinctive service characteristics, and we believe that each type of service should be allowed to demonstrate its advantages. If geostationary MSS is to have that opportunity in the near term, it must be in the L-band.

5. Coordinating spectrum for AMSC in the lower L-band is particularly attractive because, with the exception of the United States, the same administrations and systems coordinating spectrum in the upper L-band are currently coordinating spectrum in the lower L-band. AMSC's system operates in geostationary orbit and can be timely coordinated with the other entities who have published in advance with the International Telecommunication Union their plans to implement geostationary systems in the lower L-band. The lower L-band can also accommodate both voice and data services which the currently licensed system expects to provide.

6. AMSC—having already constructed and launched one of its three authorized satellites—is in the best position to provide MSS to the public expeditiously. If AMSC, through no fault of its own, obtains insufficient spectrum for its system, its service will be jeopardized, and no other potential licensee in the lower L-band will be able to provide service for years. AMSC's substantial progress toward full implementation thus figures heavily in our public interest analysis. This is especially true because AMSC's expenditures were actually *required* by the construction and launch milestones in AMSC's license.

7. While all satellite licenses are granted subject to the uncertainties of international coordinations, the public interest requires that a Commission license carry with it some reasonable expectation that it will permit the holder to implement its system. Otherwise applicants and licensees—as well as their investors and potential customers—may be unwilling to commit the significant resources necessary to implement proposed systems, and this will have a chilling effect on the introduction of new services to the public. The Commission naturally does not guarantee that any U.S.-licensed system will be profitable, and it certainly cannot guarantee that other administrations will always accommodate U.S.-licensed systems. We can and should, however, take reasonable and appropriate steps to ensure that our licensees have a fair opportunity to compete.

8. Opening the lower L-band for competing applications would present at least a theoretical possibility for a second U.S. licensee to begin providing MSS in the L-band in competition with AMSC. However, our experience in L-band coordinations since 1989 leads us to question whether this theoretical possibility is a realistic one. In particular, we note that it is unlikely that we could coordinate more than 10 MHz in the lower L-band for another

U.S. system, and we estimate that 20 MHz is the minimum amount of spectrum necessary for a viable MSS system.

9. Even under the proposal we make today, we are pessimistic about coordinating all 28 MHz of spectrum we have licensed AMSC to use. We do expect, however, to coordinate enough spectrum to permit AMSC to operate at least one of its three satellites in a cost-effective manner. If contrary to our expectation, we are able to coordinate more than 28 MHz of spectrum in the upper and/or lower L-bands, we propose to allow other parties to apply for the additional spectrum.

10. In addition to adopting rules that permit us to assign AMSC spectrum in the upper and lower L-bands different from that which AMSC is currently authorized to use, we also propose to modify AMSC's authorization to include spectrum in the entire L-band, lower and upper. Therefore, this NPRM shall also serve as notice to AMSC of a proposal to modify its current license, and protests may be filed in response to this NPRM.

Ordering Clauses

11. Accordingly, pursuant to authority contained in sections 4(i), 4(j), 303, 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 316, and 403, we hereby give notice of our intent to adopt the licensing policies set forth herein and to modify, as specified herein, the license currently held by AMSC for provision of MSS service.

12. It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 5 U.S.C. 601 *et seq.* (1981) and pursuant to § 1.87 of the rules, shall serve a copy of this NPRM on AMSC.

Administrative matters

13. This is a rulemaking proceeding to develop policies for the assignment of spectrum but because the Commission also proposes to modify a license, this proceeding is also an adjudication. Pursuant to § 1.1200(a) of the Commission's rules, § 1.1208 detailing the *ex parte* procedures for adjudicatory proceedings is waived. The entire proceeding both, rulemaking and adjudication, shall be treated as ''non-restricted'' for *ex parte* purposes in order to assist the Commission in developing a more complete record on which a well-reasoned decision can be made. 47 CFR 1.1200(a) and 1.1206. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) Releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically exempted. 47 CFR 1.1203.

14. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 3, 1996, and reply comments on or before September 23, 1996. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, send additional copies to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. For further information concerning this NPRM contact Paula Ford at (202) 418–0760 or Kathleen Campbell at (202) 418–0753.

Initial Regulatory Flexibility Act Statement

15. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub.L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19924 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–156, RM–8840]

Radio Broadcasting Services; Limon, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Roger L. Hoppe, II, requesting the allotment of FM Channel 229A to Limon, Colorado, as that community's second local FM transmission service. Coordinates used for this proposal are 39–15–36 and 103–41–12.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1,1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James A. Koerner, Esq., Baraff, Koerner & Olender, P.C., Three Bethesda Metro Center, Suite 640, Bethesda, MD 20814–5330.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–156, adopted July 19, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–19877 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–154, RM–8834]

Radio Broadcasting Services; Wynnewood, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bea Kimbrough seeking the allotment of Channel 291A to Wynnewood, OK, as the community's first local aural transmission service. Channel 291A can be allotted to Wynnewood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–38–42 North Latitude and 97–10–00 West Longitude.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bea Kimbrough, 9400 Wonga, Midwest City, OK 73130 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–154, adopted July 19, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–19875 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–155; RM–8828]

Radio Broadcasting Services; Keaau, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Deborah Takehiro Ombac seeking the allotment of FM Channel 286C2 to Keaau, Hawaii, as that community's first local aural transmission service. Coordinates utilized for this proposal are 19–37–30 and 155–02–24.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Deborah Takehiro Ombac, 620 Awa St., Hilo, HI 96720.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–155, adopted July 19, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–19878 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Parts 909, 952, and 970

RIN 1991–AB26

Acquisition Regulation; Revisions to Organizational Conflicts of Interest

AGENCY: Office of Procurement and Assistance Management, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes today to amend its Acquisition Regulation to effect changes to its Organizational Conflicts of Interest policies as a result of the repeal of the two statutory provisions upon which DOE's system for treating organizational conflicts of interest was based.

DATES: Written comments (three copies) must be submitted no later than October 7, 1996.

ADDRESSES: Comments should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, Office of Policy, HR–51, Room 8H–023, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C., 20585, (202)586–8264.

Edward Lovett, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202)586–8614.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion.
A. Types of Contracts Subject to OCI Treatment
B. Dollar Threshold for Application
C. Disclosure of Interest
D. Contract Clause
E. The OCI Determination
F. Waiver
III. Public Comments.
A. Consideration and Availability of Comments.
B. Public Hearing Determination.
IV. Procedural Requirements.
A. Review Under Executive order 12866.
B. Review Under Executive order 12988.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.
E. Review Under the National Environmental Policy Act.
F. Review Under Executive Order 12612.

I. Background

Subsections (b)(2) and (5) of section 4304 of the Federal Acquisition Reform Act of 1996 (FARA), Pub. L. 104–106, repealed section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789) and section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918). These two statutory provisions provided the basis for the Department of Energy organizational conflict of interest (OCI) regulation that is codified at 48 CFR Subpart 909.5. As a result of the repeal of the underlying statutes, the Department has re-examined the OCI systems established in the Department of Energy Acquisition Regulation (DEAR) and the Federal Acquisition Regulation (FAR) and proposes to implement and supplement the current FAR provisions in the manner described below. The OCI system refinements proposed in this regulation are intended to address concerns that the agency has identified based on more than a decade of experience under the OCI system described in the DEAR. To facilitate understanding of the revisions that the Department is proposing, the following text not only describes how the Department's regulation builds on the OCI system provided in the FAR, but also explains how it differs from the DOE OCI system currently found in the DEAR.

II. Discussion

A. Types of Contracts Subject to OCI Treatment

The FAR OCI system applies to advisory and assistance services and to consultants. This regulation proposes no change in the FAR provisions that define the scope of coverage of the OCI regulations. Although the OCI system currently described in the DEAR applies to evaluation services and technical consulting and management support services, the Department believes that the FAR definition of ''advisory and assistance services'' and the DOE definitions of ''evaluation services'' and ''technical consulting and management support services'' are essentially the same. The scope of coverage of the FAR regulation and the DOE supplement proposed in this rule, therefore, will be substantially the same as the OCI system currently found in the DEAR.

B. Dollar Threshold For Application

The OCI system described in the DEAR applies to covered contracts without regard to the dollar amount of the transaction. The FAR system applies to covered contracts in excess of the simplified acquisition threshold, currently $100,000. The proposed DOE system also would apply to covered contracts and subcontracts in excess of the simplified acquisition threshold.

C. Disclosure of Interest

The solicitation provision currently found in DEAR section 952.209–70, Organizational Conflicts of Interest—Disclosure or Representation, requires all offerors to provide a concise statement of all relevant facts concerning past, present, or currently planned interests (financial, contractual, organizational, or otherwise) that relate to the work described in the statement of work. The DEAR provision extends this disclosure requirement to the offeror's affiliates, proposed consultants, and subcontractors of any tier. It also places no time limit on the information that must be provided.

In contrast, the FAR, in solicitation provision 52.209–8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, requires that the apparent successful offeror submit a certificate that, among other things, describes services rendered to the Government or other clients, during the 12 months preceding the date of the certification, with respect, or directly related, to the same subject matter as the solicitation in question. The FAR provision allows the head of the contracting activity to extend the period subject to the reporting requirement to up to 36 months. The offeror's affiliates, proposed consultants, and subcontractors are not subject to the reporting requirement.

The approach to disclosure of information proposed in this rule is based on the approach provided in section 52.209–8 of the FAR. Like the FAR, the proposed rule would require that only the apparent successful offeror disclose information related to organizational conflicts of interest and would not require disclosure from affiliates. The proposed rule provides, however, that any consultants or subcontractors identified as part of the team proposed by the offeror also would be subject to the disclosure requirement. The proposed rule also adopts the twelve to thirty-six month time period of the FAR for disclosure of information. Finally, the proposed rule clarifies and somewhat expands the categories of information that would be subject to disclosure to include all relevant information concerning any past, present, or currently planned interest (financial, contractual, organizational, or other information) related to the work described in the statement of work. These refinements of the language provided in the FAR will help ensure that all information relevant to an organizational conflict of interest review is available to the Department when it conducts its evaluation of the apparent successful offeror and any identified subcontractors and consultants.

The proposed solicitation provision also eliminates the certification requirement. The Department believes that this approach is consistent with section 4301 of the FARA which requires agencies to eliminate certification requirements that are not required by statute. The new provision will require only a disclosure by the apparent successful offeror. This approach is predicated on anticipated changes to the FAR solicitation provision. The Department, however, will review the certification issue if the

FAR adopts a different approach to addressing this matter.

D. Contract Clause

In section 9.507–2, Contract Clause, the FAR recognizes that there may be instances where, as a condition of award, the contractor's eligibility for future prime contracts should be restricted or the contractor must agree to some other restraint. The FAR further provides that the solicitation is to contain a proposed clause that specifies both the nature and duration of the proposed restraint and that the contracting officer is to include this clause in the contract. The FAR provides no model for this clause, but does recognize that, when appropriate, the contracting officer may negotiate the final terms of this clause with the successful offeror. The FAR also states that the restraint imposed by the clause is to be limited to a fixed term of reasonable duration. The duration of the restraint must be specified in the clause and may vary from one contract to another.

This rule proposes to address this issue by providing a contract clause for inclusion in solicitations for advisory and assistance services and, ultimately, in the resulting contracts. This clause is modeled in many important respects on the organizational conflict of interest clause currently found in section 952.209–72 of the DEAR. The proposed clause differs, however, in a number of respects from the approaches found currently in the FAR and DEAR.

1. Coverage of Affiliates

While the FAR does not provide that affiliates of the successful contractor would be subject to any restraints on future activities, the clause currently found in the DEAR extends the restrictions described in that clause to affiliates of the contractors and their successors in interest. The proposed DEAR clause would continue to extend restraints on future activities to affiliates of the successful contractor.

Based on our experience in addressing organizational conflict of interest issues, the Department believes that this restriction on activities of affiliates is necessary for two reasons. First, it reduces the potential for bias in the contractor's work, by eliminating the possibility that a contractor's objectivity might be affected by the knowledge that a particular outcome might improve an affiliate's position in a competition stemming directly from performance of the contract. Second, it reduces the potential for an affiliate to obtain an unfair competitive advantage in future competitions, by ensuring that they are unable to benefit from information obtained by the contractor during the course of performance and not otherwise available to the public.

2. Application to Subcontractors

The FAR does not require the restraints imposed on the successful contractor extend to subcontractors. The clause currently found in the DEAR provides that the restraints imposed by this clause are to flow down to subcontractors of any tier. The current DEAR clause further provides that the contracting officer must review the subcontractor's disclosure statement and may preclude award to a subcontractor if organizational conflict of interest issues cannot be resolved.

Under the proposed rule, all subcontracts for advisory and assistance services whose value exceeds the simplified acquisition threshold would be subject to the proposed contract clause. This is necessary because prime contractors may subcontract crucial areas of contract performance. However, in contrast to the system currently described in the DEAR, the contracting officer would no longer be responsible for reviewing and evaluating the organizational conflict of interest information. In the future, the prime contractor would be responsible for conducting the organizational conflict of interest review of the subcontractors that were not identified in, and evaluated as part of, the proposal submitted in response to the solicitation. These subcontractors, in turn, would be responsible for evaluating subcontractors that they propose to use. In the event that the prime contractor or any of the subcontractors identify an actual or significant potential organizational conflict of interest that cannot be avoided or neutralized, they would be required to obtain the approval of the contracting officer prior to entering into the subcontract.

3. Other Issues

The proposed clause would limit restrictions on future contracting to five years. This is in contrast to the clause currently found in the DEAR that places no time limit on the restrictions against future contracting. Also, the proposed rule permits the contracting officer to tailor the provisions of the clause to address the circumstances of each acquisition.

E. The OCI Determination

The OCI system described in the DEAR explicitly requires the DOE contracting officer to evaluate all relevant information concerning possible organizational conflicts of interest prior to any award and to make a finding as to whether a possible organizational conflict of interest may exist with respect to a particular offeror. Consistent with applicable statutory requirements, the OCI regulation currently found in the DEAR provides that the contracting officer must determine whether the interests disclosed and information otherwise available present ''little or no likelihood'' of an organizational conflict of interest. If, by application of this standard, an organizational conflict of interest is found, then the contacting officer may take steps to avoid the conflict, disqualify the offeror from award, or, after another statutorily directed determination, award the contract in the face of the conflict.

The FAR does not explicitly require the contracting officer to evaluate the information submitted in the OCI certificate nor, to make a written determination regarding the potential for an organizational conflict of interest in all instances.

To clarify the responsibilities of the contracting officer, the proposed rule would require the contracting officer to make a written determination regarding the existence of an actual or significant potential organizational conflict of interest for each procurement subject to OCI requirements. If an actual or significant potential conflict exists, the contracting officer would be required to ''avoid, neutralize, or mitigate'' the conflict. If the conflict cannot be avoided, neutralized, or mitigated, the contracting officer may disqualify the offeror from award and begin the disclosure and evaluation process with the firm next in line for award.

F. Waiver

The OCI regulations currently contained in the DEAR do not provide for waiver of any portion of the OCI requirements. In order to award a contract in the face of an organizational conflict of interest, the Secretary or the Secretary's designee must determine that the award is in the best interests of the United States. The regulations further require that an appropriate written finding and determination be published in the Federal Register.

The FAR provides that ''any general rule or procedure'' of Subpart 9.5 may be waived by an official not lower than the Head of the Contracting Activity. Consistent with the FAR, the proposed rule delegates the FAR waiver authority to DOE Heads of Contracting Activities.

III. Public Comments

A. Consideration and Availability of Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

B. Public Hearing Determination

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule. However, should a sufficient number of people request a public hearing, the Department will reconsider its determination.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect , if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, that requires preparation of an initial regulatory flexibility analysis for any proposed rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule would likely ease any burden on small businesses associated with the organizational conflicts of interest system currently found in the DEAR. The proposal would limit application to contracts and subcontracts in excess of $100,000, thereby not applying to transactions dominated by small businesses. The proposed system requires no special expertise and the disclosure requirements are limited to the apparently successful or those firms in the competitive range, as opposed to applying to all offerors. The obligation to disclose past interests, which the system currently found in the DEAR does not limit, has been limited from generally to the past twelve (12) months. On the basis of the foregoing, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and, therefore, no initial regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the proposed amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this proposed rule. However, DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

List of Subjects in 48 CFR Parts 909, 952, and 970.

Government procurement.

Issued in Washington, D.C. on July 22, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486(c).

2. Subpart 909.5 is revised to read as set forth below:

Subpart 909.5—Organizational and Consultant Conflicts of Interest

909.503 Waiver.
909.504 Contracting officer's responsibility.
909.507 Solicitation provisions and contract clause.
909.507–1 Solicitation provisions.
909.507–2 Contract clause.

909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR (FAR) 9.503 regarding waiver of OCI requirements.

909.504 Contracting officer's responsibility. (DOE coverage—paragraphs (d) and (e))

(d) The contracting officer shall evaluate the statement by the apparent successful offeror or, where individual contracts are negotiated with all firms in the competitive range, all such firms for interests relating to a potential organizational conflict of interest in the performance of the proposed contract. Using that information and any other credible information, the contracting officer shall make a written determination of whether those interests create an actual or significant potential organizational conflict of interest and identify any actions that may be taken to avoid, neutralize, or mitigate such conflict. In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on organizational conflict of interest considerations, the contracting officer shall notify the offeror, provide the reasons therefor, and allow the offeror a reasonable opportunity to respond. If the conflict cannot be avoided, neutralized, or mitigated to the contracting officer's satisfaction, the contracting officer may disqualify the offeror from award and undertake the disclosure and evaluation process with the firm next in line for award. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 48 CFR 909.503. The waiver request and decision shall be included in the contract file.

909.507 Solicitation provisions and contract clause.

909.507–1 Solicitation provisions. (DOE coverage—paragraph (c))

(c) The contracting officer shall insert the provision at 48 CFR 952.209–8, Organizational Conflicts of Interest Disclosure—Advisory and Assistance Services, in solicitations for advisory and assistance services expected to exceed the simplified acquisition threshold. In individual procurements, the Head of the Contracting Activity may increase the period subject to disclosure in paragraph (c)(4) up to 36 months.

909.507–2 Contract Clause.

Contracting Officers shall insert the clause at 48 CFR 952.209–72, Organizational Conflicts of Interest, in each contract for advisory and assistance services expected to exceed the simplified acquisition threshold. Contracting officers may make appropriate modifications where necessary to address the potential for organizational conflicts of interest in individual contracts.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. Subsection 952.209–8 is added as follows:

952.209–8 Organizational conflicts of interest—disclosure.

As prescribed in 48 CFR 909.507–1(c), insert the following provision:

Organizational Conflicts of Interest Disclosure—Advisory and Assistance Services (XXX 1996)

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, ''apparent successful offeror'' means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms. The requirements of this provision apply individually to any of the proposer's identified consultants or subcontractors that will also furnish advisory and assistance services in performance of this contract.

(c) The statement must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(5) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact

may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

(End of provision)

952.209–70 [Removed]

5. Subsection 952.209–70 is removed.

6. Subsection 952.209–72 is revised to read as follows:

952.209–72 Organizational conflicts of interest.

As prescribed at 48 CFR 909.507–2, the contracting officer shall insert the following clause:

Organizational Conflicts of Interest (XXX 1996)

(a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as ''contractor'') in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Use of Contractor's Work Product. (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) Compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) Submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) Release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) Subcontracts. (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph, in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving performance of advisory and assistance services as that term is defined at FAR 37.201. The terms ''contract,'' ''contractor,'' and ''contracting officer'' shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507–1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate to the satisfaction of the contractor the organizational conflict. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

(e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(f) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(End of clause)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

8. Section 970.0905 is revised to read as follows:

970.0905 Organizational conflicts of interest.

Management and operating contracts shall contain an organizational conflict of interest clause substantially similar to the clause at 48 CFR 952.209–72 and appropriate to the statement of work of the individual contract. In addition, the contracting officer shall assure that the clause contains appropriate restraints on intra-corporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates, including personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The Contracting Officer is responsible for ensuring that M&O contractors adopt policies and procedures in the award of subcontracts

that will meet the Department's need to safeguard against a biased work product and an unfair competitive advantage. To this end, the organizational conflicts of interest clause in the management and operating contract shall require a disclosure of interests substantially similar to the one at 48 CFR 952.209–8 and inclusion of a clause substantially similar to the one at 48 CFR 952.209–72 in each subcontract for advisory and assistance services expected to exceed the simplified acquisition threshold, determined in accordance with FAR part 13.

9. Subsection 970.5204–44 is amended by revising clause paragraph (b)(15) to read as follows:

970.5204–44 Flowdown of contract requirements to subcontracts.

* * * * *

Flowdown of Contract Requirements to Subcontracts (Oct 1995)

* * * * *

(b) * * *

(15) Organizational Conflicts of Interest. Clause at DEAR 952.209–72 in accordance with DEAR 970.0905.

* * * * *

[FR Doc. 96–19797 Filed 8–5–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 361, 362, 363, 364, 385, 386 and 391

[FHWA Docket No. MC–96–18]

RIN 2125–AD64

Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The FHWA announces the extension of the comment period for its April 29, 1996, notice of proposed rulemaking (NPRM) in which the agency proposed changes to our procedural rules governing investigations of motor carrier compliance with agency regulations, penalty assessments and adjudications, safety ratings, and driver qualifications. The FHWA has determined this extension is necessary in response to requests from members of the affected public for additional time to review and comment on this broad rulemaking proposal. The comment period is extended to September 13, 1996.

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–96–18, FHWA, Office of the Chief Counsel, HCC–10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On April 29, 1996 (61 FR 18866), the FHWA published a NPRM (Docket MC–96–18) that requested comments on its proposal to revise and amend procedural rules relating to the exercise of the agency's authority to investigate compliance with the various regulations subject to its jurisdiction; to assess penalties and to adjudicate claims for violations of these regulations; to assign safety ratings to carriers; to determine driver qualifications and other matters involving formal and informal proceedings. The FHWA proposed the creation of four new parts in chapter III of Title 49 of the Code of Federal Regulations, replacing 49 CFR Part 385, 386 and a portion of Part 391. The FHWA heard reports from the affected public that because of the broad scope of the proposal, more time was needed to file meaningful comments.

On December 29, 1995, the Interstate Commerce Commission Termination Act was enacted, which transferred certain residual functions of the ICC to the Department of Transportation, some of which were delegated to the FHWA. The FHWA will be proposing to supplement its April 29, 1996 NPRM to integrate procedural aspects of its inherited ICC function into the proposed procedural rule. The extension of time should be sufficient to accommodate consideration of the supplemental NPRM, which will be issued in the near future.

The FHWA is mindful of the need for all interested parties to have enough time to prepare relevant and useful comments. The FHWA therefore is extending the deadline for submitting comments on Docket MC–96–18 an additional 45 days. As indicated in the Rulemaking Analyses and Notices section of the NPRM, all comments received before the close of business on the comment closing date indicted above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after the comment closing date, and interested parties should continue to examine the docket for new materials.

Authority: 49 U.S.C. chapters 5, 51, 59, 311, 313, 315; and 49 CFR 1.48.

Issued on: July 26, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–19916 Filed 8–1–96; 2:58 pm]

BILLING CODE 4910–22–P

49 CFR PART 393

[FHWA Docket No. MC–94–1]

RIN 2125–AD27

Parts and Accessories Necessary for Safe Operation; Lighting Devices, Reflectors, and Electrical Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: This document announces the FHWA's intent to issue a notice of proposed rulemaking to establish requirements for the use of retroreflective sheeting or reflex reflectors for certain trailers manufactured prior to December 1, 1993, the effective date of the National Highway Traffic Safety Administration's final rule on conspicuity for newly manufactured trailers.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor or Mr. Richard H. Singer, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, 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 January 19, 1994 (59 FR 2811), the FHWA published an advance notice of

proposed rulemaking to solicit comments concerning measures for reducing the incidence and severity of collisions during periods of darkness or reduced visibility. The FHWA requested that commenters address the specific questions listed below.

1. Many motor carriers have been using retroreflective sheeting or reflex reflectors which are not of the colors, retroreflective intensity, width, or configuration of the conspicuity treatment in the NHTSA's final rule. The FHWA seeks information on the type of conspicuity treatments in use and quantitative data on the cost and effectiveness of those treatments in preventing and/or mitigating accidents.

2. What types of technical problems (e.g., tape not adhering to the surface of the trailer) have motor carriers encountered when applying conspicuity materials to in-service trailers? Are any problems unique to certain types of trailers, or to certain types of paints, coatings, or surfaces?

3. What is the approximate cost (parts and labor) to apply conspicuity treatments to trailers? Is special training required for employees performing this task? What cost differences may exist between having this task performed by the motor carrier's own maintenance department or by third parties?

4. How long must a trailer be taken out of service to have the conspicuity material applied to its surfaces?

5. With regard to conspicuity treatments that differ from those in the NHTSA final rule, a retrofitting requirement would result in many motor carriers having to replace their current conspicuity treatments with one that is consistent with the requirements of FMVSS No. 108. The FHWA believes that some form of conspicuity treatment (even certain forms which may be less effective than that covered in the NHTSA's final rule) is better than no conspicuity treatment. What different types of conspicuity treatment are currently being used by motor carriers? What results have been experienced by motor carriers using conspicuity treatments?

6. If this rulemaking proceeds, should the FHWA propose requiring the same red/white color combination, retroreflective intensity, width and configuration as the NHTSA's final rule, or should alternative requirements be considered? If alternatives are considered, do commenters foresee problems in the enforcement of a retrofitting requirement?

7. If this rulemaking proceeds, should the FHWA consider an effective date which is several (2, 3, 4, or 5) years after the date of publication of the final rule?

Commenters were also encouraged to include a discussion of any other issues that the commenters believe are relevant to the rulemaking.

Analysis of Docket Comments

The FHWA received more than 900 comments in response to the ANPRM. The FHWA is not providing a detailed discussion of the docket comments at this time. However, an in-depth discussion of the comments will be presented in the notice of proposed rulemaking (NPRM). Therefore, the following is only a summary of the comments intended to provide interested parties with an indication of the type of responses the FHWA received.

Support for a Retrofitting Requirement

The rulemaking has its strongest support from concerned citizens on behalf of friends and relatives who suffered fatal injuries as a result of passenger car side or rear impacts with semitrailers. The FHWA received 321 responses on behalf of Mr. Carl Hall, who was killed in a collision with a tractor-semitrailer that blocked the road as the truck driver backed the vehicle into a driveway. Another 285 responses were on behalf of Mr. Guy Crawford, a 16-year old boy who was killed in an underride accident with a coal truck. In addition, the agency received 223 responses from other concerned citizens, many of whom lost family members or friends in accidents involving commercial motor vehicles (CMVs).

The rulemaking was also supported by the Advocates for Highway and Auto Safety, Citizens for Reliable and Safe Highways, and the Insurance Institute for Highway Safety.

Two members of the House of Representatives submitted letters in support of the rulemaking: James Greenwood (Eighth district of Pennsylvania) and Marjorie Margolies-Mezvinsky (then representing the Thirteenth Congressional district of Pennsylvania). The FHWA has also received correspondence from Senator Frank Lautenberg (NJ) expressing support for a retrofitting requirement.

As for industry support, the Owner-Operator Independent Drivers Association stated that better conspicuity would significantly reduce the likelihood of side and rear collisions. Schneider National (Schneider), one of the larger motor carriers in the United States, Contract Freighters, Inc., a motor carrier with 3,500 trailers, and Ryder Commercial Leasing and Services also support a retrofitting requirement. Schneider indicated that it has been using conspicuity treatments on all of its trailers since 1988 while Contract Freighters has been using conspicuity treatments since 1986.

Opposition to a Retrofitting Requirement

The American Trucking Associations (ATA), National Private Truck Council (NPTC) and numerous fleets indicated that retrofitting reflective material is not feasible for older trailers because the surfaces on those vehicles may require preparation (removal of oxidation, rust, etc.) to ensure that the conspicuity material adheres to the trailer. Further, the ATA and numerous fleets expressed concern about the loss in revenues that will be incurred while the trailer is being retrofitted. The ATA believes it could cost as much as $1,400 to retrofit some trailers. Other commenters provided estimates that were significant on a cost-per-trailer basis but generally lower than the ATA estimate.

The NPTC stated that a retrofitting requirement would pose a significant cost burden with very little evidence of benefit in terms of reduced accidents. The NPTC also indicated that many private fleets have a considerable financial investment in specially developed graphics packages and that it would be inappropriate for the FHWA to propose a retrofitting standard that would require fleets to replace their existing reflective designs or logos with a mandated conspicuity treatment.

FHWA Intent

The FHWA has determined that a notice of proposed rulemaking (NPRM) should be issued to propose requiring that each trailer with an overall width of 2,032 millimeters (80 inches) or more and with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds), manufactured prior to December 1, 1993, be equipped with retroreflective material. The FHWA recognizes the technical and economic concerns of commenters opposed to a retrofitting requirement. However, the Agency believes that based upon the information currently available, retrofitting of trailers with conspicuity treatments will provide significant safety benefits. Further, this action appears to be cost-effective and technically feasible.

The FHWA has completed a preliminary benefit/cost analysis to compare the projected safety benefits of a retrofitting requirement to the potential economic impact on the motor carrier industry. Three key issues were considered in determining whether to issue a notice of proposed rulemaking.

The first issue is the time and labor required to install retroreflective material to older vehicles. The surfaces of many of the older trailers will require preparation (e.g., removal of oxidation, pre-treating surfaces, etc.) to ensure that the retroreflective tape adheres to the surface of the trailer. In many cases the trailer will have to be removed from revenue service to complete the retrofit. A retrofitting requirement should allow carriers sufficient time—a phase-in period—to complete the retrofit at routine maintenance intervals. The FHWA believes the total cost (conspicuity material, labor, and loss in revenues while the trailer is being retrofitted) for retrofitting a 45–53 foot trailer is only a fraction of the ATA's estimate.

The second issue is the voluntary use of retroreflective material on older trailers by certain fleets. A large number of fleets have been using conspicuity treatments on their trailers since the mid-1980's. Unfortunately many of the color schemes, as well as the levels of reflectivity of the tape used on the older trailers are not consistent with the NHTSA requirements for trailers manufactured on or after December 1, 1993. If these motor carriers are required to replace the retroreflective materials that they voluntarily installed to improve safety, it could be perceived as penalizing motor carriers that demonstrated an extra level of safety consciousness. This could have the unintended effect of discouraging motor carriers from exploring innovative approaches to improving safety.

The third issue concerns the projected safety benefits of trailer conspicuity material that meets the NHTSA requirement. The NHTSA estimates that retroreflective tape could lead to a 25 percent reduction in rear end collisions and a 15 percent reduction in side impact collisions. From data available at the time of the NHTSA's final rule implementing conspicuity enhancements, tractor-trailer combinations were involved annually in about 11,000 accidents in which they were struck at the side or rear at night. Within this group of accidents, about 8,700 injuries and about 540 fatalities occurred. The NHTSA indicated that the conspicuity treatments, when fully implemented, is expected to prevent, annually, 2,113 of these accidents. The NHTSA estimated 1,315 fewer injuries and about 80 fewer fatalities would occur.

In 1994 there were an estimated 96,938 accidents in which one commercial motor vehicle and one passenger car were involved. All of these accidents resulted in a fatality, injury, or one of the vehicles incurring damage severe enough to require that the vehicle be towed from the accident scene. In 51,319 (52.9 percent) of these accidents the CMV was a combination vehicle—a truck or truck-tractor, towing one or more trailers.

Of the 51,319 collisions between a passenger car and a combination vehicle, 11,176 cases involved the passenger car rear-ending the trailer (daytime and nighttime accidents). It is estimated that there were more than 4,100 injuries. Collisions between passenger cars and the side of the trailer accounted for 27,764 accidents (daytime and nighttime).

With regard to fatalities, the NHTSA's Fatal Accident Reporting System data for 1994 indicate there were 2,785 fatal accidents involving one commercial motor vehicle and one passenger car. In 1,885 of these fatal accidents, the commercial motor vehicle was a combination vehicle. Of the 1,885 fatal accidents between a passenger car and a combination vehicle, 314 cases involved the passenger car rear-ending the trailer. The result was 369 fatalities (compared to 171 fatalities for 161 cases in which a passenger car rear-ended a single-unit commercial motor vehicle). Collisions in which the passenger car struck the side of a trailer at an angle accounted for 816 incidents resulting in a total of 982 fatalities. Fatal accidents in which the passenger car struck the side of a single-unit commercial motor vehicle occurred 382 times resulting in a total of 474 fatalities. All of these are a combination of day and night occurrences.

Considering the magnitude of the problem of passenger cars colliding with tractor-trailer combination vehicles, the FHWA believes that a retrofitting requirement will result in a major improvement in safety by reducing both the incidence and severity of a significant percentage of these accidents.

The FHWA has carefully examined a variety of issues, such as those mentioned, and determined that the projected safety benefits in terms of accidents prevented and lives saved, outweigh the economic burden on the motor carrier industry.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA has prepared a preliminary evaluation of the economic impact of the regulatory changes being considered in this rulemaking and will present that information in the NPRM to be published at a later date. Based upon the information received in response to the NPRM, the FHWA will carefully consider the costs and benefits associated with establishing a conspicuity retrofitting requirement. Comments, information, and data will be solicited on the economic impact of establishing retrofitting requirements.

Regulatory Flexibility Act

The FHWA will evaluate the effects of the regulatory changes on small entities. Based upon the information received in response to the NPRM, the FHWA will, in compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), consider the economic impacts of these potential changes on small entities. The FHWA will solicit comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48

Issued on: July 26, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–19917 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 100]

RIN 2127–AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to NHTSA's occupant crash protection standard and child restraint standard to reduce the adverse effects of air bags, especially those on children. Eventually, either through market forces or government regulation, NHTSA expects that smart passenger-side air bags will be installed in passenger cars and light trucks to mitigate these adverse effects. For purposes of this document, the agency considers smart air bags to include any system that automatically prevents an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys.

The agency is proposing that vehicles without smart passenger-side air bags would be required to have new, attention-getting warning labels and permitted to have a manual cutoff switch for the passenger-side air bag. By limiting the labeling requirement to vehicles without smart air bags, NHTSA hopes to encourage the introduction of the next generation of air bags as soon as possible. NHTSA proposes to define smart air bags broadly to give manufacturers flexibility in making design choices. The agency is specifically requesting comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective. NHTSA is also requesting comments on whether it should, as an alternative, set a time limit on the provision permitting manual cutoff switches in order to assure the timely introduction of smart air bags.

NHTSA is also proposing to require rear-facing child seats to bear new, enhanced warning labels.

Finally, this document discusses the agency's research on other air bag issues, such as research on technology to reduce arm and other injuries to drivers.

DATES: Comments must be received by September 20, 1996.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.—4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Stephen R. Kratzke, Office of Safety Performance Standards, NPS–31, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–5203 or by fax at (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Glancy can be reached by telephone at (202) 366–2992 or by fax at (202) 366- 3820.

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I. Overview and Summary

While air bags are providing significant overall safety benefits, NHTSA is very concerned that current designs have adverse effects in some situations. Of particular concern, NHTSA has identified 21 relatively low speed crashes in which the deployment of the passenger-side air bag resulted in fatal injuries to a child. NHTSA believes that these children would not have died if there had been no air bag.

All of these deaths occurred under circumstances in which the child's upper body was very near the air bag when it deployed. The children sustained fatal head or neck injuries, as a result of the deploying air bag. Six of these deaths involved infants in rear-facing child seats, where the infant's head was located very near the instrument panel and the air bag. The 15 other children appear to have been unbelted or improperly belted (e.g., wearing only the lap belt with the shoulder belt behind them) at the time of the crash. During pre-impact braking, these children slid or leaned forward so that they were too close to the instrument panel and air bag at the time of deployment.

The most direct solution to the problem of child fatalities from air bags is for children to be properly belted and placed in the back seat. This necessitates increasing the percentage of children who are properly restrained by child safety seats and improving the current 67 percent rate of seat belt usage by a combination of methods, including the encouragement of State primary seat belt laws. The most direct technical solution to the problem of child fatalities from air bags is the

development and installation of smart passenger-side air bags that automatically protect children from the adverse effects that can occur from close proximity to a deploying bag. However, until these smart air bags can be incorporated in production vehicles, behavioral changes based on improved information and communication of potential hazards and simpler, manually operated technology appear to be the best means of addressing child fatalities from air bags.

To partially implement these tentative conclusions, NHTSA is proposing the following for passenger cars and light trucks whose passenger-side air bag lacks smart capability: (1) To require new, enhanced warning labels; and (2) to permit manual cutoff switches for the passenger-side air bags (to accommodate parents who need to place rear-facing child seats in the front seat). By limiting the labeling requirement to vehicles without smart air bags, NHTSA hopes to encourage the introduction of those air bags as soon as possible. For purposes of this notice, NHTSA considers smart passenger-side air bags to include ones designed so that they automatically avoid injuring the two groups of children shown by experience to be at special risk from air bags: infants in rear-facing child seats, and children who are out-of-position (because they are unbelted or improperly belted) when the air bag deploys.

The agency is also proposing to require vehicles and rear-facing child seats to bear new, enhanced warning labels. The proposed labels would warn that unbelted children and children in those child seats may be seriously injured or killed by the passenger-side air bag.

This notice discusses other issues relating to the introduction of smart passenger-side air bags. NHTSA is requesting comments on whether to assure the timely introduction of those air bags by requiring their installation, and if so, by what date. As an alternative, the agency is also requesting comments on whether it should specify an expiration date for the manual cutoff switch option in order to encourage smart passenger-side air bags.

Vehicle manufacturers and air bag suppliers are working on an array of systems that might qualify as smart air bags. These systems fall into two categories: (1) Ones which would prevent the air bag from deploying in situations where it might have an adverse effect, based, for example, on the weight, size and/or location of the occupant, and (2) ones designed so that they would deploy in a manner that does not create a risk of serious injury to occupants very near the bag, e.g., deploying at a slower speed when an occupant is very near the air bag and/or deploying less aggressively as a result of being stowed with an improved fold pattern.

While previous comments from vehicle manufacturers suggest that ultimate product development and incorporation of most types of smart air bags in production vehicles is a number of years away, NHTSA is aware of one system that apparently would automatically protect children and that is in production now. This system uses a weight sensor that activates the air bag only if more than a specified amount of weight is present on the passenger seat. While this technology is currently being used to prevent the unnecessary and costly deployment of a passenger air bag when no passenger is present, commenters have suggested that the same technology could be used to prevent deployment of the air bag when either no passenger or only a child of less than a specified weight (e.g., 30 kilograms or 66 pounds) is present.

While it is possible for the agency to base a definition of smart air bags on an automatic system incorporating a weight sensor, NHTSA does not wish its definition to unnecessarily limit design choices. The agency wishes to give manufacturers and suppliers broad latitude in designing smart air bags and seeks comments suggesting objective, workable criteria that would be broadly inclusive of technologies capable of protecting children automatically. If possible, smart air bags should be defined to include any system that automatically prevents an air bag from injuring infants in rear-facing child seats, and unbelted or improperly belted children.

NHTSA recognizes that, were it to require smart passenger-side air bags, its leadtime decision would have to take into consideration the differing leadtimes for the various kinds of smart bags under development, and the fact that the longest leadtimes will be those for the more advanced smart bags potentially offering the greatest net benefits. The agency also recognizes the engineering challenge of incorporating new air bag design features in the entire passenger car and light truck fleet.

At the same time, given the growing toll of child fatalities, and the apparent near term availability of at least one smart bag design (i.e., the one using a weight sensor), NHTSA believes that it should take steps now to encourage the introduction of smart passenger-side air bags as soon as possible. The agency also believes that, as a practical matter, the longer the time needed to develop and implement the most advanced smart bags, the greater the need would be to implement interim designs that would protect children automatically.

II. Existing Requirements for Air Bags

Under Chapter 301 of Title 49, U.S. Code (''Motor Vehicle Safety''), NHTSA is authorized to set Federal motor vehicle safety standards applicable to the manufacture and sale of new motor vehicles and new motor vehicle equipment. Standard No. 208, Occupant Crash Protection, one of the original Federal motor vehicle safety standards issued under this statute, has long required motor vehicle manufacturers to install safety belts in most vehicle types to protect occupants during a crash. More recently, the standard has required manufacturers to provide automatic protection for frontal crashes.

In establishing Standard No. 208's current automatic protection requirements for passenger cars in 1984, and later extending those requirements to light trucks, NHTSA expressly permitted a variety of methods of providing automatic protection, including automatic belts and air bags. However, the agency included a number of provisions to encourage manufacturers to install air bags. These included extra credit during the standard's phase-in period for vehicles using air bags and allowing vehicles with a driver air bag system to count, for a limited period of time, as a vehicle meeting the standard's automatic protection requirements.

Ultimately, however, consumer demand led to the installation of air bags throughout the new car fleet. By the beginning of this decade, manufacturers were developing plans to install air bags in all of their passenger cars and light trucks.

Congress included a provision in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) directing NHTSA to prescribe an amendment to Standard No. 208 to require, by the late 1990's, that all passenger cars and light trucks provide automatic protection by means of air bags. The Act required at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. Every passenger car manufactured on or after September 1, 1997 must be so equipped. The same basic requirements are phased-in for light trucks one year

later.[1] The final rule implementing this provision of ISTEA was published in the Federal Register (58 FR 46551) on September 2, 1993. Essentially, ISTEA eliminated non-air bag means of providing automatic occupant protection because of Congress's belief that air bags provide the greatest level of such protection.

The vehicle manufacturers are far ahead of the ISTEA implementation schedule. Nearly every 1996 model year passenger car will be equipped with both driver- and passenger-side air bags as standard equipment, even though the statutory requirement for air bags has not yet taken effect. A large number of model year 1996 light trucks are also equipped with air bags.

Standard No. 208's automatic protection requirements, whether for air bags or (until the provisions of ISTEA take effect) for automatic belts, are performance requirements. The standard does not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on test dummies, during a barrier crash test, at speeds up to 30 mph. These criteria must be met for air-bag equipped vehicles both when the dummies are belted and when they are unbelted. The latter test condition ensures that a vehicle provides ''automatic protection,'' i.e., protection by means that require no action by vehicle occupants.

These requirements apply to the performance of the vehicle as a whole, and not to the air bag as a separate item of motor vehicle equipment. This approach permits vehicle manufacturers to ''tune'' the performance of the air bag to the crash pulse and other specific attributes of each of their vehicles and leaves them free to select specific attributes for their air bags, such as dimensions, actuation time, and the like.

III. Agency Monitoring of Air Bag Effectiveness

NHTSA has been monitoring the real world performance of air bags, including any adverse effects, for more than a decade. NHTSA published an Evaluation Plan for front-seat occupant protection in January 1990 (55 FR 1586; January 17, 1990), which calls for periodic interim analyses of their effectiveness. A final evaluation of effectiveness will not be possible until after air bags have been standard equipment for some time on high production volume cars. An Interim Evaluation Report, including analyses of fatality and injury reductions, was published in June 1992. The agency also submitted Reports to Congress on this subject in November 1992 and February 1996.

In evaluating air bag effectiveness, it must be remembered that air bags are supplemental restraints. Therefore, the agency has long emphasized in information provided to the public that the presence of an air bag does not mean it is less important for occupants to use their safety belts. The safety belt, which provides protection in *all* kinds of crashes, is the primary means of occupant restraint. Air bags *only* work in frontal crashes.

The agency's studies of air bag effectiveness conclude that current air bags are approximately 30 percent effective in reducing fatalities in pure frontal crashes (12 o'clock impacts), and, looking at *all* impacts, air bags reduce fatalities by 10 percent. These fatality effectiveness estimates are with safety belts ''as used;'' that is, they are a comparison of fatality rates in cars with and without air bags regardless of whether the safety belt was used.

Air bags reduce the likelihood of injury to an occupant's head, neck, face, chest, and abdomen, in frontal crashes, compared to the injuries received when only a lap/shoulder belt is used. Injuries to these parts of the body are much more likely to be life threatening. An air bag combined with a lap/shoulder belt reduces the injury risk to these parts of the body by 59 percent compared to 47 percent for manual lap/shoulder belts alone. These analyses also show that driver-side air bags can be associated with increased risk of arm injury. NHTSA is conducting additional analyses and research to further address these issues.

Almost all of the experience in evaluating air bag effectiveness has been based on driver-side air bags. The number of passenger-side air bags has been too small to conduct statistically significant evaluations of their life-saving benefits. As the dual air bag fleet continues to grow, such studies will become possible. Currently, only anecdotal information, located and developed by NHTSA's Special Crash Investigation program, is available on passenger-side air bags.

Although the safety benefits of air bags are documented, there are situations in which air bags can have adverse effects. As more vehicles have been equipped with air bags, these effects have become better known to researchers. The table below shows, in no particular order, the types of situations in which the agency has some information suggesting that there may be a risk of serious injury to vehicle occupants from the air bag.

Group affected	Seating position of primary risk	Probable cause of problem
Unrestrained Small Statured and/or Older People.	Driver Position	Proximity to Air Bag at Time of Deployment.
Infants in Rear-Facing Child Seats	Passenger Position	Proximity to Air Bag at Time of Deployment.
Children Unrestrained in Front Seat.	Passenger Position	Proximity to Air Bag at Time of Deployment.
Out-of-Position Occupants	Driver and Passenger Position	Proximity to Air Bag at Time of Deployment.
Persons with Disabilities	Driver Position	Proximity to Air Bag at Time of Deployment; Adaptive Equipment between Air Bag and Driver; Safety Features in Vehicle Must be Modified to Accommodate Adaptive Equipment.
Persons Experiencing Extremity Injuries.	Driver and Passenger Position	Unknown; Under Study.

As shown on this table, the risks of adverse effects from air bags primarily relate to occupants who are very near the air bag at the time of deployment. As of June 1996, NHTSA's Special Crash Investigation program had identified 18 minor to moderate severity crashes where the deployment of the driver-side air bag resulted in fatal injuries to the

[1] At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. Every light truck manufactured on or after September 1, 1998 must be so equipped.

driver. Fourteen out of 18 of these drivers appear to have been unrestrained or out-of-position (slumped over the wheel) at the time of the crash. In addition, the National Accident Sampling System has identified five high speed crashes where the driver sustained fatal injuries attributable to the air bag. However, due to the high speed of the crash, fatal injuries might have occurred in the absence of the air bag.

As of June 1996, NHTSA's Special Crash Investigation program had identified 21 crashes in which the deployment of the passenger-side air bag resulted in fatal injuries to a child. Six of these deaths were to infants in rear-facing child seats. The 15 other children appear to have been unrestrained or improperly restrained (e.g., wearing only the lap belt with the shoulder belt behind them) at the time of the crash. All of these cases involved pre-impact braking. This combination of no, or improper, belt use and pre-impact braking resulted in the forward movement of the children such that they were close to the instrument panel and the air bag system at the time of the crash and the deployment of the air bag. Because of this proximity, the children appear to have sustained fatal head or neck injuries from the deploying passenger-side air bag.

IV. Actions by NHTSA to Improve Air Bag Safety

As noted above, looking at all crashes, air bags reduce fatalities by approximately 10 percent. This occurs because of their high effectiveness in purely frontal crashes, where they also reduce the likelihood of injury to an occupant's head, neck, face, chest, and abdomen.

NHTSA is extremely concerned, however, about deaths caused by air bags. Moreover, the agency recognizes that, if there is no change in occupant behavior or in the technology of air bags, injuries and fatalities such as those described in the preceding section will increase as the number of vehicles equipped with air bags increases.

For air bag-equipped vehicles already on the road or being produced in the near future, behavioral changes comprise the most realistic hope for improvement and would bring the most immediate benefit. The agency has taken a number of steps in the past to warn drivers of the potential adverse effects caused by air bags, and how those effects can be minimized or eliminated. Moreover, NHTSA is intensifying its efforts in these areas.

In December of 1991, NHTSA issued a Consumer Advisory warning owners of rear-facing child seats not to use such a restraint in the front seat of a vehicle equipped with a passenger air bag. This warning was based on preliminary results of testing regarding this problem. At that time, no casualties to infants had occurred. Since that time, NHTSA has issued at least six additional News Releases on the subject.

In the September 1993 final rule implementing ISTEA's provisions concerning air bags, NHTSA required vehicles equipped with air bags to bear labels on the sun visors providing four specific cautions, including a statement not to install rearward-facing child seats in front passenger positions, and advising the occupant to see the owner's manual for further information and explanations. The sun visor label requirement became effective on September 1, 1994, and the owner's manual requirement became effective on March 1, 1994.

On February 16, 1994, NHTSA published in the Federal Register a final rule amending Standard No. 213, *Child Restraint Systems,* to require rear-facing child seats manufactured on or after August 15, 1994 to include a warning against using the restraint in any vehicle seating position equipped with an air bag. 59 FR 7643. The rule also requires the printed instructions for such restraints to include safety information about air bags.

In addition, on May 23, 1995, NHTSA published a final rule amending Standard No. 208 to allow manufacturers, beginning June 22, 1995, the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which rear-facing child seats can only fit in the front seat. 60 FR 27233. A more complete description of the various steps NHTSA took during the early 1990's to address the problem of the interaction between rear-facing child seats and air bags can be found in the notice of proposed rulemaking which preceded the May 1995 final rule. See 59 FR 51158, 51159, October 7, 1994.

On October 27, 1995, because of the incidence of several fatalities to improperly restrained children in air bag-equipped positions, NHTSA issued a strong warning in a press release, ''SAFETY AGENCY ISSUES WARNING ON AIR BAG DANGER TO CHILDREN.'' It ''warned that children who are not protected by a seat belt could be seriously injured or killed by an air bag, and in the strongest possible terms urged parents to insist that their children ride belted in the back seat whenever possible.'' This release repeated prior agency warnings of the dangers of placing a rear-facing seat in front of an air bag, and *broadened* the previous warnings to apply to older children and even adults who may ride unrestrained. To ensure that infants and children ride safely, with or without a passenger-side air bag, this warning and advisory urges care givers to follow three ''rules'':

- Make sure *all* infants and children are properly restrained in child safety seats or lap and shoulder belts for every trip.
- The *back seat* is the safest place for children of any age.
- Infants riding in rear-facing child safety seats should *never* be placed in the front seat of a vehicle with a passenger-side air bag.

On November 9, 1995, NHTSA published a request for comments to inform the public about NHTSA's efforts to reduce the adverse effects of air bags, and to invite the public to share information and views with the agency. 60 FR 56554. The request for comments focused on possible technological changes to air bags to reduce their adverse effects, including possible regulatory changes, and is discussed more fully in the next section of this document.

Since publishing its October 1995 warning and November 1995 request for comments, NHTSA has intensified its efforts to educate the public about air bag performance and the campaign to properly restrain children. A large part of the agency's plan is to increase information to the affected public through the traffic safety community throughout the country. With this support, the agency will be able to extend the reach of its safety messages to a wider population.

A few of the agency's many activities include: an article in the Center for Disease Control's ''Morbidity and Mortality Weekly Report'' reached the public health community nationwide and attracted substantial press coverage. An article in the Food and Drug Administration's bulletin (circulation 1.2 million) reached all physicians. The American Academy of Pediatrics notified all pediatricians through its newsletter and also issued a special media alert. The International Association of Chiefs of Police and the National Sheriffs' Association informed all law enforcement agencies nationwide. The agency has also conducted a national press event for National Child Passenger Safety Awareness Week at the National Automobile Dealers Association (NADA) Convention in February 1996, featuring a display on air bags and child safety information.

To expand public education even further, a recent National Conference, ''Safety Belts, Air Bags, & Passenger Safety: A Call to Action,'' was held in January 1996, in partnership with the National Safety Council to develop a plan to inform the public about the potential dangers of air bags to unrestrained and improperly restrained occupants. Of main concern was the need to immediately increase the proper use of safety restraints by children and adults.

NHTSA believes national safety belt use rates can be increased significantly beyond the current national average of 67 percent. The agency knows, for example, from its own research and demonstration efforts and the efforts of the insurance and automobile industries, that three ingredients are essential to increasing safety belt use: (1) strengthening current state safety belt use laws to allow for primary enforcement; (2) implementing periodic, highly visible enforcement programs in the states so that the public will know these laws are important and are being enforced; and (3) conducting public information and education programs to reinforce these efforts and alert the public to the dangers of riding unrestrained or improperly restrained.

On May 21, 1996, Secretary of Transportation Federico Peña announced the formation of a coalition of automobile manufacturers, air bag suppliers, insurance companies, safety organizations, and the Federal government to prevent injuries and fatalities which may be inadvertently caused by air bags, especially to children. Coalition members pledged almost $10 million to pursue a three-point program:

- An extensive national effort to educate drivers, parents and care-givers about seat belt and child safety seat use in all motor vehicles, with special emphasis on those equipped with air bags.
- A campaign to convince states to pass ''primary'' seat belt use laws.
- Activities at state and local levels to increase enforcement of all seat belt and child seat use laws, such as increased public information and use of belt checkpoints.

V. November 1995 Request for Comments

As indicated in the preceding section, NHTSA published a request for comments in November 1995 concerning the need to reduce the adverse effects of air bags. The request for comments in particular sought information about possible technological changes to air bags to reduce the adverse effects, including possible regulatory changes.

The request for comments noted the agency's belief that, for vehicles manufactured far enough in the future to incorporate significant design changes, there will be technological enhancements available that could minimize the adverse effects of air bags. NHTSA noted that the vehicle manufacturers and air bag suppliers are working on ''smart bags,'' which could include advanced technologies for occupant sensing, phased deployment of air bags, and so forth. These technologies will be able to perform a number of functions, including preventing air bag deployment when they sense that an occupant is too close to the point of deployment, inflating the air bag at different speeds according to the severity of the crash, and preventing the passenger-side air bag from deploying when that seat is not occupied. NHTSA stated that, based on discussions with suppliers and vehicle manufacturers, it anticipates these types of smart bags will eventually be widely incorporated into production. The agency indicated that it will step up its monitoring of manufacturer efforts to develop and use smart bags, the technologies being explored, the practicability and reliability of smart bag systems, and the timetables for availability of smart bag systems.

NHTSA recognized that while it anticipates that these smart bag systems will substantially reduce adverse effects of air bags in the relatively near future, this still leaves the question of what can be done in addition to public education for the near future. NHTSA stated that manufacturers may be able to make adjustments to existing air bag system designs, and, further, that the agency may make temporary adjustments to its regulations if it is shown to be appropriate to enable manufacturers to reduce any adverse effects during this period.

In the notice, NHTSA noted that Ford has requested that the agency reduce Standard No. 208's unbelted test speed from 30 mph to 25 mph. According to Ford, this change would permit it to produce less aggressive air bags, thereby reducing air-bag induced injuries. The agency requested comments on a detailed technical assessment of the issues raised by Ford's request.

NHTSA also asked a number of specific questions in the following subject areas: field experience with air bags, crash sensing, air bag inflators, air bag designs, proximity considerations, near-term considerations, future plans, obstacles to near- and long-term plans, and air bag issues related to persons with disabilities.

NHTSA stated that it hoped that its request for comments would help the agency obtain the information needed to make reasoned decisions about whether some regulatory changes are appropriate for the interim period, whether some relatively simple technological fixes are available to reduce adverse effects until smart bags become a reality, or whether other activities, such as consumer information, offer the best chance of effectively reducing these adverse effects.

VI. Summary of Comments

NHTSA received more than 50 comments, totaling over 1600 pages of text, from auto manufacturers, manufacturer organizations, suppliers of air bags and other automotive equipment, insurance companies, consumer groups, medical groups, research organizations, other government agencies, and private individuals. NHTSA has carefully analyzed the information provided in the comments, and its proposals are based on this analysis and agency research. In addition, the agency has held meetings with several vehicle manufacturers, air bag suppliers, consumer and insurance groups, and other associations. This section provides a summary of the most significant comments, focusing on those related to possible regulatory changes. For purposes of brevity, the summary cites representative comments.

A. Smart Bags

Commenters generally confirmed that vehicle manufacturers and air bag suppliers are developing smart air bags that would incorporate advanced technologies such as variable inflation rates, occupant seat sensors, proximity detection/sensing, dual or multi-stage inflators/sensors, dual or variable venting, and the like. However, it was not clear from the comments how quickly these various technologies will be introduced into production vehicles.

Ford, for example, stated that it expects these advanced air bag technologies to be incorporated gradually during the first half of the next decade as new vehicle programs are introduced. GM stated that many technologies for automatic occupant sensing systems are being investigated, but that no supplier has yet demonstrated a ''production-ready'' system. According to GM, once production-feasible systems are available, at least two years of further development to achieve reliability levels demanded by the public will be

required to integrate and validate in a vehicle.

Mercedes identified a possible short term solution for children. That company noted that it already uses a pressure sensitive mat in the passenger-side seat of some vehicles to deactivate the passenger-side air bag when the seat is unoccupied. Mercedes stated that if the recognition threshold for the system was increased to 66 pounds, the passenger air bag would not deploy for children up to this weight sitting in that seat or for rear-facing child seats with infants. That company stated that such a decision could not be made by a vehicle manufacturer alone, and would be possible only in compliance with a Federal regulation.

B. Tag Systems

Several commenters addressed the possibility of using rear-facing child seat detection ''tag'' systems. Such systems would deactivate the air bag when they detect a rear-facing child seat equipped with a special tag. Several suppliers are working on tag concepts, and Mercedes-Benz (Mercedes) and BMW expect to introduce such a feature in Europe for model year 1997. Toyota stated that standardization of tagging methods, as well as requirements for the same, would need to be mandated by the government or an appropriate institution. GM cited a number of issues surrounding the use of a tag system, including the need for special tagged rear-facing child seats, the use of untagged rear-facing child seats, retrofitting of existing rear-facing child seats with tags, potential for multiple tag technologies, and availability of tagged rear-facing child seats at low volume for used vehicles once tag systems are superseded.

C. Improvements to Labeling

Nine commenters expressly addressed labeling and other public information activities in their comments. These commenters included the National Automobile Dealers Association, the American Association of Motor Vehicle Administrators, the National Association of Pediatric Nurse Associates and Practitioners, the Shriners Hospital—Cincinnati Unit, the Automotive Occupant Restraints Council (which represents both manufacturers of air bags and manufacturers of safety belts), and several members of the public. All the commenters that addressed this subject suggested that the current labels should be studied to see if the safety information could be conveyed more effectively to the American public. As part of its comments, the National Transportation Safety Board submitted its November 2, 1995 Safety Recommendation that NHTSA develop and implement a highly visible multimedia campaign to advise the public how to minimize the risks of air bag-induced injuries to children.

D. Manual Cutoff Switches

Commenters addressed a number of issues related to manual cutoff switches, including whether the current option for manual switches should be extended for a longer period of time, to more vehicles, and to air bags on the driver side.

Several commenters, including Ford, GM, Toyota, and air bag manufacturer TRW, stated that the agency should permit passenger-side manual cutoff switches for a longer period of time. GM also requested that the option for manual cutoff switches be extended to all vehicles. Subsequently, in a petition for rulemaking dated June 24, 1996, GM formally petitioned NHTSA to allow manual cutoff devices indefinitely.

Ford stated that it considers the manual cutoff switch to be an interim solution until technology can provide a better solution that is not as dependent on operator activation. That company stated that it would support an extension of the time period during which manual cutoff switches are permitted, but its goal is to adopt automatic passenger air bag deactivation along with other technological approaches to mitigate the injury risk from aggressive air bag inflation.

Some advocates of extending cutoff switches indicated that placing a rear-facing child seat in the front seat of a vehicle is sometimes necessary for medical reasons. For example, the parents of an infant with medical problems commented that those medical problems require them to be able to monitor the child and that cannot be done with the child in the back seat. The National Association of Pediatric Nurse Associates & Practitioners submitted a comment identifying a number of medical conditions for which infants would need to be monitored closely, which would require those children to be transported in the front seat.

Toyota stated that, assuming the consumer understood the existence and operation of a manual cutoff switch, and correctly used the switch only to disable the air bag when a rear-facing child seat is installed in the front passenger position, it believes that this is the most effective measure at the moment.

Several commenters expressed concerns about extending the option for manual cutoff switches. The Insurance Institute for Highway Safety (IIHS) stated that it strongly opposes changing Standard No. 208 to allow the indiscriminate installation of manual switches in vehicles equipped with passenger air bags to address the problems of rear-facing child seats or unrestrained child passengers. According to IIHS, parents or guardians who allow their children to ride unrestrained in vehicles are the least likely group to use a switch correctly, and this clearly would not be an effective solution to the problem. IIHS stated that the agency should facilitate coordination among restraint and auto manufacturers to encourage the quick adoption of technologies that reliably detect rear-facing child seats in the front passenger seat and temporarily deactivate the passenger air bag, modifying Standard No. 208 as appropriate to encourage these technologies.

Advocates for Highway and Auto Safety (Advocates) stated that the major benefits of air bags can only be achieved when air bags are fully operational and are available to function as passive restraints during all hours of operation. For this reason, it strongly opposes any general application of an on/off switch for air bags.

Chrysler stated that even if the agency were to modify Standard No. 208 to permit the extended use of manual cutoff switches for air bags, it would be concerned with the potential for user error in setting, or remembering to set such switches.

E. Other Issues

Commenters addressed many other issues. These issues included possible regulatory changes to permit or facilitate less aggressive air bags, raising the threshold speed at which air bags deploy, special issues faced by persons with disabilities, and various possible changes to air bag and vehicle designs to reduce air bag aggressivity.

With respect to possible regulatory changes, several changes were discussed, but none represented a consensus position. A number of commenters, including many vehicle manufacturers (Chrysler, Ford, BMW, Volkswagen, Porsche, and Toyota), an air bag supplier (Autoliv Development AB), and IIHS, expressed support for Ford's recommendation to reduce the test speed for the unbelted test from 30 mph to 25 mph. These commenters stated that this change would allow an approximate 30% reduction in the kinetic energy required in the air bag system, and that lower kinetic energy in the air bag would lower the risk of air bag- induced injuries to vehicle occupants.

Other vehicle manufacturers had different views on the Ford recommendation. GM commented that it agreed with the theory of the Ford recommendation and said that it was ''directionally correct.'' However, GM said that it has not been shown that a reduction in the unbelted test speed to 25 mph would allow manufacturers to reduce the kinetic energy in air bag systems enough to influence the actual frequency of air bag-induced injuries to vehicle occupants. Nissan went further, saying that it would not anticipate any major changes in air bag deployment specifications because of a reduction in the unbelted test speed from 30 to 25 mph. Nissan suggested that the unbelted test speed would have to be reduced to 20 mph to reduce the risk of air bag-induced injuries in the real world.

NHTSA also sought comment on another possible way of permitting or facilitating less aggressive air bag designs. This approach would raise the chest deceleration limits during unbelted testing from the current 60 g limit to 80 g's. NHTSA indicated that recent biomechanical data suggest that the human tolerance to acceleration for serious chest injury may be higher for air bags than for belts, because the air bag delivers a more broadly distributed, uniform loading to the chest than does a safety belt. BMW enthusiastically supported this concept but suggested the limit be raised to 75 g's. If this were done, BMW said it would attempt to recertify all of its vehicles with less aggressive air bags within one year.

Other commenters were less certain about this approach. GM said an 80 g limit would not appear likely to permit any appreciable reduction in inflator output, so GM doubted it would reduce significantly the potential for air bag-induced injuries. Ford said such a change might permit reductions in air bag aggressivity, but to a much less significant extent than the Ford recommendation. Chrysler stated that it could not comment on an 80 g limit because it had no data to analyze the effects of such a change.

In a presentation to the agency and supplemental comment submitted after the comment closing date, GM suggested an alternative regulatory change that it argued would be effective at reducing air bag-induced injuries. GM suggested keeping the unbelted testing speed at 30 mph, but adopting a crash pulse to better reflect the crash pulse in real world crashes and using a sled test for unbelted testing.

No manufacturer argued that downloading air bags would solve the adverse effects associated with children. GM provided the results of a depowered air bag inflator study. Based on that study, GM concluded that depowered inflators are ''directionally correct,'' but that deactivation is needed to meet injury assessment reference values for passengers who are at or near the instrument panel, particularly children due to lower injury tolerance.

Not all commenters believed that Standard No. 208 should be changed. Takata Corporation (Takata), an air bag manufacturer, argued that restraint system technology that has recently become available, combined with further improvements that are scheduled to be available within the next 24 months, will significantly reduce air bag injuries without the need for any changes to Standard No. 208. Takata stated that it is concerned that the process of developing improved technology to eliminate air bag injuries will be delayed if Standard No. 208 is changed in response to the present concerns.

Advocates opposed reducing Standard No. 208's unbelted test speed. That organization stated that there are several flaws in the Ford recommendation. According to Advocates, altering the inflation rate of air bags may only address a portion of the problem, may not make any difference at all, or may even create other safety concerns. Advocates also stated that the Ford recommendation is based entirely on static computer modeling that is limited to a single variable, air bag inflator rise rates, and that the recommendation is modeled on only an adult driver. Advocates stated that NHTSA should be reluctant to predicate major regulatory changes on anything less than clear and convincing evidence that a modification will improve safety.

NHTSA also asked for comments on increasing the minimum vehicle speed at which an air bag deploys, a change the agency said could be made relatively quickly. The agency believes that an increase in the deployment threshold would yield a decrease in the number of air bag deployments and, therefore, a decrease in the number of air bag-induced injuries.

The comments did not reflect any consensus on this approach either. Volkswagen commented that an increase in the deployment threshold would be feasible. GM, however, commented that until further analyses are completed, it is not apparent that raising the deployment threshold is necessarily directionally correct. GM stated that its general approach to crash sensing is the result of its goal to deploy air bags only when they are likely to reduce the potential for serious injuries, and that major facial bone fractures are regarded as serious injuries and are typically the deciding factor in establishing the upper limit deployment threshold. Chrysler suggested that raising the deployment threshold might result in fewer deployments but more aggressive deployments when the air bag was triggered later in the crash event.

VII. Proposal

A. Summary

As discussed earlier in this notice, NHTSA is taking a number of different steps to address the adverse effects of air bags. The agency is initially emphasizing reducing the adverse effects associated with children.

The most direct solution to the problem of child fatalities from air bags is for children to be properly belted and placed in the back seat. This necessitates increasing the percentage of children who are properly restrained by child safety seats and improving the current 67 percent rate of seat belt usage by a combination of methods, including the encouragement of State primary seat belt laws. The most direct technical solution to the problem of child fatalities from air bags is the development and installation of ''smart air bags'' that protect children automatically from the adverse effects that can occur from close proximity to a deploying bag. However, until these smart air bags can be incorporated in production vehicles, behavioral changes based on improved labeling and simpler, manually operated technology appear to be the best means of addressing child fatalities from air bags.

Ultimately, NHTSA expects that smart passenger-side air bags will be installed in passenger cars and light trucks. In the meantime, vehicles without smart passenger-side air bags would be required to have new, attention-getting warning labels and permitted to have a manual cutoff switch for the passenger-side air bag. The labeling requirement would be limited to vehicles without smart air bags. NHTSA believes this limitation will encourage the introduction of those air bags as soon as possible. In addition, rear-facing child seats would be required to have new warning labels.

More specifically, NHTSA is proposing, for passenger cars and light trucks whose passenger-side air bag lacks smart capability, to (1) require new, enhanced warning labels; and (2) permit manual cutoff switches for the passenger-side air bags (to accommodate parents who need to place rear-facing child seats in the front seat). The agency

is also proposing to require rear-facing child seats to bear new, enhanced warning labels. The proposed vehicle and rear-facing child seat labels would warn that unbelted children and children in those child seats may be killed by the passenger-side air bag.

NHTSA is requesting comments on whether, and if so on what date, to require smart passenger-side air bags that automatically prevent the air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: children in rear-facing child seats, and unbelted or improperly belted children. Alternatively, the agency is also requesting comments on whether it should endeavor to encourage smart passenger-side air bags by specifying an expiration date for the manual cutoff switch option.

B. Defining Smart Air Bags

Since the presence of a smart passenger-side air bag would obviate the label requirement, and since NHTSA is seeking comments on whether to require smart passenger-side air bags, it is necessary to define smart bags, e.g., specify appropriate tests and performance requirements. For purposes of this rulemaking, NHTSA is seeking to define smart passenger-side air bags sufficiently broadly to include any system that automatically prevents an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and unbelted or improperly belted children. At the same time, NHTSA would like to accomplish this goal without increasing the risks to those who would benefit from an air bag.

Vehicle manufacturers and air bag suppliers are working on a number of different systems which might qualify under appropriate criteria. These systems fall into two categories: (1) ones which would prevent the air bag from deploying in situations where it might have an adverse effect, based, for example, on the weight, size and/or location of the occupant, and (2) ones designed so that they would deploy in a manner that does not create a risk of serious injury to occupants very near the bag, e.g., deploying at a slower speed when an occupant is very near the air bag and/or deploying less aggressively as a result of being stowed in an improved fold pattern.

NHTSA is seeking comments whether the following categories of passenger air bags would be considered smart air bags:

(1) the passenger-side air bag system incorporates an automatic means (e.g., a weight sensor) to ensure that the air bag does not deploy when a mass of 30 kg or less is present on the front passenger seat (thus ensuring that the air bag would not deploy when either of the two specially at-risk groups of children are present; i.e., when that seat is occupied by an infant in a rear-facing child seat or an unbelted child weighing less than 30 kg);

(2) the passenger-side air bag system incorporates other automatic means (e.g., an occupant size or proximity-to-dashboard sensor) to ensure that the air bag does not deploy when an infant in a rear-facing child seat or an unbelted or improperly belted child is present in the front passenger seat; and

(3) the passenger-side air bag designed to deploy when an infant in a rear-facing child seat or to an unbelted or improperly belted child is present, but does so in a way that is not dangerous to the child.

All of these categories are reflected in the proposed regulatory text as obviating the label requirements and the permissive manual cutoff switch option. However, specific language is only proposed for the first category. See proposed amendments to S4.5.5(a). NHTSA requests comments on the most appropriate means of expressing the second and third categories in a manner that permits objective identification of qualifying air bags. See proposed amendments to S4.5.5 (b) and (c). NHTSA also requests comments on appropriate test procedures for use in determining satisfaction of the criteria for each of the three categories of smart air bags.

In its response to the November 1995 request for comments, Mercedes-Benz indicated that it has a weight sensor in the passenger seat that automatically prevents deployment of the passenger-side air bag unless a specified mass is present in the seat. The purpose of this sensor as currently employed by Mercedes, which is set at 26 pounds, is to ensure that the air bag only deploys if the passenger seat is occupied. Mercedes suggested that a possible short term solution for addressing problems with children would be to raise the threshold for deployment to a higher level, such as 30 kilograms (66 pounds) or more. For vehicles that do not already have such a sensor, the cost of adding one would be about $20 to $35 per vehicle, depending on volume, according to Mercedes.

Since receiving Mercedes' comment suggesting use of a weight sensor as a possible short-term solution for children, NHTSA has obtained additional information about the sensor currently used by that company. The agency has obtained information both from Mercedes and from the manufacturer of the sensor, IEE.

IEE calls its weight sensor a ''passenger presence detection system.'' According to IEE, the product has been used by European auto manufacturers since 1994, and one million sensors are now in use. A representative of IEE indicated that the sensor (which resembles a mat) adapts easily to any seat form or contour, and is unaffected by user-placed seat covers or cushions. IEE added that while the sensor is currently designed to detect forces greater than 26 pounds, there would be no difficulty in designing it to detect a different weight, such as the 66 pound weight suggested by Mercedes. NHTSA is placing additional information provided by IEE in the docket.[2]

NHTSA notes that GM, in its June 24, 1996 petition concerning manual cutoff switches, stated that it is reviewing and evaluating a variety of automatic suppression technologies, including the one identified by Mercedes. GM stated that ''this concept appears feasible.'' However, GM has not completed its analysis and is therefore ''uncertain whether the technology can become a production capable, highly reliable, automatic suppression system.''

NHTSA would construe a weight sensor as an automatic means of preventing air bag deployment, and a system incorporating such a sensor as a smart air bag. Further, NHTSA has tentatively concluded that Mercedes—suggestion of 30 kilograms as the threshold is appropriate. This threshold would deactivate the air bag when a child in a child restraint or other child weighing less than 66 pounds was positioned in the seat. This 30 kilogram threshold corresponds to the weight of a 50th percentile 10-year old and a 95th percentile 7-year-old. However, the threshold is far enough below the weight of a 5th percentile adult female (approximately 46 kilograms) to avoid inadvertently deactivating the air bag when a small adult is occupying the seat.

NHTSA asks the public for comments on this approach to deactivate the passenger-side air bag automatically in the presence of a child, and also on the proposed threshold of 30 kilograms for deactivation. The agency recognizes that

[2] NHTSA notes that IEE also provided information about a ''child-seat presence and orientation detection system.'' This is a form of tag system. It works only with special child seats and should not be confused with the possibility of raising the weight threshold of the weight sensor to 66 or so pounds. The agency also notes that while it has information about the particular weight sensor manufactured by IEE, there may be other suppliers of weight sensor technology.

there are possible safety trade-offs with this approach, since the air bag would not deploy in the presence of some children who might benefit from the air bag. However, this concern must be weighed against the number of fatalities and serious injuries for children in rear-facing seats and unbelted children in the front seat. Quantitative data on these tradeoffs are specifically requested. The agency also requests comments on whether a warning light should be required to indicate when the air bag is off.

Commenters on the November 1995 notice and NHTSA anticipate a number of other approaches to this problem to emerge, some more technologically sophisticated than a seat sensor, that would also qualify as smart air bags.

Other approaches for automatically preventing the deployment of the passenger-side air bag in situations where deployment might injure children include size sensors and position sensors. NHTSA requests comments on these approaches as well, and how they might be reflected in an objective definition of smart air bag. The agency notes that there appear to be particular engineering challenges in designing a system that relies on position-sensing alone. This is because, in order to be effective in a pre-crash braking situation, the system would need to both sense a change in occupant position and deactivate the air bag in an extremely short period of time. NHTSA is particularly interested in comments on how such a system could be evaluated in a test procedure.

Still another approach for protecting children is the development of passenger-side air bags that deploy in such a manner that they do not create a risk of serious injury to occupants very near the air bag. These systems might deploy at a slower speed when the occupant is very near the air bag and/or deploy less aggressively as a result of being stowed with an improved fold pattern.

Some of these more sophisticated approaches could possibly be evaluated using the out-of-position tests established by the ISO. The ISO out-of-position tests involve a series of tests in which a test dummy is positioned up against the passenger-side air bag cover. However, the ISO tests do not include any recommended ''pass/fail'' level nor any dummy specifications.

Most of the manufacturers that responded to the November 1995 request for comments indicated that they use the ISO tests or some variation of those tests to assess how well they have reduced the risks to out-of-position occupants with current air bag designs. To use the ISO tests as a starting point for a new regulatory requirement, NHTSA must develop appropriate criteria to assess performance in the tests. Among other things, NHTSA must determine appropriate tolerance levels for the injury criteria and decide whether additional injury criteria and/or additional dummy sizes are needed to assess this problem. At this time, the agency does not have enough information to propose any performance criteria. The agency has initiated a testing program described later in this notice that will help the agency answer this question. NHTSA is asking the public at this time to provide relevant child test dummy, positioning, and injury tolerance data which could be used to define a benign air bag. Alternatively, NHTSA asks for comments concerning other approaches to developing a definition of smart air bag that incorporates a wide range of technologies.

The more advanced approaches to automatic deactivation have advantages over the simple weight sensor, because they would presumably have fewer safety tradeoffs and potentially reduce adverse effects of air bags for occupants other than children, as well as for children.

Several commenters described a tag-system for deactivating the passenger-side air bag. For these tag systems, a circuit is present in the vehicle that is capable of deactivating the passenger-side air bag. The circuit is accessed either by a wire from the child restraint or by means of a sensor that picks up a signal (possibly magnetic) from the child restraint. When the circuit detects the presence of a child restraint, it deactivates the air bag. These systems, by themselves, would not be considered smart air bags, because they work only with child restraints that have a particular piece of equipment installed in them and there is no assurance that such devices would be used in these vehicles.

NHTSA also received a request for interpretation from Porsche describing a system that can deactivate the passenger-side air bag when a special rear-facing child seat is installed at the front passenger seat. This child seat has a special separate latch plate that can be engaged in a buckle under the passenger seat. When the buckle is so engaged, the passenger-side air bag would be deactivated. This system also would not be considered a smart bag, because it works only with a particular type of child seat and because it requires an affirmative action by the parent (fastening the latch plate to the buckle) to deactivate the air bag.

C. Possibility of Mandating Smart Passenger Air Bags and Timing of a Mandate.

A significant issue that NHTSA is considering in this rulemaking is whether to mandate smart passenger-side air bags, and the appropriate date on which the proposed requirement for a smart passenger-side air bag would replace the requirement for enhanced vehicle labeling (as well as the permissive provision for cutoff switches).

In evaluating these issues, the agency recognizes that leadtimes will differ for the various kinds of smart bags under development, and that the longest leadtimes will be those for the more advanced smart bags potentially offering the greatest net benefits. The agency also recognizes the engineering challenge of incorporating new air bag design features in the entire passenger car/light truck fleet.

At the same time, given the growing toll of child fatalities, and the apparent near-term availability of at least one smart bag design (i.e., the one using a weight sensor), NHTSA believes that it should take steps now to encourage the early introduction of smart air bags. The agency also believes that, as a practical matter, the longer the time needed to develop and implement the most advanced smart bags, the greater the need would be to implement interim designs that would automatically protect children.

NHTSA also notes that use of a weight sensor with a threshold of 66 pounds as an automatic means of preventing air bag deployment is allowed now under Standard No. 208. Mercedes indicated, however, that without a Federal requirement, it would not raise the weight threshold on its system for deactivating the air bag because of product liability concerns.

In order to assist in deciding whether to require smart passenger-side air bags and, if so, when, NHTSA requests comments on the following questions:

1. What are the costs, benefits, and leadtime of installing smart passenger-side air bags? Please address this question separately for weight sensors and other technologies.

2. To what extent will today's proposal result in the early introduction of the various types of smart air bags? NHTSA plans to use this information to, among other things, develop better estimates of the benefits and costs of this rulemaking action.

3. How would vehicle manufacturer plans differ if smart passenger air bags were required on a date certain? In answering this question, please address

dates of September 1, 1998, September 1, 1999, and September 1, 2000; the number and types of smart passenger bags that would be installed and when; and the extent to which manual cutoff switches would be installed for vehicles without smart passenger bags.

4. Taking account of the answer to question 3, how would different dates for requiring smart passenger air bags affect overall benefits and costs?

5. Are product liability concerns discouraging early introduction of smart air bags that could result in net benefits to children? If so, how would regulatory action by NHTSA affect this situation?

6. Taking account of the considerations discussed above, and any other considerations that commenters regard as relevant, please address whether the agency should mandate smart passenger air bags.

7. If NHTSA were to mandate smart passenger air bags, what is the appropriate date they should be required?

D. New Warning Label Requirements for Vehicles Which Lack Smart Passenger-side Air Bags

NHTSA's current vehicle labeling requirements for vehicles with air bags require the following information, coupled with the signal phrase ''CAUTION, TO AVOID SERIOUS INJURY:,'' to be labeled on the sun visors:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child restraints in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

The standard allows the word ''WARNING'' to be used in lieu of ''CAUTION.'' In addition, the owner's manual must include appropriate additional information in each of these areas.

In establishing this requirement in September 1993, NHTSA believed the air bag warning label required on new vehicles would be effective. The agency was satisfied that the required label identifies the four most important factors to reduce the possibility of adverse side effects from air bags. Experience since that time confirms that these four factors are the most important things occupants should do to minimize the risk of adverse effects from air bags.

The agency also believed that the required sun visor label conveyed the information to vehicle occupants clearly and with the proper sense of its importance. And there is evidence to suggest that NHTSA's current labeling requirements are effectively reaching significant numbers of people. For instance, in response to the November 1995 request for comments, the Insurance Institute for Highway Safety (IIHS) presented a survey which reported that 74 percent of respondents knew that it was unsafe to install a rear-facing child seat at a seating position equipped with an air bag. More than half of these respondents indicated that they had learned this information either from the vehicle owner's manual or from the labels on the vehicle sun visor or the child restraint.

Unfortunately, the experience with unrestrained or improperly restrained children and with children in rear-facing child seats suggests that the current air bag warning label is not reaching enough consumers. Given this, NHTSA wanted to explore whether improvements to the current label could make it even more effective.

In order to improve the current label, NHTSA used focus groups to test the effectiveness of several new label designs and locations. The agency specifically looked at three particular types of labels that could supplement and/or improve the current label design. The first was a label with a picture and words that would go on the side of the dash panel covered by the passenger-side front door when the door is closed or on the door itself. With the door open to install a rear-facing child seat, this location should be very visible. The International Organization for Standardization (ISO), a group that proposes voluntary standards, has proposed the installation of a warning label at this location. NHTSA is proposing that such a label be *in addition* to the current sun visor label.

The second type of label examined by the agency was a highly visible label in the middle of the dash panel that would warn that the safest place for all children was the back seat and that all children must be restrained. NHTSA's preliminary consideration of such location is that this would attract more attention than the current sun visor label and therefore be more likely to alter people's behavior regarding children in the front seat. This label would also be in addition to the sun visor label.

The third type of label examined by the agency was a label in the current location on the sun visor, but with enhanced colors and graphics to attract attention and make the message more effective.

Based on the results of the focus groups, NHTSA is proposing to modify the existing labeling requirements. The agency began its investigation of improved labeling with two basic premises. First, there is no label that has been or can be designed so that every person will act in accordance with the warnings or instructions on the label. Given this, NHTSA does not believe that any label will by itself eliminate adverse effects of air bags for children.

Instead, NHTSA used focus groups with the aim of designing a label which would improve substantially the likelihood that people will read the label and understand its message. Once people have received the information, the agency has to depend on them to take the appropriate actions based upon the label information.

Second, the literature on labeling makes it clear that there is no single perfect label that a safety agency such as NHTSA could propose or should seek. In other words, choosing a design for a warning label is not a multiple choice test in which there is one ''correct'' answer and all the other choices are ''wrong.'' Because the identification of the ''best'' label by a subject is an expression of personal preference, some members of the public would react best to one label design and other members would react best to different label designs. Accordingly, any pursuit of the single ''best'' label would necessarily be quixotic.

Again, this is why NHTSA has used the focus groups to get guidance about peoples' reactions to different label designs. The agency can now use this information to propose labels that could be significantly more effective than the labels currently on vehicles and on child seats.

The contractor's final report on the focus group study has been placed in the docket for this rulemaking. What follows is a brief overview of the study. NHTSA's focus group study was conducted in three cities in three different regions of the country. Focus groups were conducted in Baltimore, MD on March 26, 1996, in Atlanta, GA on March 27, 1996, and in Denver, CO on March 28, 1996. All participants had at least one child under 13, made several trips per week with one or more children in the car, drove at least 7,500 miles per year, were 25–45 years of age, had no connection with the automotive industry or with market research, and had not participated in a focus group in the preceding six months.

The main part of the study involved six focus groups, each with nine people and lasting about two hours. The composition of the groups reflected the

population as a whole in terms of gender, ethnic background, and level of education. The participants reported driving a wide variety of vehicles, including passenger cars, vans, trucks, and sport utility vehicles. Of the 54 people in the groups, 18 said they had a passenger-side air bag.

Before starting the discussions with the focus groups, a secondary study was conducted. Each participant was taken one by one to a car with a rear-facing child seat installed in the front passenger seat. The participants were asked to place an infant-sized doll into the child seat, secure the buckle, and then remove the doll from the child seat. Prototype warning labels were placed on the side of the child seat and on the right end of the dashboard in the area that is covered when the door is closed. These labels included the colors red and yellow, a graphic showing a rear-facing child seat in front of a deploying air bag with a red international ''NO'' slash, and the heading ''Danger to Life!'' in red letters. The label on the child seat was 100 millimeters long and 65 millimeters high (roughly 4 and 2½ inches, respectively). The label on the car dash was slightly larger, at 140 millimeters long and 65 millimeters high (roughly 5½ and ½ inches, respectively). After the participants had put the doll into and removed the doll from the rear-facing child seat, they were given a brief questionnaire asking if they had noticed and could describe the two new labels.

After they had responded to that questionnaire, the participants returned inside for a discussion. The first half-hour was spent discussing current actions and beliefs regarding children riding in cars, use of seat belts, air bags, and awareness of any warning labels currently in vehicles. Most of the remaining time was devoted to evaluating three different sets of prototype labels, with a total of 36 labels evaluated by these focus groups.

The results from the focus groups were striking. A total of 66 people participated in the exercise of installing a doll in a rear-facing child seat to learn if the participants noticed new, brightly colored warning labels on the side of the dash in the vehicle and on the side of the child seat. These 66 people included the 54 who were in the group discussions and another 12 who were invited to ensure that nine people would be in each focus group. *None* of these 66 people noticed the new label on the side of the dash. Two of the 66 claimed to have seen the new label on the child seat, but one did not know the color or shape of the new label on the child seat.

With respect to warning labels, the focus groups generally offered the following suggestions:

- Use colors in the label, especially red and yellow, with black and white, because these offer high contrast, attract attention, make a message easy to read, and connote danger or warning.
- Use the international ''prohibited'' symbol (a red circle with a diagonal slash) to attract attention, to convey a warning to people who may not read English well or at all, and to reinforce the message for others.
- Include an illustration that shows as clearly as possible that an inflating air bag can injure a child.
- Include either the word ''WARNING'' or ''DANGER'' in large, colorful capital letters.
- Make the text as short and simple as possible.
- State clearly and explicitly the actions that people should take or avoid.
- Provide a reason for the actions (e.g., ''Unbelted children may be killed or injured by passenger-side air bag'').

As a basic matter, the focus group members identified a conflict between label effectiveness and product aesthetics. Group participants stated that they generally ignored the labels in their own vehicles and on their own child seats. Thus, it is not surprising that group participants felt no label would be read unless it is very conspicuous—with bright colors (even ''day-glo''), a large size, and a prominent location. On the other hand, most group participants agreed that any label conspicuous enough to be noticed consistently would be something of an eyesore, and that people would not want it in their cars. In addition, the groups felt that warning needs to be conveyed only once (when either the vehicle or child seat is first delivered to the person) and that daily reminders from a label are unnecessary. As one woman said, ''Once I know my child seat has to go in the back, that's where I'll put it. You don't have to tell me again.''

Based on these results and other information discussed above, NHTSA is proposing a new label for child seats and two new labels for air-bag equipped vehicles which lack smart passenger-side air bags, together with a revision of the sun visor labels currently required in these vehicles. However, the agency is especially interested in comments concerning other focus group, survey or other data relevant to location, format, color, size and number of labels, or other factors that may affect labeling effectiveness. For color copies of labels, please contact Stephen R. Kratzke. (Mr. Kratzke's address and phone number are provided near the beginning of this document.)

The proposals are as follows:

1. *Child Seat Labels.* NHTSA currently requires a warning to be labeled on each child restraint that can be used in a rear-facing position. Specifically, S5.5.2(k)(ii) of Standard No. 213, *Child restraint Systems* (49 CFR 571.213) requires:

> Either of the following statements, as appropriate, on a red, orange, or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear- facing child restraint system in the front passenger seat:
>
> WARNING: WHEN YOUR BABY'S SIZE REQUIRES THAT THIS RESTRAINT BE USED SO THAT YOUR BABY FACES THE REAR OF THE VEHICLE, PLACE THE RESTRAINT IN A VEHICLE SEAT THAT DOES NOT HAVE AN AIR BAG, or
>
> WARNING: PLACE THIS RESTRAINT IN A VEHICLE SEAT THAT DOES NOT HAVE AN AIR BAG.

NHTSA notes that this location on the side of the child restraint is where a prototype label with yellow and red colors and a visual with a red slash through it was tested on the focus groups. As mentioned above, only two of 66 claimed to have seen this label, and one of those two could not identify the color of the label. Based on these findings, NHTSA believes an enhanced warning label in a more prominent location is needed to better alert the people responsible for placing children in a vehicle.

Accordingly, NHTSA is proposing to move and enhance the warning label currently required on child restraint systems. The current warning label on the side of the child restraint would no longer be required. Instead, a new permanent label would be affixed to each child restraint system that can be used in a rear-facing position in the area where a child's head would rest. The agency is proposing that the new label be at least the size tested in the focus groups for vehicle labels—that is, at least 140 mm long and 65 mm high. This new label would have a yellow background for the text portion. On that yellow background would first appear a heading in red that said ''DANGER!'' Under that heading, the text would appear in black as:

> DO NOT place rear-facing child seat on a vehicle seat with air bag.
>
> DEATH or SERIOUS INJURY can occur.

Opposite the text, this warning label would have a pictogram showing an inflating air bag striking a rear-facing child seat, with a red slash through that.

NHTSA acknowledges that a permanent warning label on the child seat cushion in the vicinity of the child's head will require changes to the manufacturing process and increase costs. However, the agency does not believe that the aesthetic concerns the focus group participants expressed about conspicuous labels in a vehicle apply equally to child seats. In addition, this warning would likely be effective because it would be targeted specifically to the people whose dependents are at greatest risk (persons transporting an infant) and an audience that would be very receptive to this warning. Further, any cost burdens will be reduced by eliminating the current requirement for the warning label on the side of these child seats.

The proposed enhanced labels for child seats would be required on all new child restraints that can be used in a rear-facing position. This broad coverage is necessary because, to the best of the agency's knowledge, there are no current vehicles with passenger-side air bags in which a rear-facing car seat can safely be installed at the right front passenger seat.

2. *Label on Passenger-Side End of Vehicle Dash or Door Panel.* NHTSA currently has no requirements for any safety labels in these locations. However, NHTSA has been participating in the efforts of the International Organization for Standardization (ISO) to try to develop a voluntary international standard for a vehicle label warning not to place a rear-facing child seat in a vehicle seat with an air bag. The current proposals feature a visual showing a rear-facing child seat positioned in front of an air bag, with a red slash through the visual. The proposed location is on the passenger-side end of the dash, which is visible only when the passenger door is opened. An alternative location is on the door panel in a location that is also visible only when the door is opened. Based partly on this effort by ISO, a proposal for such a label in such locations was submitted as a draft supplement to Regulation 94 of the Economic Commission for Europe in September 1995. Further, NHTSA is aware of labels warning about air bag hazards to rear-facing child seats on the passenger-side end of the dash or on the door on current Lexus, Mercedes, Saab, and Volvo vehicles. The agency has also been told that Nissan plans to begin labeling their vehicles in this area to warn against using rear-facing child seats in front of air bags.

NHTSA notes that this location on the side of the dash is where a prototype label with yellow and red colors and a visual with a red slash through it was tested on the focus groups. As mentioned above, none of the 66 people participating claimed to have seen this label. Based on this finding, NHTSA would not propose a warning label in this location as the *only* vehicle warning label. In fact, NHTSA considered not requiring a warning label in this location.

Nevertheless, NHTSA is proposing to require a label in this area, for vehicles which lack smart passenger-side air bags. Even though none of the 66 people in NHTSA's focus groups study noticed the label in this area, the design of the test may have contributed to this result. As noted before, in the focus group exercise, the child restraint was already installed in the car when the participants were asked to secure an infant-sized doll in the child restraint. NHTSA suspects that, if the participants instead were asked to take a child restraint, install it in the vehicle, and then secure the infant-sized doll in the child restraint, some participants would have noticed the label in the process of placing the child restraint in the vehicle. In addition, this area is where an international voluntary standards group and the Economic Commission for Europe are proposing to place a label. Furthermore, several vehicle manufacturers have or will soon be voluntarily placing a label in this area.

However, the agency believes it is appropriate to use its focus group results to proceed on the assumption that a warning label in this area is not so conspicuous that it should be a primary means of alerting the public to this problem. Accordingly, NHTSA has structured its proposal so that the label in this location is intended to remind and reinforce the message people have already gotten from other sources. To this end, NHTSA is proposing that this label be nearly identical to the label proposed for child seats. It would be a permanent label with the same minimum dimensions (140 mm X 65 mm), the same yellow and red colors, and the same content, including the visual with the red slash through it. As regards the location, NHTSA is proposing to permit this label to be installed either on the passenger-side end of the dash or on the door panel. NHTSA's focus groups provide no basis for proposing to prefer one of these locations over the other. NHTSA asks for public comment on whether this label should be required, especially given the other labels and the focus group findings about labels in this location.

Only a few current vehicles offer a manual cutoff switch for the passenger air bag. For those vehicles that do not offer a cutoff switch, the label on the passenger-side end of dash or door panel would be identical to the label proposed for child seats. However, if the vehicle had a manual cutoff switch for the passenger air bag, the label would be modified to read ''Danger! Do not place rear-facing child seat on front seat with air bag UNLESS the air bag is off.'' This language is similar to the existing language for sun visor warnings for vehicles that have manual cutoff switches, and should accurately inform care givers.

3. *Label on Sun Visor.* As discussed above, NHTSA currently requires for all air-bag equipped vehicles a warning to be placed on sun visors above each seating position equipped with an air bag. In addition, NHTSA requires an ''air bag alert label'' if the sun visor warning label is not visible when the sun visor is in its stowed position. The air bag alert label can either be on the air bag cover or on the side of the sun visor visible when the visor is in the stowed position. To the best of the agency's knowledge, to date, all manufacturers have placed the alert label on the visible side of the sun visor. S4.5.1(c) of Standard No. 208 provides that this alert label on the visor must read, ''Air bag. See other side.'' No minimum size dimensions are specified for the alert label.

The NHTSA focus groups were specifically asked if they were aware of any warning labels about air bags in their personal vehicles. A few participants said they had seen some kind of label or sticker in their vehicles but could not recall what the label said. Only one person said she had noticed several labels, had read them, and could remember the topics of the labels. Based on these results, NHTSA believes an enhanced warning label on sun visors may be needed to better alert the public.

Accordingly, NHTSA is proposing to enhance the warning label currently required on sun visors, for vehicles which lack smart passenger-side air bags. The current warning labels on sun visors would no longer be required. In their place, enhanced alert labels and warning labels would be required. Manufacturers would continue to be permitted to provide a warning label only, if that label is visible when the sun visor is in its stowed position.

For the alert labels, NHTSA is proposing to require that a new permanent label be affixed to the side of the visor that is visible when the visor is in its stowed position. This label would be required on that side of the visor above every seating position equipped with an air bag. This new

label would have a black background. On the left side of the alert label would be the same visual proposed for the child seat and dash/door label showing a rear-facing child seat in front of a deploying air bag with a red slash across the picture. On the right side of the alert label would be yellow letters reading ''AIR BAG WARNING.'' Underneath that warning, in much smaller yellow letters, would appear text reading ''FLIP VISOR OVER.''

The agency is proposing that the new alert label be at least the size tested in the focus groups for vehicle labels—that is, at least 140 mm long and 65 mm high. NHTSA recognizes that this size alert label may be larger than needed to attract attention. Accordingly, NHTSA specifically asks for comments on an alert label that is 75 percent, 50 percent, and 25 percent of the proposed size. A 75 percent label would be approximately 4 1/8 inches long and 1 7/8 inches high. A 50 percent label would be approximately 2 3/4 inches long and 1 1/4 inches high. A 25 percent label would be approximately 1 1/2 inches long and 3/4 inches high. There is a tradeoff between the use of color and the size of the label. Commenters should be sure to view the colored label when commenting with respect to size.

NHTSA recognizes that the proposed alert label would be much larger and more conspicuous than any labels currently in vehicles. The agency is sensitive to the aesthetic concerns expressed by the focus group participants about warning labels detracting from the appearance of their vehicle. However, NHTSA does not believe the proposed label would be an eyesore. In the focus groups, 50 of the 54 participants preferred an alert label such as the proposed one. Moreover, to the extent this label is not more conspicuous than the existing alert labels, it would not serve its intended function of improving the effectiveness of the sun visor labels.

For the warning label to be permanently affixed on the other side of the visor than the alert label (unless the manufacturer chooses to place the warning label on the side of the visor that is visible when the visor is in its stowed position), NHTSA is again proposing a minimum size of 140 mm X 65 mm. In the lower left corner of this label there would be a white visual on a black background. The visual would be a representation of a belted occupant in front of a deploying air bag. The background for the rest of the label would be yellow. In red across the top of the label would appear a triangle with an exclamation mark inside it followed by the word ''WARNING'' in large type. In smaller red type beneath that heading, the phrase ''Severe injury or death can occur'' would appear. Beneath that, in black type, would appear the phrase ''Air bags need room to inflate.'' Beneath that, four bullets in black type would read:

- Never put a rear-facing child seat in the front
- Unbelted children can be killed by the air bag
- Don't sit close to the air bag
- Always use seat belts

Aside from using colors and visuals to improve the existing sun visor warning, these four proposed bullets in the warning differ from the five bullets on the current warning label. Two of the five current bullets are deleted. One current bullet says, ''Do not place any objects over the air bag or between the air bag and yourself.'' The focus groups strongly suggest that this current warning is too long. In addition, the new admonition that ''Air bags need room to inflate'' together with the new visual will convey the same message the current bullet seeks to convey. The other current bullet deleted in this proposal is ''See the owner's manual for further information and explanations.'' Some of the focus group participants disliked this advice, indicating they want the label to tell them what they need to know about these matters. There was also some feeling that people already knew to consult the owner's manual to get more information on a vehicle problem.

This proposed label adds a proposed bullet saying that unbelted children can be killed by the air bag. NHTSA acknowledges that this bullet may be redundant of the point in red at the top of the label that severe injury or death can occur and the bullet at the bottom of the label advising to ''Always use seat belts.'' However, NHTSA has tentatively concluded that it is worth specifically highlighting the hazards to unbelted children, given the available information suggesting that unbelted children as a group are particularly at risk and given that the agency places special weight on its responsibility to protect children.

As was the case for the proposed label on the passenger-side end of the dash or door panel, the sun visor warning label would be slightly different for vehicles that offer a manual cutoff switch for the passenger air bag. For vehicles with a manual cutoff switch, the first bullet on the label for the stowed side of the sun visor would be modified to read ''Never put a rear-facing child seat in the front UNLESS the air bag is off.''

This notice proposes to carry forward the current prohibition against sun visors showing any other information about air bags or the need to wear seat belts, except for air bag maintenance information and the utility vehicle label required by NHTSA's consumer information regulations. The agency notes, however, that Volkswagen has recently stated in a request for interpretation that it would be in the interest of safety to include references to side air bags on the sun visor label of vehicles equipped with these devices. The agency requests comments on whether particular statements should be permitted or required for vehicles with new kinds of air bags, such as air bags for side impact protection and, if so, what statements.[3]

4. *Label in the Middle of the Dash Panel.* NHTSA believes that the proposed changes to the sun visor labels will enhance the effectiveness of those labels by making them more noticeable. However, the agency has an obligation to do all it can with labels to help address the adverse effects of air bags in the near term. The focus groups generally reported that a label (though not necessarily a permanent one) needs a very prominent location in a vehicle to attract attention and be read. The middle of the dash panel is a location that is visible to both the driver and the passengers. It is also a location both drivers and passengers tend to look at since the radio and temperature controls are generally in this area. As such, this may be the location in the vehicle where a label would be most likely to be noticed and read.

On the other hand, NHTSA also must be sensitive to the findings from the focus groups that the public would not want a conspicuous day-glo label permanently in their vehicles. NHTSA believes it has fashioned a proposal that takes account both of the need to alert people to adverse effects of air bags for unbelted children and the public's desire that labels not become an eyesore. NHTSA is proposing that a very visible label be placed in the middle of the dash of all new vehicles equipped with air bags, if they lack smart passenger-side air bags. However, this label may be a removable label that must be on new vehicles when they are delivered to consumers but may then be

[3] NHTSA asks commenters to address whether and what cautionary statements are needed concerning these new devices, whether such statements can be effectively communicated by simple additions to the sun visor label without diluting the impact of cautionary statements about air bags providing frontal impact protection, and whether generic statements could be developed that would be accurate for all air bag designs currently under development. The agency also desires information on what specific dangers side air bags may pose to infants or other occupants.

removed by consumers after they have had a chance to read it. The agency believes this conspicuous positioning of the label position will get the message out effectively to the American public as they buy new vehicles. This conspicuous label should also highlight the importance of the permanent but less conspicuous labels in the vehicle regarding air bags when the purchaser sees those labels.

The removable label NHTSA is proposing would have the same minimum dimensions as all the other labels proposed in this notice (140 mm X 65 mm). The top half of this label would have a yellow background with the phrase ''Make sure all children wear seat belts'' in red type. The bottom half of this label would have a white background. In black type, the bottom half of this label would say, ''Unbelted children and children in rear-facing child seats may be KILLED or INJURED by passenger-side air bag.''

To make the label as effective as possible, the signal word ''WARNING'' would be placed at the beginning of the label to highlight the importance of the message. NHTSA believes that a strong signal word is important in this case as a means of first attracting attention to the serious nature of the message.

The agency specifically invites public comments on the four types of enhanced labels proposed above. Commenters are urged to offer all the data of which they are aware to support their opinions about the relative merits of the proposed labels compared to potential alternative labeling schemes. Commenters are also requested to provide information that would help in assessing the effectiveness of labels in changing behavior in the intended ways.

5. *Possible Sun Visor Label Requirement for Vehicles With Smart Passenger Air Bags.*

All of the new vehicle labeling requirements would be limited to vehicles which lack smart passenger-side air bags, to encourage the early introduction of these improved air bags. NHTSA is interested in comments on whether any sun visor labeling requirements should be applied to vehicles with smart air bags. The agency notes that the enhanced sun visor warning label would include information that would be important even for vehicles with improved air bags, such as the warning to always use seat belts. Therefore, it could be argued that some kind of warning label and alert label for these vehicles should be required. The agency therefore requests comments on what, if any, labeling requirements should be established for such vehicles, with respect to content, size, color and format.

6. *Leadtime and Costs.* NHTSA is proposing to require the new or enhanced vehicle labels for vehicles manufactured on or after a date 60 days after publication of the final rule. The agency is also proposing that enhanced labels be affixed to all child restraints that can be used in a rear-facing position and manufactured on or after a date 180 days after publication of the final rule. This longer lead time for child seat manufacturers is an acknowledgment that these manufacturers will have to change their manufacturing process to include some means of permanently labeling the padding or cushion, something they do not do presently to the best of the agency's knowledge. However, public comment is invited on whether a shorter effective date for child seat manufacturers would be practicable and what the cost implications of a shorter lead time would be.

The agency recognizes that the proposal would provide a very short leadtime for the vehicle manufacturers. However, a longer delay in making some effort to enhance warning the vehicle occupants runs the risk of further tragic and avoidable child fatalities. NHTSA is also concerned that the absence of a reminder to supplement the ongoing public education efforts would make those efforts less effective. Accordingly, NHTSA proposes to find for good cause that this change in labeling requirements should take effect sooner than six months after publication of a final rule. In light of the same considerations, the agency is providing a slightly abbreviated comment period of 45 days.

Even with this short leadtime, NHTSA estimates that the cost of each vehicle label would be between 7 and 12 cents. The combined cost of the two new labels would therefore be between 14 and 24 cents. Adding in the cost of the enhanced and larger sun visor label (about one cent), the increased cost per vehicle would be between 15 and 25 cents. The cost of an enhanced label for child restraints is dependent upon the type of material to which the label must permanently adhere and the method chosen to achieve the permanent adhesion. Incremental costs are estimated to range from $0.05 to $1.00 per child restraint. The public is invited to comment on these cost estimates. If any commenter suggests different estimates be used, the commenter should provide data to support its views.

E. Manual Cutoff Switch Option for Vehicles Which Lack Smart Passenger-side Air Bags

As discussed above, until smart passenger-side air bags can be incorporated into vehicles, the proposed improvements to the existing air bag warning labeling requirement would better ensure that drivers and other occupants are aware of the dangers posed by air bags to unbelted children and children in rear-facing child seats located in the front seat. Adult occupants would ideally respond to the label by placing a child in the back seat and properly restraining the child, or at the very least, by ensuring that older children in the front seat are properly restrained.

For rear-facing child seats, however, proper installation in a front seat does not address the problem, because a rear-facing child seat should never be placed in a seating position with an air bag. However, some vehicles do not have back seats, or have back seats which are not large enough to accommodate a rear-facing child seat.

To address this dilemma, on May 23, 1995, NHTSA published a final rule which allowed manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles manufactured on or after June 22, 1995, in which rear-facing child seats can be used in the front seat only. In addition to the limit on the types of vehicles which were permitted to have the manual cutoff device, the final rule included a number of conditions that had to be satisfied. The manual cutoff device had to deactivate the air bag by means of an ignition key and require manual reactivation of the air bag once deactivated. The manufacturer had to also install a warning light separate from the air bag readiness indicator, which would indicate that the air bag was turned off. The light would have to be visible to both the driver and passenger. The manufacturer had to include information on the manual cutoff device in the owner's manual. Finally, the option was only available for passenger cars manufactured before September 1, 1997, and light trucks manufactured before September 1, 1998.

As the agency now proposes requirements to initially encourage, and possibly require, smart passenger-side air bags, it believes it would be appropriate, in the meantime, to permit manual cutoff switches for any vehicle which lacks smart passenger air bags. In the very short term, such devices can accommodate parents who need to place rear facing child seats in the front seat.

Thus, the agency is proposing that the option for manual cutoff switches be extended both in time and to all vehicles with passenger air bags that lack smart capability.

NHTSA cited two reasons for its decision to allow the installation of manual cutoff devices for only a limited period of time. First, several commenters that were developing automatic cutoff devices indicated that the devices would soon be available. Second, vehicle manufacturers were considering more sophisticated devices which would deactivate the air bag in a number of appropriate situations, not just when a rear-facing child seat is present. The agency did not wish to issue a regulation which could have the unintended effect of delaying introduction of these more sophisticated and effective devices.

Given the fatalities which have occurred to infants in rear-facing child seats and to unbelted children in the front seat, as well as the incentives that should be created by today's encouragement of smart passenger-side air bags, manufacturers have a strong incentive to provide smart passenger-side air bags as quickly as possible. NHTSA notes that the option to use manual cutoff devices is a limited means of addressing child fatalities from air bags, and believes that it would not significantly reduce the overall incentive to develop a more comprehensive solution.

Since weight sensors are apparently already available and in production (albeit with a lower threshold weight), however, the agency requests comments on whether and how the availability of such devices should affect its decision on extending the manual cutoff switch option. NHTSA requests specific comments on how weight sensors compare with manual cutoff switches with respect to costs, benefits, safety tradeoffs, and leadtime, and how the agency should factor in the availability of weight sensors in its decision concerning manual cutoff switches.

NHTSA is also considering the availability of other possible alternatives to manual cutoff switches. It does appear that tag system technology is production-ready, as evidenced by the plans of Mercedes and BMW to use this technology in Europe in 1997. As indicated by GM, however, there are a number of significant issues surrounding the use of a tag system. These include a need to educate parents, need for special tagged infant seats, consequences of using untagged infant seats, availability of tagged seats, retrofitting of existing infant seats with tags, potential for multiple tag technologies, and availability of tagged infant seats at low volume for used vehicles, once tag systems are superseded.

NHTSA believes that the issues surrounding tagging are particularly significant given manufacturer efforts to develop advanced automatic systems addressing a wide scope of problems. While the agency wishes to encourage the industry to pursue all possible solutions to the problems of adverse effects of air bags, it is not clear that tagging can be effectively implemented, on an industry-wide basis, as a short-term interim solution until a more comprehensive solution is developed. The agency specifically requests comments on this issue.

Another possible near-term alternative includes the Porsche system. However, the Porsche system requires special child seats and thus raises many of the same compatibility issues as tagging. Also, even with a special child seat, special buckling action is required.

The agency requests comments on whether any other alternatives to manual cutoff switches are currently available.

NHTSA also requests comments on whether it should endeavor to further encourage smart passenger-side air bags by specifying an expiration date for the manual cutoff switch option and, if so, what date. Commenters are asked to provide a rationale for their position on this question, and to discuss whether particular end dates would be so early as to possibly discourage manufacturers from offering manual cutoff switches, or so late as to possibly discourage early introduction of smart passenger-side air bags.

In proposing to permit manual cutoff switches for any vehicles that lack smart passenger-side air bags, NHTSA notes that, in its earlier decision not to allow all vehicles to be equipped with a manual cutoff device, the agency stated:

> NHTSA does not believe it should allow all vehicles to have a manual cutoff device to accommodate parental preference for placement in the front seat. If any child seat can be placed in a rear seat, that is the safest position. 60 FR 27233, 27234.

While the latter statement is true, the first statement deserves potential reconsideration in retrospect. NHTSA has tentatively concluded that there are reasons to permit manual cutoff switches for the passenger side of vehicles with rear seats large enough to accommodate rear facing child seats.

First, commenters to the November 1995 request for comments provided information showing the agency that placing a rear-facing child seat in the front seat of a vehicle is sometimes a matter of medical necessity and not always ''to accommodate parental preference.'' For example, the parents of an infant with medical problems commented that those medical problems require them to be able to monitor the child and that cannot be done with the child in the back seat. The National Association of Pediatric Nurse Associates & Practitioners submitted a comment identifying a number of medical conditions for which infants would need to be monitored closely, indicating a need for those children to be transported in the front seat. That organization stated that approximately two percent of all children (which translates into about 400,000 children under the age of 5 and close to 100,000 under the age of one) have some type of medical condition or disability which requires some type of nonmedical assistive technology. Also, about 0.1 percent (or about 20,000 children under the age of five and 5,000 infants) require medical technology assistance such as respirators, surveillance devices, or nutritive assistance devices. Also, some medical problems may be of a transitory nature, but they may require short-term monitoring of the infant. It is obviously not possible for these children, or the vehicles in which they would be transported, to be identified in advance.

Also, the National Center for Health Statistics reports that approximately 10% of the 4 million births in 1993 were premature. A number of these children and other children may have medical conditions that require monitoring. However, because these are a small percentage of the total births, an alternative to permitting manual cutoff switches might be to permit air bags to be deactivated in these situations, i.e., the agency could issue an exemption from the general statutory requirement in 49 U.S.C. § 30122 that prohibits manufacturers, distributors, dealers and repair businesses from ''making inoperative'' required safety equipment. However, even assuming the agency issued such an exemption, owners and/or dealers might not be aware of the exemption process, or owners might not go to the trouble of having an air bag deactivated, and thus risk injury to the child. It would be much easier to operate a manual cutoff switch. Also, if owners did have the air bag deactivated, the bag would not be available for any occupants, depriving them of the added protection an air bag offers, while a manual cutoff switch would allow the selective deactivation of the air bag when appropriate. In addition, there is the possibility that the owner would not

have the air bag reactivated once the child grew out of a rear-facing child seat. For these reasons, the manual cutoff switch appears to be a better option to accommodate the needs of infants who require monitoring for medical reasons.

A second argument for permitting manual cutoff switches is that the instinctual desire of some parents to keep their infants near them under their close and watchful eye may be sufficiently strong that it is difficult to convince them of the safety need to place the children in the rear seat. This is a particular concern given the inherent limitations of any public education campaign or label. NHTSA recently conducted six focus groups (two in Lubbock, Texas and four in Cleveland, Ohio) on public information campaigns relating to air bags. Many parents of children under the age of one year indicated that they travel with the child rear-facing in the front seat. Most indicated that they are reluctant to place an infant rear-facing in the rear seat, where they cannot see the child and will not be able to reach the child quickly in the event of an emergency.

NHTSA is thus concerned that some parents may decide to place a rear-facing child seat in the front seat where the infant can be closely monitored, even in the presence of an air bag and warning labels. While the agency does not wish to encourage parents to place children in the front seat, a cutoff switch would enable these parents to eliminate the risk from the air bag.

The agency notes that many commenters to the November 1995 request for comments expressed concern about the potential for misuse of a manual cutoff switch. A switch could be misused either by a driver or other vehicle occupant deactivating the air bag when a rear facing child seat is not present, or because a driver simply forgets to reactivate the air bag after using such a restraint. In either such instance, properly restrained occupants, who are not at risk from the air bag, or unrestrained adults in higher speed crashes would not be afforded the protection of the air bag.

As discussed in the Preliminary Regulatory Evaluation (PRE) for this rulemaking, NHTSA has assessed possible benefit trade- offs associated with a manual cutoff switch for the right front passenger, intended to be used for rear-facing child restraints. It appears that there will be more benefits to allowing a cutoff switch than losses under reasonable assumptions of possible misuse of the cutoff switch. (See the PRE for a more detailed discussion.) The agency's educational efforts will focus on preventing such misuse and the agency also notes that the requirement for an extra warning light would reduce the possibility of drivers forgetting to reactivate the air bag after using a rear-facing child restraint in the front seat. Currently, a yellow warning light displays the message ''AIR BAG OFF'' whenever the right front passenger air bag is deactivated using the cutoff switch.

Based on discussions with Ford, the vehicle manufacturer with the largest number of manual cutoff switches,[4] NHTSA is not aware of any misuse problems with these devices. Nevertheless, NHTSA specifically requests comments on whether there are any quantitative data or other information concerning the likelihood of manual cutoff switches being misused. The agency is particularly interested in information that is derived from the real-world experience with the vehicles which have been produced with manual cutoff switches.

NHTSA requests comments on the various factors discussed above, and any other factors commenters consider relevant to permitting the option of manual cutoff switches for passenger-side air bags.

VIII. Future Agency Considerations

As discussed above, NHTSA believes serious adverse effects of air bags can be effectively addressed in the medium and long term by means of changes to the designs of air bags and other related vehicle components. Some design changes were discussed in the preceding sections of this notice. This section discusses other possible design changes, ongoing agency efforts to evaluate the effects of such changes, and possible future agency regulatory actions.

Through conducting its own research and working with the motor vehicle industry, NHTSA is looking for design solutions that will be reasonable in cost and effective in reducing the identified adverse side effects of air bags without creating new safety problems. To minimize further injuries and loss of life, the agency is seeking solutions having as short leadtime requirements as possible. It may be that solutions meeting these criteria are currently permitted by the standard. There is already considerable flexibility under the standard to make design changes in air bags. Nevertheless, it may be that the agency would have to amend the standard to permit the implementation of those solutions. If it is necessary to amend the standard, the agency's desire would be to amend it in a way that minimizes the adverse side effects while preserving the protection afforded by air bags.

At this point, the agency does not have enough detailed research concerning trade-offs to determine which design solutions will be most effective. Before the agency can make the necessary determinations, it will need additional data and have to make a variety of assessments and analyses. The agency will examine the alternatives that are or will be reasonably available at reasonable cost. It will also assess safety trade-offs associated with each of those alternatives. This will include assessing how each alternative would affect the safety of occupants of different weights and sizes. There is a possibility that some design changes may benefit some groups more than others. There is even a possibility that although some changes may benefit some groups, they will not benefit, or even may harm, other groups. Finally, the agency will compare the alternatives in terms of their relative safety effects and costs.

The agency's search for effective solutions is complicated by a number of factors. First, NHTSA is sensitive to the possibility that to the extent that the agency mandates solutions, its intervention could affect the pace and direction of industry efforts to find effective solutions. Second, the sheer complexity of air bag technology and crash dynamics and the range of different circumstances associated with the adverse effects of air bags make it virtually impossible to find a single solution to the challenge of providing the best possible protection for the wide range of vehicle occupants. Third, the state of the art in air bag technology and in design choices regarding air bags is rapidly changing. Fourth, there is no clear emerging industry consensus to aid the agency in identifying which design changes will effectively address the adverse effects while preserving the safety benefits of air bags.

The agency has initiated a research testing and analysis program to address these problems. The program is being coordinated and conducted at the Vehicle Research and Test Center, the agency's in-house laboratory in Ohio. The program's objectives are to:

- Assess the performance of air bag systems in current production vehicles in particular crash conditions, including the effects on out-of-position children.

[4] To date, NHTSA knows of only three models utilizing cutoff switches—the model year 1996 Ford Ranger pickup, the model year 1997 Ford F150 pickup, which was introduced in February 1996, and the LE and SE versions of the model year 1996 Mazda B-series pickup trucks, which are equipped with an optional passenger side air bag.

• Assess the level of improvement possible in out-of-position performance from changes to existing air bag components, including downloaded air bags, as well as newly developed pre-production systems.

• Provide visibility for air bag-related technology, thus promoting the rapid adoption of newer technologies that will help solve the out-of-position occupant injury problem.

The immediate focus of the program is on the passenger-side out-of-position problem as related to children. Several vehicle models have been selected based upon field accident investigations and air bag design characteristics. Both domestic and foreign vehicles are included in the selection. The test conditions include four different child positions similar to those recommended by ISO, and represent worst case occurrences. These tests will provide ''baseline'' performance of air bag systems when a child is an out-of-position occupant.

NHTSA is inviting vehicle manufacturers and air bag and component suppliers to provide state-of-the-art air bag systems. Systems that show significant improvements over baseline performance for out-of-position children will also be tested with adult-sized dummies in full-scale crash conditions required in Federal standards.

The test program will also address other aspects of air bag safety following the out-of-position child study. These include out-of-position driver tests, vehicle crash sensor testing, and testing of advanced air bag systems. The out-of-position driver testing will focus on small-sized female occupants who are sometimes injured due to the close proximity to the steering-wheel air bag system. Testing will continue into fiscal year 1997.

While it is not part of the agency's current test program, NHTSA also continues to be interested in whether increasing the minimum vehicle speed at which an air bag deploys, and possibly having different deployment thresholds for the unbelted and belted conditions, may be an effective way to reduce air bag-induced injuries.

As the agency's test program continues, and as it receives relevant information from other sources, NHTSA will continue to assess whether other regulatory action is appropriate, including possible action to permit or facilitate downloading, and including possible action to address the vehicle speed at which air bags deploy. The agency invites interested persons to submit relevant information. NHTSA is particularly interested in additional information and analyses which address possible safety trade-offs, and information concerning the possible availability of design features that could make such trade-offs unnecessary. The agency expects to publish a Federal Register notice in the next few months announcing a public meeting on these technical subjects, reporting on its research to date, and laying out the issues to be addressed in the meeting.

Finally, the agency is continuing to evaluate the special problems faced by persons with disabilities. People with disabilities may have problems with air bags in addition to those that result primarily from their proximity to the air bag at the time of deployment. Persons with disabilities may also face unique problems due to the special adaptive equipment they need to drive, or vehicle modifications needed to accommodate the disability. The installation of certain adaptive equipment may require removal of the air bag, reduce the effectiveness of air bags by interfering with their deployment, or cause injury to a driver because of movement of the device during deployment. In September 1994, the agency issued a consumer advisory cautioning drivers with disabilities not to use steering control devices mounted on a bar installed across the steering wheel hub (a ''spanner bar'') of vehicles with driver-side air bags.

NHTSA currently lacks sufficient data to decide if air bags will pose unique problems for people with disabilities because of the interaction with the special adaptive equipment. Thus, the agency does not believe it is appropriate, at this time, to propose special requirements for air bags in vehicles adapted for people with disabilities. Nor does the agency have enough information to make recommendations. The agency has started a sled testing program to investigate the potential for injury from steering control devices used by people with disabilities and the possible interaction of these devices with deploying air bags. This testing is scheduled to be completed by September 1996. The agency will then analyze the test results and take appropriate actions.

IX. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures. The action is considered significant because of the degree of public interest in this subject. This action is also potentially economically significant under E.O. 12866. Should NHTSA decide to require smart air bags in the final rule, the final action would be economically significant and/or major, in which case additional public comment may be necessary.

As discussed earlier in this notice, NHTSA estimates that the costs of the new or enhanced labels that would be required by the proposed rule at between 15 and 25 cents per vehicle. The enhanced labels for child restraints would add between $0.05 and $1.00 per child restraint.

The costs of automatic cutoff devices, or other automatic systems to prevent injuries from bags, varies considerably, although the agency does not have accurate estimates of these costs. A weight sensor may cost $20 or more; a smart air bag system incorporating other technologies may add $50 or more in incremental cost; an air bag that utilizes different fold patterns and inflators may add very little incremental cost to the current air bag systems. These are all rough estimates. Comments are requested on the costs of various systems.

NHTSA estimates the cost of a manual cutoff device at a little over five dollars. Such a device would be optional, not required.

A full discussion of costs and benefits can be found in the agency's preliminary regulatory evaluation for this rulemaking action, which is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

The proposal primarily affects motor vehicle manufacturers and child restraint manufacturers. Almost all motor vehicle manufacturers would not qualify as small businesses. The agency knows of eight manufacturers of child restraints, two of which NHTSA considers to be small businesses. However, since the agency is only proposing a minor labeling change for child restraints, the proposed requirements would not have any significant economic impact.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

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

X. Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

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

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

All comments received by NHTSA before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571–FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

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

2. Section 571.208 would be amended by removing S4.5.4.1, redesignating S4.5.1(e) as S4.5.1(f) and S4.5.4.2 through S4.5.4.4 as S4.5.4.1 through S4.5.4.3, revising S4.1.5.1(b), S4.5.1(b) through (d), and S4.5.4, and by adding a new S4.5.1(e) and S4.5.5, to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S4.1.5.1 *Front/angular automatic protection system.*

* * * * *

(b) For the purposes of sections S4.1.5 through S4.1.5.3 and S4.2.6 through S4.2.6.2 of this standard, an *inflatable restraint system* means an air bag that is activated in a crash.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) *Labels on sun visor above seating positions equipped with an inflatable restraint system.* Except as provided in S4.5.1(e) of this standard, each vehicle manufactured on or after (the date 60 days after publication of the final rule would be inserted) shall have labels permanently affixed to both sides of the sun visor over each front outboard seating position that is equipped with an inflatable restraint system. The label on the side of the visor visible when the visor is in the stowed position and the label on the side of the visor visible when the visor is in the extended position shall conform in size, content, color, and format to the appropriate sun visor label shown in Figures 6a, 6b and 6c of this standard. No additional information about air bags or the need to wear seat belts shall appear on sun visors, except for air bag maintenance information provided pursuant to S4.5.1(a) of this standard or the utility vehicle label provided pursuant to 49 CFR 575.105(c)(1).

(c) *Label on Passenger-Side End of Dash or on Passenger-Side Door.* Except as provided in S4.5.1(e) of this standard, each vehicle manufactured on or after (the date 60 days after publication of the final rule would be inserted) that is equipped with an inflatable restraint system for the passenger position shall have a label permanently affixed to the passenger-side end of the vehicle dash or the passenger-side door. The label shall be positioned so that it is plainly visible and easily readable when the passenger-side door is fully opened. This label shall conform in size, content, color, and format to the appropriate passenger-side dash/door label shown in Figures 7a and 7b of this standard.

(d) *Label in the middle of the dash.* Except as provided in S4.5.1(e) of this standard, each vehicle manufactured on or after (the date 60 days after publication of the final rule would be) that is equipped with an inflatable restraint system for the passenger position shall have a label affixed to the middle of the dash. This label shall be positioned so that it is conspicuous and easily readable for a seated occupant in any front designated seating position. This label shall conform in size, content, color, and format to the middle of the dash label shown in Figure 8 of this standard.

(e) (1) The labels specified in S4.5.1(b), (c) and (d) of this standard are not required for vehicles that have a smart passenger air bag meeting the

criteria specified in S4.5.5 of this standard.

(2) A manufacturer may, at its option, place the label specified in S4.5.1(b) of this standard for the side of the visor visible when the visor is in the extended position, on the side of the visor visible when the visor is in the stowed position. If the manufacturer selects this option, it need not provide a label on the side of the visor visible when the visor is in the extended position.

* * * * *

S4.5.4 P*assenger Air Bag Manual Cutoff Device.* Passenger cars, trucks, buses, and multipurpose passenger vehicles which do not have smart passenger air bags (as defined in S4.5.5 of this standard) may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all of the conditions in S4.5.4.1 through S4.5.4.3 of this standard are satisfied.

* * * * *

S4.5.5 *Smart Passenger Air Bags.* For purposes of this standard, a smart passenger air bag is a passenger air bag which:

(a) Provides an automatic means to ensure that the air bag does not deploy when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat;

(b) Provides an automatic means to ensure that the air bag does not deploy when [In the final rule, the agency would include specific, broadly-inclusive language that allows objective identification of other deactivation technologies (e.g., sensors of occupant size or proximity-to-dashboard) that would automatically prevent an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and unbelted or improperly belted children]; or

(c) Deploys in a manner that [In the final rule, the agency would include specific, broadly-inclusive language that allows objective identification of technologies that would automatically prevent an air bag from injuring the two groups of children that experience has shown to be at special risk from air bags: infants in rear-facing child seats, and unbelted or improperly belted children].

* * * * *

3. Section 571.208 would be amended by adding a new heading preceeding the figures and new figures 6a, 6b, 6c, 7a, 7b, and 8 at the end of the section as follows:

Figures to § 571.208

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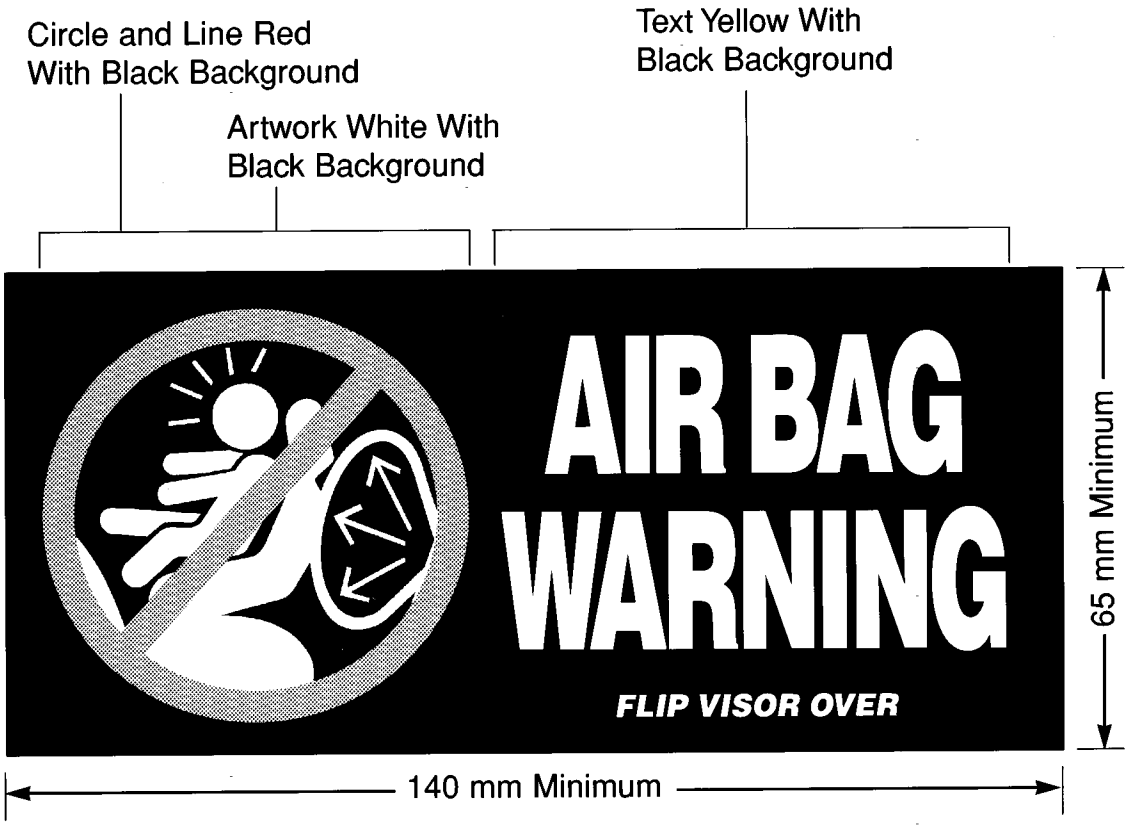

Figure 6a. Sun Visor Label Visible When Visor is Stowed.

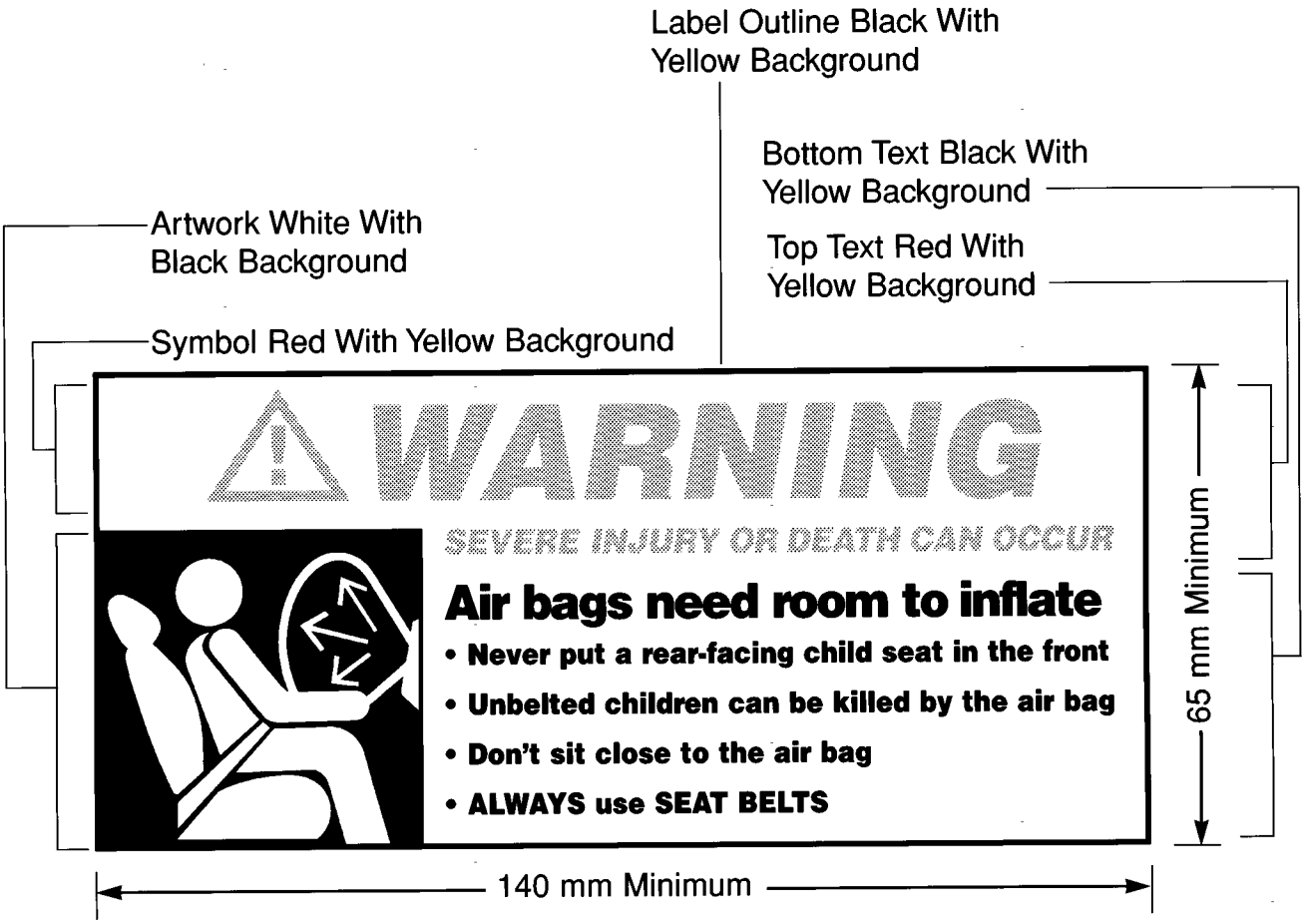

Figure 6b. Sun Visor Label Visible When Visor Is Extended (if vehicle does not have an air bag cut off switch).

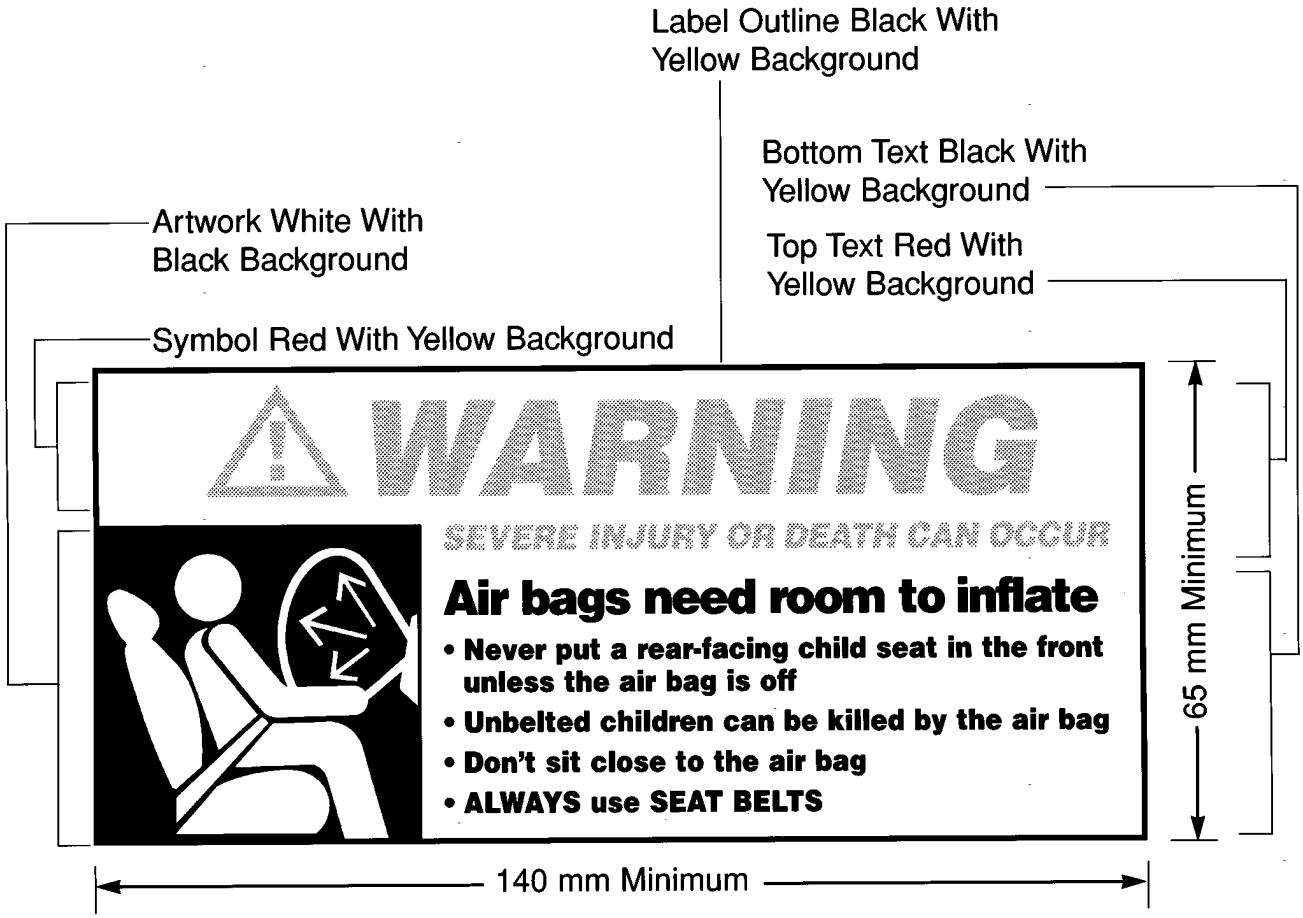

Figure 6c. Sun Visor Label Visible When Visor Is Extended (if vehicle has an air bag cut off switch).

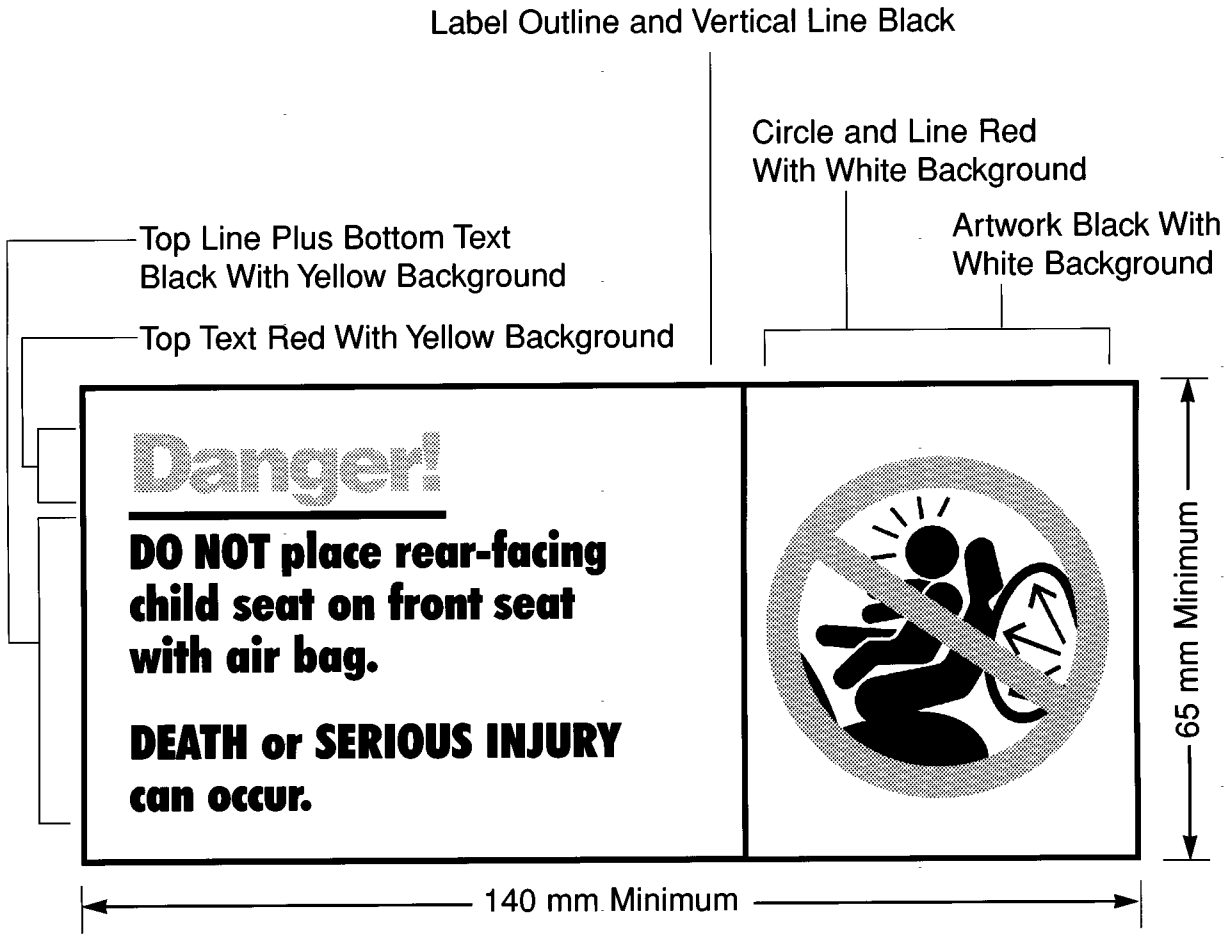

Figure 7a. Label on Passenger Side End of Dash or on Passenger Side Door (if vehicle does not have an air bag cut off switch).

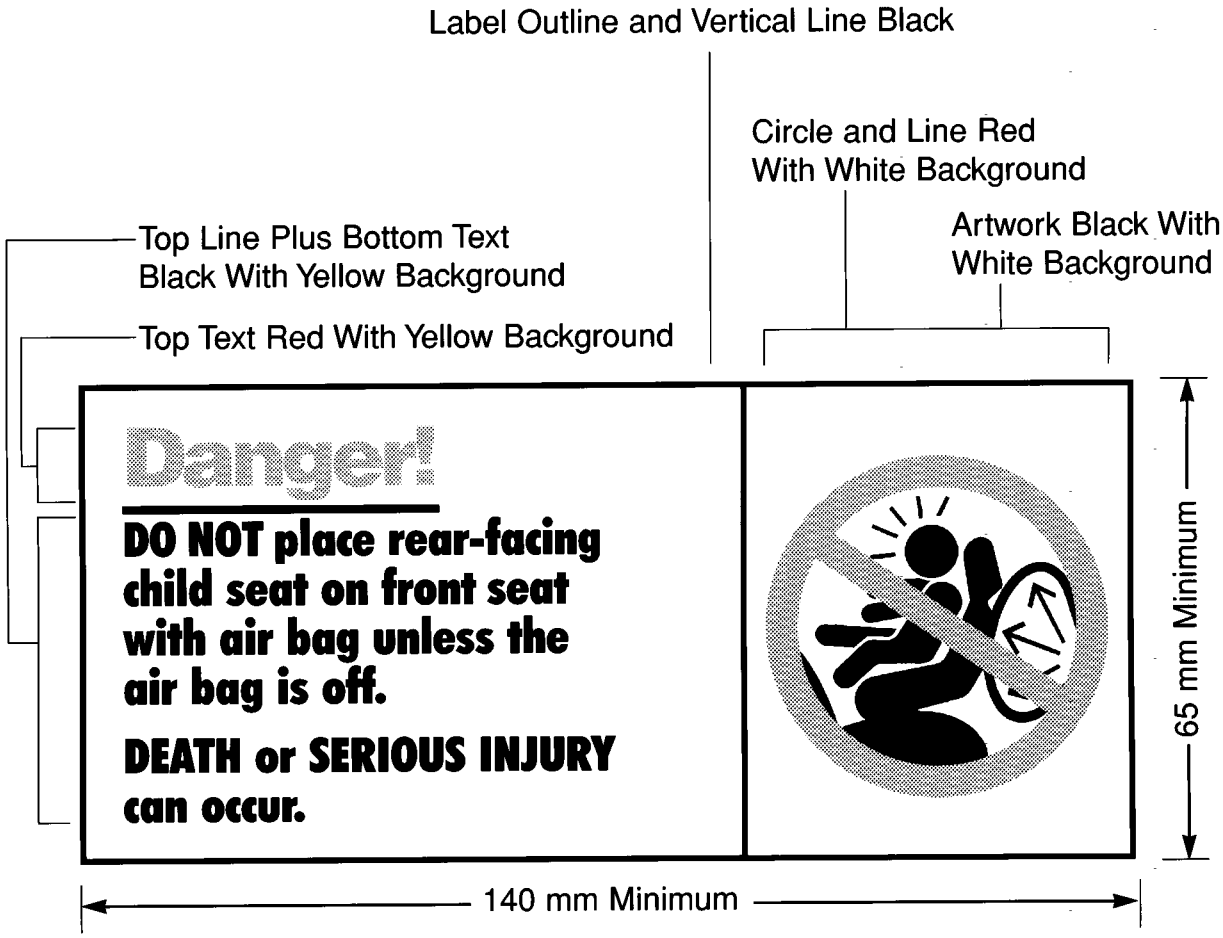

Figure 7b. Label on Passenger Side End of Dash or on Passenger Side Door (if vehicle has an air bag cut off switch).

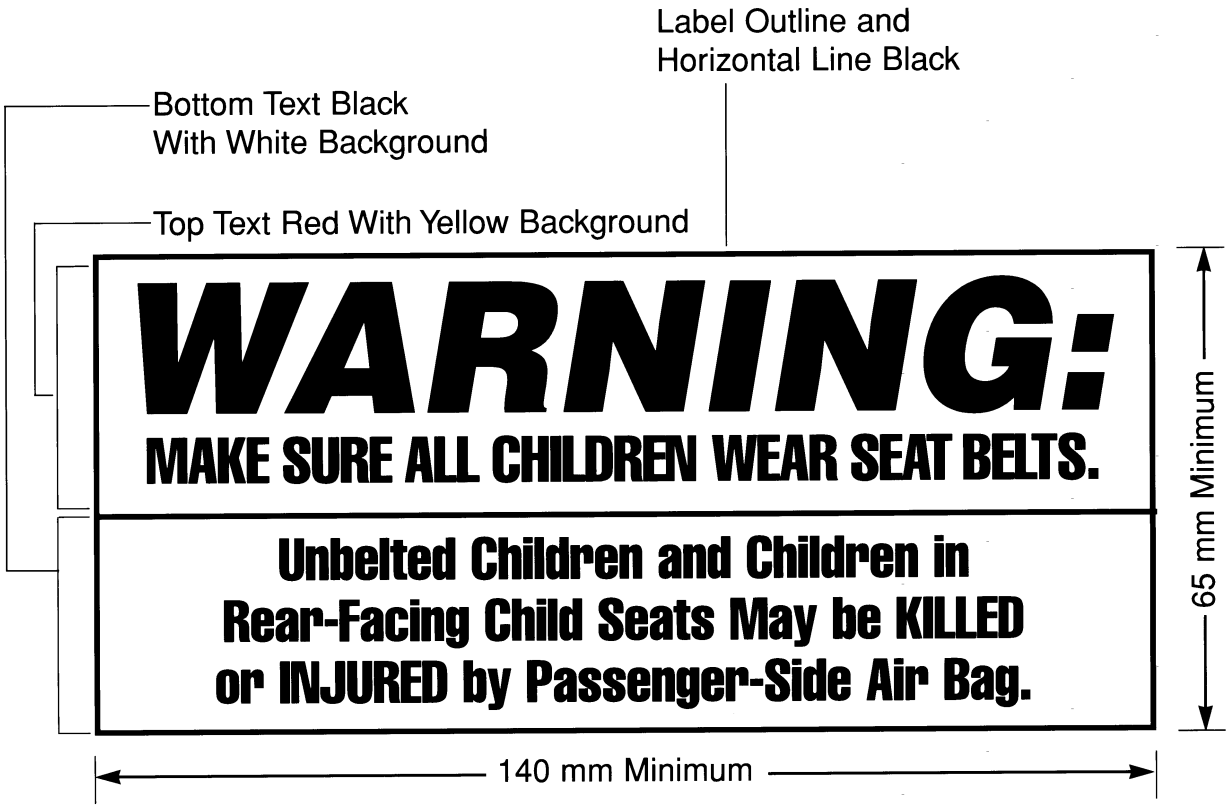

Figure 8. Warning Label in Middle of Dash.

4. Section 571.213 would be amended by adding S5.5.2(k)(4) to read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S5.5.2 * * *

(k) * * *

(4) In the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after (the date 180 days after publication of the final rule would be inserted), instead of the warning specified in S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii) of this standard, a label that conforms in size, content, color, and format to Figure 10 of this standard shall be permanently affixed to the outer surface of the cushion or padding in the area where a child's head would rest, so that the label is plainly visible and easily readable.

* * * * *

5. Section 571.213 would be amended by adding new figure 10 at the end of the section as follows:

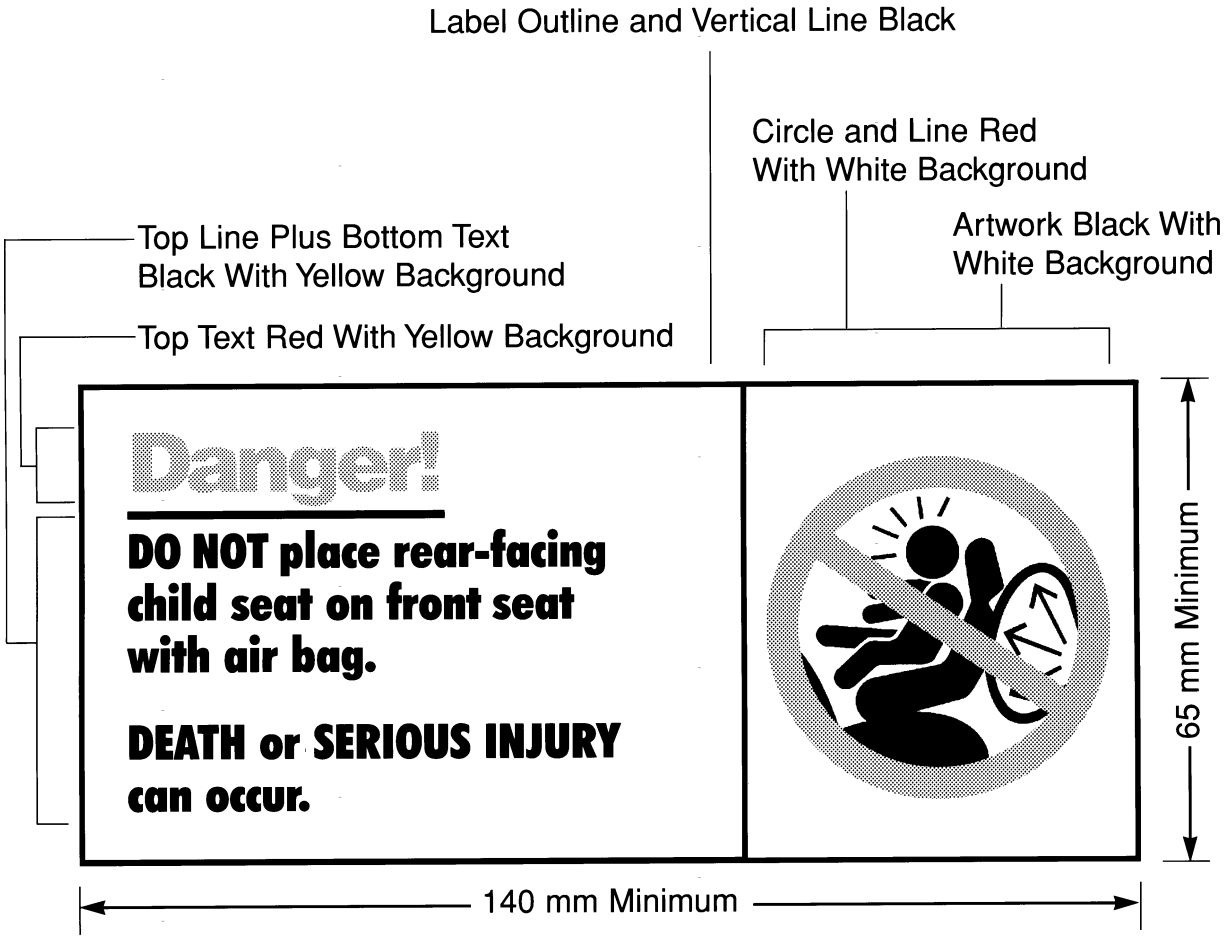

Figure 10. Label on Rear Facing Child Seat.

Issued on July 31, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–19923 Filed 8–1–96; 1:48 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 042696A]

RIN: 0648–AH05

Fisheries of the Northeastern United States; Amendment 8 to the Summer Flounder and Scup Fishery Management Plan; Resubmission of Disapproved Measures

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS issues this document to advise that the Mid-Atlantic Fishery Management Council (Council) has resubmitted modifications of three previously disapproved measures contained in Amendment 8 to the Fishery Management Plan for the Summer Flounder and Scup Fisheries for Secretarial approval and is requesting comments from the public.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: All comments should be sent to Dr. Andrew Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope ''Comments on Summer Flounder and Scup Plan''.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of the resubmission portion of Amendment 8 and other supporting documents are available from David R. Keifer, Executive Director, Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires each regional fishery management council to submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires the Secretary, upon receiving the plan or amendment, to publish immediately notification that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

The Regional Director of NMFS disapproved six measures proposed in Amendment 8 upon preliminary evaluation of the amendment as authorized in section 304(a)(1)(A)(ii) of the Magnuson Act. These provisions would have: Conferred moratorium permit eligibility upon vessels that were re-rigging on January 26, 1993, and landed scup prior to the implementation of Amendment 8; required vessels to keep scup catches of less than 4,000 lb (1,814 kg) (the level at which the minimum codend mesh requirement is triggered) in 100–lb (45.4–kg) containers to enhance enforcement; required NMFS to accept state dealer permits in lieu of the required Federal permit; denied access to the exclusive economic zone to vessels from states that do not implement recreational measures equivalent to those specified in Amendment 8; deferred to state regulations to define scup pot requirements for the residents of that state; and required any landings in excess of the recreational harvest limit to be subtracted from the harvest limit of the following year.

The Council and the Atlantic States Marine Fisheries Commission Summer Flounder, Scup, and Black Sea Bass Board met on May 15, 1996. During that meeting, they reviewed the disapproved measures, revised three of those measures that were preliminarily disapproved, and voted to resubmit the revised measures under section 304(b)(3)(A) of the Magnuson Act. The resubmitted measures are the re-rigging measure, the scup pot and trap definition, and the annual recreational harvest limit.

Day 1 of this rule is July 30, 1996. Proposed regulations for these provisions are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19925 Filed 8–1–96; 11:44 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 152
Tuesday, August 6, 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

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of loan programs regarding rice, feed grains, wheat, oilseeds, and farm-stored peanuts as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act).

DATES: Comments on this notice must be received on or before October 7, 1996 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Margaret Wright, Agricultural Program Specialist, Price Support Division, USDA, FSA, STOP 0512, P.O. Box 2415, Washington, DC 20013, (202) 720–8481.

SUPPLEMENTARY INFORMATION:

Title: Loan Program.

OMB Number: 0560–0087.

Expiration Date: February 28, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The 1996 Act provides for loans to eligible producers on eligible commodities. Producers are required to meet certain eligibility requirements to ensure the integrity of the program so that only eligible producers receive loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .2155 hours per response.

Respondents: Individual producers and small businesses.

Estimated Number of Respondents: 438,200.

Estimated Number of Responses per Respondent: 3.26.

Estimated Total Annual Burden on Respondents: 308,072 hours.

Comments regarding: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Margaret A. Wright, Agricultural Program Specialist, USDA-Farm Service Agency-Price Support Division, STOP 0512, P.O. Box 2415, Washington, D.C. 20013; telephone (202) 720–8481. Copies of the information collection may be obtained from Margaret Wright at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 31, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–19905 Filed 8–5–96; 8:45 am]

BILLING CODE 3410–05–P

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to an information collection currently approved in support of the Cooperative Marketing Association (CMA) regulations under the CCC Charter Act. The automation of certain procedure has caused a decrease in burden hours.

DATES: Comments on this notice must be received on or before October 7, 1996 to be assured consideration.

ADDITIONAL INFORMATION: James K. Tegeler, Agricultural Program Specialist, Price Support Division, Farm Service Agency, USDA, STOP 0512, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–3110.

SUPPLEMENTARY INFORMATION:

Title: Regulations for Cooperative Marketing Associations, 7 CFR Part 1425.

OMB Control Number: 0560–0040.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0040, as identified above, is needed to enable FSA to effectively administer the regulation relating to eligibility of Cooperative Marketing Associations (CMA), under related reporting and recordkeeping requirements and CMA approval under the CCC Charter Act.

The CCC is administered by the Farm Service Agency. Although there are several cooperative marketing associations types covered under CCC functions, the certification and reporting requirements within a particular type are essentially the same as those across all CMA types and the forms used for eligible cooperatives are essentially the same. These forms are furnished to the CMA or used by the Price Support Division employees, employed by FSA, to secure and record information about the CMA and determine that the CMA is eligible to obtain price support on behalf of its members. The general purpose of the forms are identical, i.e., to provide CCC a basis to determine whether or not the CMA meets the terms and conditions which a CMA must meet in order to be approved to obtain from CCC price support on behalf of its members. Certain information

requirements, such as producer eligibility and payment limitation files, are automated, which decreases burden hours.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 14 minutes per response.

Respondents: Cooperatives, farms, or business organizations.

Estimated Number of Respondents: 103.

Estimated Number of Responses per Respondent: 144.

Estimated Total Annual Burden on Respondents: 26,458 hours.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to James K. Tegeler, Program Specialist, Price Support Division, Farm Service Agency, USDA, STOP 0512, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–3110. Copies of the information collection may be obtained from James Tegeler at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 31, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–19906 Filed 8–5–96; 8:45 am]

BILLING CODE 3410–05–P

Natural Resources Conservation Service

Attoyac Bayou Watershed, Nacogdoches, TX

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: Harry W. Oneth, State Conservationist, responsible Federal Officer for projects adminstered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Texas, is hereby providing notification that a record of decision to proceed with the installation of MPS No. 23A of the Attoyac Bayou Watershed is available. Single copies of this record of decision may be obtained from Harry W. Oneth at the address show below.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone 817–774–1214.

Dated: July 26, 1996.

Tomas M. Dominguez,

Deputy State Conservationist.

[FR Doc. 96–19991 Filed 8–5–96; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—Basic Demographic Items.

Legal Authority: 13 U.S.C. 182.

Form Number(s): CPS–263, CPS–264, BC–1428, BC–1433.

Agency Approval Number: 0607–0049.

Type of Request: Revision of a currently approved collection.

Burden: 15,168.

Number of Respondents: 48,000.

Avg Hours Per Response: 1.58 minutes.

Needs and Uses: The Current Population Survey (CPS) is a monthly survey conducted in approximately 48,000 households throughout the United States. Data on demographic and labor force characteristics are collected from a sample of households which represent the U.S. population. Households remain in the sample for 2 years and are interviewed 8 times over that period. The basic monthly questionnaire is periodically supplemented with additional questions which address specific needs. The Bureau of the Census uses the data to compile monthly averages of household size and composition, age, education, ethnicity, marital status and various other characteristics at the U.S. level. The Bureau of Labor Statistics (BLS) sponsors and will request separate clearance for the labor force portion of the CPS. BLS uses this data in their monthly calculations of employment and unemployment. This request is for clearance of basic demographic items such as age, marital status, sex, Armed Forces status, education, race, origin, family income, and country of birth. These basic demographic questions are asked of household members in the first interview and are updated during remaining interviews. The demographic items provide the basic demographic descriptions for the survey population.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19872 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–07–M

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—November 1996 Voting and Registration Supplement.

Legal Authority: 13 U.S.C. 182.

Form Number(s): None.

Agency Approval Number: 0607–0466.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 1,200 hours.

Number of Respondents: 48,000.

Avg Hours Per Response: 1.5 minutes.

Needs and Uses: The November Voting and Registration Supplement to the Current Population Survey (CPS) is conducted once every two years. Data are collected on voter and nonvoter behavior and correlated with demographic characteristics. We will collect this data as part of the November 1996 CPS through a series of questions which will be part of the automated CPS instrument. The supplement yields statistics on voter and nonvoter characteristics and current voter trends which are useful for election officials who formulate policies relating to the voting and registration process. These data enable policymakers to keep up-to-date with issues such as changes in voter participation based on such characteristics as age, sex, race, ethnicity, and educational attainment. Data are used by colleges, political party committees, research groups, and other private organizations. The November 1996 collection will include the same questions asked previously and will include two additional items on motor-voter registration.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503

Dated: July 30, 1996.

Linda Engelmeier,

Acting Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19873 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–588–703]

Certain Internal-Combustion, Industrial Forklift Trucks From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers three manufacturers/exporters of the subject merchandise to the United States during the period June 1, 1993 through May 31, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Thomas Barlow of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On June 7, 1988, the Department published in the Federal Register (53 FR 20882) the antidumping duty order on certain internal-combustion, industrial forklifts from Japan. On June 7, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 29411). Petitioners requested that we conduct a review of three respondents, Nissan Motor Company (Nissan), Toyota Motor Corporation (TMC), and Toyo Umpanki Company, Ltd (TCM). On July 15, 1994, we initiated an administrative review of this order for the period June 1, 1993, through May 31, 1994 (59 FR 36160). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing or handling of articles. Less than complete forklift trucks are defined as imports which include a frame, by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. This merchandise is currently classifiable under the Harmonized System (HTS) item numbers 8427.20.00, 8427.90.00, and 8431.20.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Such or Similar Comparisons

In this administrative review, respondents made no sales of identical merchandise in the home and U.S. market. Therefore, for all respondent companies, pursuant to section 771(16) of the Act, we established categories of ''such or similar'' merchandise on the basis of load (lifting) capacity of the forklift. Within these categories, we based our product comparisons on six primary characteristics, to which we assigned ''points'' indicating their relative importance. These characteristics and their point totals are as follows: tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; engine size, 1 point. If no matches were found at the 21-point level at the exact or same load capacity, then matches of forklift trucks were found with tire type taking preference. For a more detailed description of the product matching criteria, see Section VII of the Department's Questionnaire, June 16, 1995, Product Comparisons

(Concordance) And Adjustments For Differences In Merchandise.

United States Price (USP)

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. The calculation of United States price for each respondent is detailed below.

Nissan: The information submitted by Nissan in this review, as well as our consultations with the Customs Service, indicates that Nissan made no sales of subject merchandise during the period of review.

TMC: We calculated purchase price and ESP based on packed and delivered, f.o.b., and c&f prices to unrelated customers in the United States. Pursuant to section 772(d)(2) of the Act, we made deductions from purchase price and ESP, where appropriate, for foreign inland freight, export brokerage, U.S. brokerage and handling, ocean freight, marine insurance, and U.S. inland freight. We also made deductions for discounts. For sales made to unrelated customers which were financed through Toyota's credit corporation, we added interest revenue earned to USP. For ESP sales, we made further deductions from USP under section 772(e) (1) and (2) of the Act for credit expenses, commissions, warranties, direct advertising, and indirect selling expenses (which include inventory carrying costs, advertising, product liability expenses, and selling expenses). For ESP transactions involving further manufacturing (*e.g.*, swapping forks and masts, and installation of certain accessories by a U.S. related entity of TMC) prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. Also, based on a decision by the Court of Appeals for the Federal Circuit (*Federal Mogul* v. *United States*, CAFC No. 94–1097), the Department returned to the methodology of adding the absolute amount of consumption taxes collected in the home market to both U.S. price and home market price. Pursuant to this court decision and in accordance with section 772(d)(1)(C) of the Act, we calculated this amount by multiplying the tax rate in the home market by home market price net of discounts and rebates.

We did not incorporate operating leases into our calculations of U.S. Price. In accordance with 19 CFR 353.2(t), we accounted for capital leases in our preliminary margin calculations.

TCM: The information submitted by TCM in this review, as well as our consultations with the Customs Service, indicates that TCM made no sales of subject merchandise during the period of review.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value (FMV) on the basis of home market sales and, where appropriate, constructed value. The calculation of FMV for Toyota is detailed below.

Petitioners alleged that Toyota sold forklift trucks in Japan at prices below the cost of producing the merchandise. Based on our analysis of the sales-below-cost-of-production (COP) allegation filed by petitioners, and in accordance with section 773(b) of the Act, we determined that there were reasonable grounds to believe or suspect that such sales were being made. We therefore initiated a COP investigation.

In accordance with 19 CFR 353.51(c), we calculated the COP based on the sum of the costs of materials and fabrication employed in producing such or similar merchandise plus selling, general and administrative expenses, and all costs and expenses incidental to placing such or similar merchandise in condition, packed, and ready for shipment. In our COP analysis, we used the home market sales and COP information provided by TMC in its questionnaire and supplemental questionnaire responses.

We performed a model-specific COP test in which we examined whether each home market sale was priced below the merchandise's COP. For each model, we compared the COP to the reported home market unit price, net of price adjustments and movement expenses. In accordance with section 772 (b) of the Act, we also examined whether the home market sales of each model were made at prices below their COP in substantial quantities over an extended period of time. Toyota did not submit evidence that such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, we assumed that prices would not recover the costs in the normal course of trade.

For each model where less than 10 percent, by quantity, of the home market sales during the period of review (POR) were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where 10 percent or more, but not more than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where more than 90 percent of the home market sales during the POR were priced below the COP and over an extended period of time, we disregarded all sales of the model from our calculation of FMV and used the constructed value (CV) of those models as described below. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Orders (in Part)* 59 FR 9463 (February 28, 1994).

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which each product was sold below cost to the number of months during the POR in which each model was sold. If a product was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POR.

For those models that had sufficient above-cost sales, we calculated FMV based on delivered prices and f.o.b. prices to unrelated and related customers in the home market. Where appropriate, and in accordance with section 773(a)(4)(B) of the Act, we made deductions from the home market price for inland freight, inland insurance, and rebates. Since no packing costs were claimed on the home market sales, we added U.S. packing to the home market price.

In accordance with section 773(a)(4)(B) of the Act and 19 CFR 353.56, for comparisons involving ESP and purchase price sales transactions, we made deductions from the home market price, where appropriate, for credit expenses, warranties, and advertising. We made an adjustment to FMV for indirect selling expenses (which included incentive program expenses, inventory carrying costs, product liability expenses, and other indirect expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. We

limited the indirect expense deduction on home market sales by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.56(b)(2). Pursuant to section 773(a)(4)(C) of the Act and 19 CFR 353.57, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

We used CV as FMV for those U.S. sales for which there were no contemporaneous sales of the comparison home market model or insufficient sales at or above the COP. We calculated CV, in accordance with section 773 (e) of the Act, as the sum of the cost of manufacture (COM) of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit and U.S. packing. Pursuant to 19 CFR 353.51, the COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, and in accordance with section 773(e)(1)(B)(i) of the Act, we used the larger of the actual SG&A expenses reported by Toyota or 10 percent of the COM, the statutory minimum for general expenses. For home market profit, and in accordance with section 773(e)(1)(B)(ii) of the Act, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of COM and general expenses. We deducted home market direct selling expenses and added U.S. direct selling expenses to CV.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 1, 1993 through May 31, 1994:

Manufacturer	Margin (percent)
Toyota Motor Corporation	43.41
Nissan	[1]7.36
Toyo Umpanki, Ltd.	[1]4.48

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A hearing, if requested, will be held 44 days from the date of publication of the preliminary results at the main Commerce Department building.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific *ad valorem* duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between foreign market value and United States price, by the total United States price value of the sales compared, and adjusting the result by the average difference between United States price and customs value for all merchandise examined during the POR.) The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain internal-combustion, industrial forklift trucks from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for TMC will be the rate established in the final results of this administrative review, unless these final results are preceded by the final results in the 1994/1995 administrative review; (2) for previously reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this review, or a prior administrative review, and who are unrelated to the reviewed firm or any previously reviewed firm will be 39.45 percent , the ''all others'' rate established in the amended final notice of the investigation by the Department (53 FR 20882, June 7, 1988).

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–20000 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–031]

Large Power Transformers From Italy; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Finding in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Finding in Part.

SUMMARY: In response to requests by the petitioner, ABB Power T&D Co., Inc. (ABB), and by Tamini Costruzioni Elettromeccaniche (Tamini), a manufacturer/exporter of transformers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on large power

transformers from Italy. The review covers exports of subject merchandise by Tamini to the United States during the period from June 1, 1994, through May 31, 1995.

We have preliminarily determined that Tamini did not make sales at prices below normal value (NV) during the period of review (POR). If these preliminary results are adopted in our final results of administrative review, we intend to revoke the antidumping duty order with respect to Tamini based on three years of sales at not less than normal value. *See Intent to Revoke, infra.* Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Background

On June 6, 1995, the Department published a notice of ''Opportunity to Request Administrative Review'' (60 FR 29821) of the antidumping finding on large power transformers from Italy (37 FR 11772, June 14, 1972). ABB and Tamini both requested administrative reviews on June 30, 1995. We published a notice of initiation of the review on July 14, 1995 (60 FR 36260), covering the period June 1, 1994, through May 31, 1995. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of large power transformers (LPTs); that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term ''transformers'' includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers shipments of transformers by Tamini during the period June 1, 1994, through May 31, 1995.

Verification

In accordance with section 782(i) of the Act, we conducted a verification of the information Tamini submitted during the review at Tamini's headquarters in Melegnano, Italy, from May 20–24, 1996.

United States Price

We reviewed three U.S. sales that entered into the United States during the POR. In calculating U.S. prices, the Department used export price (EP), as defined in section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter outside the United States to unaffiliated U.S. purchasers prior to the date of importation. We calculated EP based on the packed price to the U.S. customer. We made adjustments to EP for transportation expenses and duty drawback.

Normal Value

Although the home market is viable, based on a review of product specifications, we have preliminarily determined that the LPTs sold in the home market during the period of review are not appropriate matches to the LPTs involved in the three U.S. sales. *See Memorandum from Andrea M. Chu to File: Preliminary Analysis Memo for Tamini Costruzioni Elettromeccaniche, 1994–95 Administrative Review* (July 27, 1996). Therefore, pursuant to section 773(a)(4) of the Act, we calculated NV based on the constructed value of the model sold in the United States.

In accordance with section 773(e) of the Act, the constructed value includes the costs of (1) materials and fabrication, (2) selling, general, and administrative (SG&A) expenses, (3) profit, and (4) packing for shipment to the United States. Where possible, we use an amount based on sales of the foreign like product, in the ordinary course of trade, for consumption in the home market. *See* section 773(e)(2)(A) of the Act. If such information is not available, we calculate profit using one of three non-hierarchical alternatives. The third alternative is any other reasonable method, capped by the amount normally realized on sales in the foreign country of the general category of products. *See* section 773(e)(2)(B)(iii) of the Act. The Statement of Administrative Action states that, if the Department does not have the data to determine this profit cap, it may apply alternative three on the basis of ''the facts available.''

Tamini stated in its questionnaire response that it was unable to provide a profit rate attributable to sales made for consumption in Italy because it does not maintain records of the profitability of LPTs by market. At verification, we confirmed that Tamini does not maintain market-, product-, or sale-specific profit information. We also calculated estimated profits on selected home market sales, all of which were less than Tamini's worldwide profit rate. *See Memorandum from Andrea M. Chu to File: Cost Verification Report of Tamini Costruzioni Elettromeccaniche, 1994–95 Administrative Review.* As a result of our analysis of the information submitted by Tamini, as well as our findings at verification, we have preliminarily determined that the use of Tamini's worldwide profit rate for transformer sales, as derived from its 1994 financial statements, is a reasonable method for calculating profits given the facts available in this case. Although we do not have the data to determine the profit cap regarding profits normally realized by LPT producers in Italy, we have preliminarily determined that the use of this rate is a reasonable method of calculating profit, within the meaning of section 773(e)(2)(B)(iii), based on the facts available. See section 776(a) of the Act.

In accordance with sections 773(a)(6)(C) and 773(a)(8) of the Act, we made circumstance-of-sale adjustments for differences in credit expenses, direct bank charges, warranty expenses, technical service expenses, and commissions. Since commissions were granted only in the home market, we offset the commission adjustment by adding U.S. indirect selling expenses to the constructed value in accordance with section 353.56 of our regulations.

Intent To Revoke

Tamini requested, pursuant to 19 C.F.R. 353.25(b), revocation of the order with respect to its sales of the merchandise in question and submitted the certification required by 19 C.F.R. 353.25(b)(1). Tamini was not required to provide the certification required by 19 C.F.R. 353.25(b)(2) (a statement in writing agreeing to its immediate reinstatement in the order if the Department concludes, subsequent to revocation, that the respondent sold merchandise at less than normal value) because the Department has not previously determined that Tamini sold subject merchandise in the United States at less than NV. Based on the preliminary results in this review and the two preceding reviews (*see Large Power Transformers from Italy; Final Results of Antidumping Duty Administrative Review,* 59 FR 48851 (September 23, 1994), and *Large Power Transformers from Italy; Final Results of Antidumping Duty Administrative Review,* 61 FR 37443 (July 18, 1996), Tamini has demonstrated three consecutive years of sales at not less than NV.

Given the results of the two preceding reviews, if the final results of this review demonstrate that Tamini sold the merchandise at not less than NV, and if we determine that it is not likely that Tamini will sell the subject merchandise at less than NV in the future, we intend to revoke the order with respect to merchandise produced and exported by Tamini.

Preliminary Results of Review

As a result of our comparison of USP to NV, we preliminarily determine that a weighted-average margin of zero percent exists for sales of LPTs made to the United States by Tamini during the period June 1, 1994, through May 31, 1995.

Parties to this proceeding may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Service of all briefs and written comments must be in accordance with 19 C.F.R. 353.38(e). The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing, within 180 days of publication of these preliminary results of review.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) for Tamini, if we revoke the order with respect to its merchandise, suspension of liquidation and cash deposits will no longer be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 92.47 percent, which is the ''new shipper'' rate established in the first final results of review of this finding. *See Large Power Transformers from Italy: Notice of Final Results of Administrative Review,* 49 FR 31313 (August 6, 1984). For a further explanation of our policy concerning the all other deposit rate in this case, *see Large Power Transformers from Italy: Notice of Final Results of Administrative Review,* 59 FR 48851 (September 23, 1994). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5).

Dated: July 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19999 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–847]

Initiation of Antidumping Duty Investigation: Persulfates From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Irene Darzenta, or Howard Smith at (202) 482–3965, 482–6320, and 482–5193 respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

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 Round Agreements Act (''URAA'').

The Petition

On July 11, 1996, the Department of Commerce (''the Department'') received a petition filed in proper form by FMC Corporation (''FMC'' or ''petitioner''). On July 22 and 25, 1996, the petitioner submitted a supplement to the petition in response to the Department's request for additional information. The supplement contained updated normal values and revised margin calculations.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of persulfates from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

Because the petitioner is an interested party, as defined under section 771(9)(C) of the Act, it has standing to file the petition.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner is the only known U.S. producer of persulfates. Accordingly, the Department determines that the petition is supported by the domestic industry.

Scope of Investigation

The products covered by this petition are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Export Price

The petitioner based export prices for ammonium, potassium, and sodium persulfates on price quotes obtained from U.S. importers. Petitioner reduced these prices to account for estimated importer mark-ups, and for U.S. duties and customs fees, ocean freight, insurance, foreign inland freight and foreign handling fees.

Normal Value

In previous investigations, the Department has determined that the PRC is a nonmarket economy (''NME'') country within the meaning of section 771(18) of the Act. *See, e.g., Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China* (60 FR 56045, 56047 (November 6, 1995)). In accordance with section 771(18)(C), the presumption of NME status for the PRC shall continue for purposes of the initiation of this investigation. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the NME status of the PRC and the assignment of separate rates to individual exporters. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC* (59 FR 22585 (May 2, 1994))).

In antidumping investigations in which the comparison market is not a market economy, section 773(c) of the Act requires that the normal value of the foreign like product be based on the producer's factors of production valued in a surrogate market economy country or countries that is/are a significant producer of comparable merchandise and at a level of economic development comparable to the NME country. Publicly available published information from India was used by the petitioner to value the factors of production because India is the only persulfate producer among surrogate countries that the Department typically uses for the PRC. The petitioner based the fixed factory overhead, selling, general and administrative, and profit elements of its normal value calculation on data from an annual report of an Indian producer of hydrogen peroxide. According to the petitioner, it relied on data from a producer of hydrogen peroxide because public financial data for Indian persulfate producers was not available, and the production processes for hydrogen peroxide and persulfates are comparable.

The petitioner based the quantities of factors (*i.e.*, raw materials, labor, and energy) used in production of ammonium, potassium, and sodium persulfates on the experience of certain PRC producers. The petitioner relied on its own production experience where PRC usage factors were not available. *See, Initiation of Antidumping Duty Investigation: Certain Brake Drums and Certain Brake Rotors from the People's Republic of China* (61 FR 14740 (April 3, 1996)). The petitioner maintains that it is reasonable to use its own production experience because the production process is the same whether the persulfates are produced in the United States or in the PRC.

Based on comparisons of the export prices with normal values constructed from factors of production, the calculated dumping margins range from 15.87 percent to 182.37 percent. If it becomes necessary at a later date to consider the petition as a source for facts available, we may re-examine the information in the petition and, if necessary, revise the margin calculations therein.

Normal Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of persulfates from the PRC are being, or are likely to be, sold at less than fair value.

Initiation of Investigation

We have examined the petition on persulfates from the PRC and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of material injury or threat of material injury to the domestic producers of domestic like products by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of persulfates from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless the investigation is extended, we will make our preliminary determination by December 18, 1996.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of the PRC.

International Trade Commission (''ITC'') Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by August 26, 1996, whether there is a reasonable indication that imports of persulfates from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in this investigation will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: July 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19997 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–DS–P

A–201–504

Porcelain on Steel Cookware From Mexico; Antidumping Duty Administrative Review; Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary and final results of the ninth antidumping duty administrative review of the antidumping duty order on porcelain on steel cookware from Mexico. The review covers the period December 1, 1994 through November 30, 1995.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas F. Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4195 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limits for the preliminary results until January 2, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. (*See* Memorandum to Robert S. LaRussa dated July 29, 1996.) We will issue our final results for this review 120 days from the publication of our preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: July 29, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–20001 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–533–808]

Certain Stainless Steel Wire Rods From India; Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the antidumping duty order on certain stainless steel wire rods from India, which has a December anniversary date. In accordance with 19 CFR 353.22(h)(1995), we are initiating this new shipper administrative review.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request on June 28, 1996, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.22(h) of the Department's Interim Regulations (60 FR 25130, 25134 (May 11, 1995)) (Interim Regulations) for a new shipper review of the antidumping duty order on certain stainless steel wire rod from India, which has a December anniversary date. *Antidumping Duty Order: Certain Stainless Steel Wire Rods from India,* 58 FR 63335, (December 1, 1993). *See also* memorandum to the file dated July 30, 1996.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act, and section 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on certain stainless steel wire rod from India. We will issue the preliminary results of these reviews not later than 180 days from the date of publication of this notice and the final results within 90 days after issuance of the preliminary results, unless these time limits are extended in accordance with section 751 (a) (2) (B) (iv) of the Act.

Antidumping duty proceeding	Period to be reviewed
India: Certain Stainless Steel Wire Rod, A–533–808 ..... Isibars Limited.	1/01/96–6/30/96

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 353.22(h)(4)(1995).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with Section 353.34(b) of the Department's regulations (19 CFR 353.34(b) (1995)).

This initiation and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and section 353.22(h) of the Interim Regulations.

Dated: July 31, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–19998 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 020696C]

Atlantic Large Whale Take Reduction Team Meeting

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

ACTION: Notice of establishment of a Large Whale Take Reduction Team.

SUMMARY: The following individuals have been invited to participate on a Take Reduction Team (TRT) to address bycatch of large baleen whales, specifically the northern right whale (*Eubalaena glacialis*) and the humpback whale (*Megaptera novaeangliae*) in the following fisheries: The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery, the mid-Atlantic coastal gillnet fishery, the southeastern U.S. Atlantic shark gillnet fishery, and the Gulf of Maine sink-gillnet fishery. These large whale marine mammal stocks are considered strategic under the Marine Mammal Protection Act (MMPA) because they are listed as an endangered species under the Endangered Species Act (ESA), and because the level of human-caused mortality is greater than their Potential Biological Removal (PBR) levels.

FOR FURTHER INFORMATION CONTACT: Dr. Kathy Wang, Southeast Regional Office, NMFS, (813) 570–5312, or Dr. Sal Testaverde, Northeast Regional Office, NMFS, (508) 281–9254, or Michael Payne, Office of Protected Resources, NMFS, (301) 713–2322.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the 1994 Amendments to the MMPA were signed into law. Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each stock assessment report is required to categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or is a strategic stock, with a description of the reasons therefore; and estimate the PBR level for the stock, describing the information used to calculate it, including the recovery factor. Stock Assessment Reports and the calculated PBR were published by NMFS in July 1995.

The MMPA defines a ''strategic stock'' as a marine mammal stock for which the level of direct human-caused mortality exceeds the PBR level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; which is listed as a threatened species or endangered species under the ESA, or is designated as depleted under the MMPA. The MMPA further defines the term ''potential biological removal,'' or PBR, as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.''

Description of Fisheries to be Reviewed by Large Whale TRT

Gulf of Maine, U.S. mid-Atlantic lobster trap/pot fishery: Based on a review of 1990–1994 large whale entanglement reports received by the agency and new information received about the prosecution of the lobster fishery, the inshore and offshore fisheries were proposed to be combined into a single fishery, the Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery, and proposed to be placed in Category I in the 1997 List of Fisheries (LOF) (see 61 FR 37035, July 16, 1996). Serious injuries and/or mortalities to large whales are known to occur in this fishery. An examination of large whale entanglement records were reviewed at 61 FR 37035, July 16, 1996. Based on this analysis the annual serious injury and mortality across all fisheries for humpback and northern right whale stocks interacting with this fishery exceeded 10 percent of the PBR for both of these species. The single record of a serious injury and/or mortality of a northern right whale, and 11 records of serious injury and/or mortality of humpback whales, were reported for this fishery from 1990–1994.

These records represent a minimum serious injury and/or mortality rate (from a 5-year average) of 0.2 per year for northern right whales, and 2.2 per year for humpback whales. This rate is greater than 1 percent but less than 50 percent of the PBR for humpback whales, which would have resulted in a proposed reclassification of this fishery to a Category II fishery under the MMPA. However, the rate is equal to 50 percent of the PBR for northern right whales; therefore this fishery was proposed to be placed in Category I in the 1997 LOF.

In addition to the one right whale entanglement used in the above analysis, the agency has received several reports of right whale entanglements prior to 1990 and after 1994 which are or may be attributable to the lobster fishery.

U.S. mid-Atlantic coastal gillnet fishery: Between 1989 and 1992, 31 humpback whales stranded from New Jersey through Virginia (Wiley et. al, 1995). Most of these strandings occurred between the Chesapeake Bay and Cape Hatteras, North Carolina. Strandings increased from February through April, and 25 percent had scars consistent with net entanglement. Between 1990 and 1996, 10 humpbacks stranded in Virginia; three animals had rope abrasion injuries consistent with entanglement in gillnets.

This fishery includes, but is not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, yellow perch, dogfish, and monkfish (see 61 FR 37035, July 16, 1996). NMFS proposed that the geographic definition for the mid-Atlantic coastal gillnet fishery to be bounded on the east by the 72°30' W. long. line, running south from the southern Long Island shoreline, and on the south by a line drawn from the North Carolina-South Carolina border east to the 72°30' line (61 FR 37035, July 16, 1996).

New England multispecies sink-gillnet fishery: Strategic marine mammal species/stocks seriously injured/killed in this fishery (fishery defined in the New England Multispecies fisheries Management Plan) include several humpback whales and a northern right whale (see 60 FR 67063, December 28, 1995).

The geographic definition for the southern boundary of the Northeast Multispecies sink gillnet fishery has been proposed to be changed from 71°40' W. long. to 72°30' W. long. (61 FR 37035, July 16, 1996).

Southeastern U.S. Atlantic shark gillnet fishery: A right whale calf was observed in February, 1994, about ten miles off of Jacksonville, Florida, with cuts nearly severing each fluke from the leading edge, back. Additional injuries across the blowhole and head area were similar to injuries observed on right whales entangled in gillnet gear in New England. Researchers believe that the calf was entangled in gillnet gear, and then hauled back into the fishing vessel's props as the gear was being retrieved. Trent and Parshley's 1995 description of net retrieval in the shark gillnet fishery over the stern of gillnet vessels is consistent with this theory. The gillnets are set and retrieved at night, they are set in an east-west direction crossing whale pathways, and the vessels are large enough to tow a small calf. Given these data, and the precarious status of the northern right whale, this fishery will be reviewed by this TRT.

List of invited participants: Section 118(f) of the MMPA requires NMFS to establish a TRT to prepare a draft Take Reduction Plan (TRP) designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries. Section 118(f)(6)(C) requires that members of the TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental mortality and serious injury of such species. The MMPA further specifies that members of the TRT shall include representatives of Federal agencies, each coastal state with fisheries that interact with the species or stock, appropriate regional fishery management councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations, or Indian tribal organizations, and others as deemed appropriate.

As a result of stock assessment reports developed under section 117 of the MMPA, and an extended interview process conducted by a NMFS-contracted facilitator, NMFS has asked the following individuals to be a member of the TRT, which will focus on reducing bycatch of northern right whales and humpback whales taken as bycatch in the Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery, the mid-Atlantic coastal gillnet fishery, the southeastern U.S. Atlantic shark gillnet

fishery, and the Gulf of Maine sink-gillnet fishery:

Kathy Wang, NMFS, SER; Sal Testaverde, NMFS, NER; Michael Payne, NMFS, Office of Protected Resources; Bill Brooks, Florida Department of Environmental Protection; Philip Coates, Massachusetts Division of Marine Fisheries; Chris Finlayson, Maine Department of Marine Resources; Mike Harris, Georgia Department of Natural Resources; William (Pete) Jensen, Maryland Department of Natural Resources; Jack Travelstead, Virginia Marine Resources Commission; Mike Street, North Carolina Division of Marine Fisheries; Jeff Goodyear, University of British Columbia; Robert Kenney, University of Rhode Island; Scott Kraus, New England Aquarium; David Laist, Marine Mammal Commission; David Mattila and Charles Mayo, Center for Coastal Studies; Mark Swingle, Virginia Marine Science Museum; Chris Croft, Environmental Solutions International; Ellie Dorsey, Conservation Law Foundation; Hans Neuhauser, Georgia Land Trust Service Center; David Wiley, International Wildlife Coalition; Nina Young, Center for Marine Conservation; Sharon Young, The Humane Society of the U.S.; Patricia Fiorelli, New England Fishery Management Council; Tom Hoff, Mid-Atlantic Fishery Management Council; Bill Adler, Massachusetts Lobstermen's Association; Dick Allen, Atlantic Offshore Fishermen's Association; Ron Hauck, southeast gillnet representative; Mike Baker, Southeast Shark Gillnet Association; Chris Hickman, mid-Atlantic coastal gillnet representative; Bill Foster, mid-Atlantic coastal gillnet representative; Bob MacKinnon, Massachusett's Netters Association; John Our, Jr., Cape Cod Gillnetters Association; Terry Stockwell, Maine Gillnetters Association; and Pat White, Maine Lobstermen's Association.

Other individuals from NMFS, state and Federal agencies, and the Department of Fisheries and Oceans-Canada, may be present as observers, or for their scientific expertise. The TRT will be facilitated by Abby Dilley, The Keystone Center, Washington, D.C. This Take Reduction Team will hold its first meeting to develop a TRP as described in the MMPA focusing on reducing bycatch in these fisheries in September in Boston, Massachusetts. The date, time and location of this meeting will be announced in a subsequent notice published in the *Federal Register* and each person invited to participate will be notified by the facilitator by letter.

NMFS fully intends to convene a TRT process in a way that provides for national consistency yet accommodates the unique regional needs and characteristics of any one team. TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings are open to the public.

References

Wiley, D. N., R. A. Asmutis, T. D. Pitchford and D. R. Gammon. 1994. Stranding and mortality of humpback whales (*Megaptera novaeangliae*) in the mid-Atlantic and southeast United States, 1985–1992. Fishery Bulletin 93: 196–205.

Trent, L. and D.Parshley. 1995. The shark drift gillnet fishery off the east coasts of Florida and Georgia, 1993–1995. Draft report prepared for Marine Fisheries Review.

Authority: 16 U.S.C. 1387

Dated: August 1, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources.

[FR Doc. 96–20026 Filed 8–1–96; 3:37 pm]

BILLING CODE 3510–22–F

[I.D. 072996A]

Endangered Species; Permits

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

ACTION: Receipt of an application for modification 5 to scientific research permit 818 (P211C).

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife in La Grande, OR (ODFW) has applied in due form for a modification to a permit authorizing takes of a threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before September 5, 1996.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: ODFW requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

ODFW (P211C) requests modification 5 to permit 818. Permit 818 authorizes takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for scientific research. For modification 5, ODFW requests that permit 818 be extended through June of 1998, for a total duration of approximately five years. Permit 818 was issued by NMFS on April 22, 1993 (58 FR 25811, April 28, 1993) and is currently set to expire on December 31, 1996.

Also for modification 5, ODFW requests an increase in the takes of adult and juvenile, ESA-listed salmon associated with new studies in the Wallowa River Basin. ODFW proposes to determine the migration timing, survival rates, seasonal distribution, relative abundance, and habitat utilization of spring chinook salmon juveniles produced within the Wallowa River Basin. In addition, ODFW will investigate the significance of cold-water refugia in the life histories of juvenile salmonids. A greater number of ESA-listed fish are proposed to be observed or captured and handled. ODFW also proposes to tag/mark a greater number of ESA-listed fish with passive integrated transponders or pigment inoculation. The new research will provide essential information on the life history and critical habitat of the spring chinook salmon populations in the Wallowa River Basin. The information collected will enable managers to make more effective decisions concerning the protection and enhancement of critical habitat.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: July 30, 1996.

Eric H. Ostrovsky,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–19894 Filed 8–5–96; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 11:00 a.m., Tuesday, August 6, 1996.

LOCATION: Room 714, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Children's Sleepwear Enforcement

The Commission will consider issues related to the enforcement of the children's sleepwear standard.

The Commission decided on August 1, 1996, that agency business required scheduling this meeting without the usual seven days advance public notice.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: August 2, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–20160 Filed 8–2–96; 2:23 pm]

BILLING CODE 6355–01–M

Petition Requesting Development of Safety Standard for Protective Batting Helmets and Staff Report

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In 1994, the American Academy of Facial Plastic and Reconstructive Surgery petitioned the Commission to develop a safety standard for protective batting helmets used by children younger than 15 years of age to require these helmets to be manufactured with a face guard. In 1996, the Commission staff published a report about injuries to children associated with baseball and the types of protective equipment currently available to prevent those injuries. The Commission solicits written comments on the petition and on that portion of the report concerning facial injuries and batting helmets with face guards.[1]

[1] The Commission voted 2–1 to publish this notice, with Commissioner Mary Shiela Gall dissenting. Commissioner Gall's statement concerning her vote is available from the Office of the Secretary.

DATES: Comments on the petition and the report should be received in the Office of the Secretary by September 20, 1996.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments should be captioned ''Petition and Report Concerning Batting Helmets with Face Guards.'' Five copies are requested of each submission in response to this notice.

A copy of the petition, comments on the petition submitted before July 26, 1995, and the document entitled ''Youth Baseball Protective Equipment Project—Final Report'' are available for inspection at the Commission's Public Reading Room, room 419, 4330 East-West Highway, Bethesda, Maryland. To obtain a copy of the petition, comments on the petition, or ''Youth Baseball Protective Equipment Project—Special Report,'' call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: For information about the petition or the staff report, call or write Susan B. Kyle, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0470, extension 1210.

SUPPLEMENTARY INFORMATION: In 1994, the American Academy of Facial Plastic and Reconstructive Surgery petitioned the Commission to develop a safety standard for protective batting helmets intended for children. The petition, designated HP 95–1, requests development of a standard requiring batting helmets intended for children younger than 15 years of age to be manufactured with a face guard which meets the requirements of the Safety Specification for Face Guards for Youth Baseball (ASTM F910), published by ASTM (formerly the American Society for Testing and Materials). The petition includes two articles from the journal ''Pediatrics.'' These articles state that batting-related injuries are a leading cause of sports-related eye injuries and that the Sports Eye Safety Committee of the National Society to Prevent Blindness has endorsed requiring face guards with batting helmets. The petition asserts that the use of batting helmets without face guards by children younger than 15 years of age creates an unreasonable risk of injury.

In the Federal Register of November 1, 1994 (59 FR 54548), the Commission published a notice to solicit written comments on the petition. In response to that notice the Commission received four comments, all of which urge denial of the petition.

Two comments observe that the risk of being injured from impact of the ball is inherent in the game of baseball. One of these comments states that helmets meeting the requirements of the standard requested by the petition would add to the frustrations of young players and detract from their enjoyment of the game.

Two other comments state that the ASTM standard for face guards should not be incorporated into a mandatory standard. These comments state that the adequacy of protection afforded by this standard has not been adequately evaluated, and that compliance with the standard could reduce the player's field of vision and access to the airway of an injured player.

In 1995, the Commission staff began a study of the circumstances surrounding facial injuries associated with baseball and softball. On July 14, 1995, the Commission voted to defer a decision on the petition until the results of that study became available.

In May 1996, the Commission staff completed a report entitled ''Youth Baseball Protective Equipment Project—Final Report'' (the Final Report). That document provides information about injuries to children associated with baseball, and about protective equipment available to prevent those injuries. The Final Report discusses, among other things, a survey of injuries associated with baseball, softball, and T-ball treated in hospital emergency rooms during the spring and summer of 1995. A copy of the complete Final Report is available without charge by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800.

From the survey of injuries associated with baseball, the Commission staff estimates that about 37 per cent (59,400) of the total youth baseball-related injuries treated in hospital emergency rooms were facial injuries. About 74 per cent of these facial injuries resulted from being hit by a ball; 19 per cent resulted from being hit by a bat; and about 7 per cent resulted from colliding with another player.

Batters sustained 11 per cent of all facial injuries. Almost 98 per cent of the injured batters were batting righthanded. For these right-handed

batters, 56 per cent of the facial injuries were to the left side of the face (the side toward the pitcher); 28 per cent were to the right side of the face; in the remaining 16 per cent, the location of the injury on the face was unknown.

For the youngest children, ages five through seven years old, facial injuries represented a high proportion of all injuries (59 to 84 per cent). Facial injuries accounted for 50 per cent or more of all injuries for players younger than 10 years of age.

For five-year-olds, facial injuries were divided almost evenly between organized play (53 per cent) and unorganized play (47 per cent). Facial injuries in organized play predominated in all other age groups, consisting of 72 to 96 per cent of all injuries.

The Commission staff estimates that 2.1 to 3.5 million protective batting helmets are in use by players in all organized youth leagues during a single season. About 4 to 10 per cent of these helmets are likely to have face guards. The Commission staff also estimates that about 125,000 to 200,000 face guards were sold during the years 1994 and 1995.

The results of the 1995 survey of injuries to children associated with baseball and other information contained in the Final Report were not available when the Commission requested comments on the petition in 1994. Therefore, the Commission now solicits comments on the petition and those portions of the Final Report concerning facial injuries and face guards.

Additionally, the Commission solicits information on the following topics:

- The expected useful life of face guards;
- The number and types of any injuries associated with the use of face guards;
- The number of children who participated in organized and/or unorganized play, by age;
- Any information about the effectiveness of face guards to prevent or reduce injuries; and
- Information about annual sales of face guards for the past ten years, and projected sales for the next five years.

Dated: July 31, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–19882 Filed 8–5–96; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of the National Senior Service Corps' Project Progress Report (A–1020)

AGENCY: Corporation for National and Community Service.

ACTION: Notice of 30-day OMB review of Project Progress Report.

SUMMARY: On June 4, the National Senior Service Corps (NSSC) announced a 60-day review and comment period during which project sponsors and the public were encouraged to submit comments suggesting revisions to the NSSC Project Progress Report (PPR) used by project sponsors (grantees) to report progress made toward work plan accomplishment, problems encountered, resources generated and budget variances from the grant awarded.

Comments were invited on (1) whether the existing PPR appropriately meets project oversight and operational management, planning and reporting needs of the Senior Corps programs; (2) ways to enhance the quality, utility and clarity of the PPR; (3) accuracy of agency estimates of reporting burden; and (4) ways to further reduce burden on respondents.

NSSC is requesting extension of the authorization to use the PPR in its current form with grants funded in 1997. However, revising and phasing in of a new form in conjunction with planned implementation of the impact programming initiative and redesign of the Project Grant Application is anticipated for grants funded in 1998.

DATES: The National Senior Service Corps and the Office of Management and Budget will consider written comments on the Project Progress Report and record keeping requirements which are received within 30 days from the date of publication.

Addressess to Send Comments to both:

Janice Forney Fisher, NSSC, Rm 9403A, Corp. for National Service, 1201 New York Avenue, NW., Washington, D.C. 20525

Deborah Bonds, Office of Info. & Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

Estimated Annual reporting or Disclosure Burden: 18,400 hours.

Established projects (over 80 percent of NSSC grantees) report twice annually. First-year projects, new components, demonstrations, and projects experiencing problems or with substantial project revisions will continue to report quarterly, as identified in the Notice of Grant Award (NGA).

FOR FURTHER INFORMATION CONTACT: Janice Forney Fisher (202) 606–5000 ext. 275.

This document will be made available in alternate format upon request. TDD (202) 606–5000 ext. 164.

Regulatory Authority: National Service Trust Act of 1993.

Dated: July 31, 1996.

Thomas E. Endres,

Deputy Director, National Senior Service Corps.

[FR Doc. 96–19929 Filed 8–5–96; 8:45 am]

BILLING CODE 6050–28–M

Proposed Changes to AmeriCorps State, National, and Tribes and Territories Application Guidelines for the Program Year 1997 Grant Cycle

AGENCY: Corporation for National and Community Service.

ACTION: Request for comment on proposed changes in policy and guidelines for AmeriCorps State, National, and Tribes and Territories applications.

SUMMARY: The Corporation for National and Community Service is proposing changes to and inviting comments on its application guidelines for AmeriCorps programs: AmeriCorps State and National programs; and AmeriCorps Tribes and Territories. The proposed changes were developed in response to recommendations from programs and experience over the last two years. The changes were also developed to reduce the federal cost of AmeriCorps programs to meet specific benchmarks over the next three years. A broad range of areas is covered by the proposed changes, including the following: the timeline for distribution of guidelines and submission of applications; new targets and caps on program costs per Member; revised priorities for service activities in the areas of education, public safety, the environment, and other human needs; and criteria for evaluating the quality of program applications. The Corporation invites all interested parties to submit written comments on the issues discussed in this notice. Comments received will be given careful consideration in the development of final Program Year 1997 policies and grant application guidelines.

DATES: Only written comments will be considered. Comments must be submitted no later than October 7, 1996. Faxes will not be accepted.

ADDRESSES: Comments should be addressed to Deborah Jospin, Acting General Counsel, Corporation for National Service, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Peter Heinaru, Deputy Director, AmeriCorps State/National, at (202) 606–5000, ext. 302 or (202) 565–2799 (T.D.D.). For visually impaired individuals, this information will be made available in alternative format upon request.

SUPPLEMENTARY INFORMATION:

Applications

The Corporation invites comments on its guidelines as set forth in the 1995 AmeriCorps State and National Direct Program Application Guidelines and the 1996 AmeriCorps Renewal Application Guidelines. Copies of these applications are available through the individual State Commissions and the Corporation for those who wish to review them and provide feed back to the Corporation. For copies of the guidelines, contact Rosa Harrison at (202) 606–5000, ext. 433.

I. Specific Program Requirements and Guidelines

A. *Renewals, Re-competition, and New Applications*—State Commissions will have the option to allow programs in their first or second year of operation with Corporation funds to renew their grants. AmeriCorps National and AmeriCorps Tribes and Territories grantees in their first or second year of operation with Corporation funds may also submit renewal applications to the Corporation. All Corporation-funded programs in their third year of operation, including those funded through the State Commissions, must re-compete with other new applicants as new programs. States will have latitude in the type of program outreach they choose to conduct. The National and Community Service Act of 1990, as amended (the Act), is due to be reauthorized next year. Changes could be made in appropriations or reauthorization language that affect 1997 applications. Potential applicants will be apprised of any changes.

B. *Continuing Grants*—Programs have suggested that they could more easily raise funds if they receive multi-year grants which indicate anticipated levels of support in the outyears. To accommodate the needs of our programs, the Corporation's initial grant award agreement with all newly-competed programs will include estimated levels of support for the second and third years and indicate that the grant may continue for three years, if annual review determines that the program meets quality standards and if funds are available. The process of approving the second and third year awards will be similar to the current renewal process and will be conducted separately from any new competition. States will have the option of making continuing grants for up to three years. When the Act is reauthorized by Congress, all programs, regardless of a continuing grant award, must meet any new requirements established under the reauthorization.

C. *Planning Grants*—The Corporation will not support any planning grants. States, however, have the option to support small planning grants under their formula allotment.

D. *Summer Programs*—The Corporation encourages applicants to consider operating summer programs as an adjunct to their regular full-time or part-time schedule. The application guidelines will specify how those programs will meet part-time requirements.

E. *State Coordination with National Direct Applications*—One of the criteria for evaluating the State Commission in its application for Administrative funds will be the extent to which the Commission provides support for the National Direct operating sites in the State. The National Direct Application instructions will ask the Parent Organizations to describe how they worked with the State Commissions in selecting operating sites in the specific States. The National Directs will be evaluated on that process during the peer and staff reviews. They will also be encouraged, but not required, to include support letters from the State Commissions in their applications.

F. *Preferences*—''Preference'' means that the Corporation, as authorized by the Act, has designated certain types of national service programs for priority consideration. During the staff selection process, a program that addresses the following issues may be given a preference over other programs that do not.

1. *Issue Area Specialization*—The four national issue areas established by law are education, public safety, environment, and other human needs. The Corporation will continue to encourage programs to develop issue area specialization instead of trying to meet all of the Corporation's issue areas. The Corporation recognizes that certain programs (e.g., volunteer generator models or programs operating in rural areas) may not be able to focus on single issues to the extent that others can. However, program experience to date indicates that it is difficult to demonstrate impact on communities when programs try to meet many needs all at once.

2. *Localities*—The Corporation will give a preference to applicants who propose to sponsor AmeriCorps service activities in areas officially designated as Empowerment Zones or Enterprise Communities by the U.S. Department of Housing and Urban Development and/or the U.S. Department of Agriculture. The Corporation will also give preference to areas affected by military downsizing.

G. *New Priority: Children and Youth, Especially Education*—The four national issue areas established by law remain the same: education, public safety, environment, and other human needs. In 1997, the new priority will be children and youth, especially in education. While this priority supersedes the 1994 and 1995 priorities, the focus on children and youth can fit within any of the four issue areas and need not be the sole focus of the program. A program will be considered to meet the priority if it plans to recruit and coordinate youth volunteers to assist in projects that may be in any of the four issue areas. The Corporation does expect to fund high quality programs that do not fall into the priority category.

H. *Capacity Building*—While the Corporation will continue to require that all AmeriCorps Members perform direct service, they may also engage in activities we call ''capacity building''—such as developing community partnerships, coordinating activities of other Members, and creating new programs. Programs should not, however, focus AmeriCorps Members' service hours solely on capacity building activities.

I. *Leveraging Volunteers*—The Corporation encourages all programs to place a greater emphasis on involving other community members as volunteers to assist them in service activities. In keeping with the Corporation's new priority on children and youth, programs are especially encouraged to find ways to involve children and youth in service as volunteers. This does not mean, however, that a program's sole purpose must be to recruit and supervise volunteers.

J. *Program Focus and Service Ethic*—The Corporation believes that it is important for all programs to impart the service ethic to their Members. Accordingly, the Corporation will not fund any programs whose major purpose is job training rather than service.

K. *Living Allowance*—The Corporation encourages programs to offer living allowances that are not more than the average annual subsistence allowance provided to VISTAs. (For 1996, the figure was $7,945 per year.)

L. *Corporation Cost Per Member*—The Corporation is committed to reducing its overall average cost per AmeriCorps Member over the coming three years. In order to do so, State Commissions, National Direct, and Tribes and Territories applicants must also reduce the amount of Corporation funds per Member they are requesting from the Corporation. The Corporation wants to give the States and National Direct applicants as much flexibility as possible to allow for different program models. Therefore, we have set an average per State and National Direct applicant of $11,750. Individual programs within the State or operating sites under the National Direct applicant may propose costs per Member that are higher or lower than this figure as long as the average cost meets the target. In addition, no individual program or National Direct operating site may propose a Corporation share that exceeds $14,500 per Member. The average cost per Member should decrease each year. While specific targets have not been set, the average proposed Corporation cost is anticipated to be $11,300 for 1998–1999 and $10,800 for 1999–2000.

II. Timelines

The Corporation is recommending the following timeline for submission of applications from States:

A. Corporation application guidelines will be disseminated by December 1, 1996.

B. States review all their programs and decide which to put forward in the competitive pool and which to support with their formula funds. States submit the State narrative and competitive program applications to the Corporation by April 15, 1997.

C. The Corporation makes decisions on the State competitive programs and notifies States by June 20, 1997.

D. States have the option to make changes to their formula package based on the Corporation's decisions and submit their formula packages for approval to the Corporation by June 30, 1997.

The Corporation is recommending the following timeline for submission of applications from AmeriCorps National applicants:

A. Application guidelines will be available by December 1, 1996.

B. AmeriCorps National applications are submitted to the Corporation by March 15, 1997.

The Corporation is recommending the following timeline for submission of applications from AmeriCorps Tribes and Territories applicants:

A. Application guidelines will be available by December 1, 1996.

B. AmeriCorps Tribes and Territories applications are submitted to the Corporation by March 28, 1997.

III. Application Evaluation and Selection for New Programs

The Corporation is looking for high-quality programs that are innovative, have the potential to be replicated in other areas, and can be sustained with State and local support when Corporation support ends. Applications will be reviewed by outside experts and then by Corporation staff.

The review by outside experts (peer review) serves as the first stage in the AmeriCorps State, National, and Tribes and Territories review and selection processes for new applications. The peer review is a basic evaluation of a program's quality, which is determined based on the following criteria:

1. Impact and Program Design—65%
   a. Getting Things Done (25%)
   b. Strengthening Communities (10%)
   c. Developing Members (10%)
   d. Evaluation and Continuous Improvement (20%)
2. Other Quality Indicators—35%
   a. Organizational Capacity (20%)
   b. Cost-effectiveness and Sustainability (15%)

Evaluation and Continuous Improvement has been given greater weight as a selection criteria to emphasize its importance as a demonstration of impact and a way to ensure program quality. The role of the State Commission and Parent Organization (in National Direct) is important in monitoring quality. To that end, the Corporation is considering setting guidelines related to how difficult a program is to monitor. Programs that are inherently difficult to monitor would be at a disadvantage unless they can persuasively demonstrate that they have developed ways to overcome that problem. Examples of programs that may be inherently difficult to monitor include:

- Individual placements that are spread out geographically;
- Programs attempting to address many issue areas at once; and
- Programs with vague objectives.

Some programs have found innovative ways to maintain high quality despite the difficulties. Examples include:

- Aggressive recruiting leading to greater selectivity of Members;
- Enrolling more experienced, more mature Members;
- Strong orientation, training, and other regular means of on-going communication;
- Narrowing the range of tasks performed so as to make long-distance monitoring easier; and
- Strong host sites.

Corporation staff will also analyze the quality of the proposal and review the proposal taking into consideration the preferences and priorities described previously, as well as the following:

1. Geographic diversity—The Corporation will ensure that the programs funded are geographically diverse and include projects in urban and rural areas.

2. Diversity—The Corporation seeks a broadly-diverse participant pool of AmeriCorps Members that includes a representation of young adults; a proportionate ratio of individuals who have not attended college and those with college-education experience; approximately equal numbers of men and women; individuals with physical and cognitive disabilities; individuals of all races and ethnicities; and diverse economic backgrounds. The Corporation anticipates funding a range of program types with various approaches to addressing community needs and that will yield the desired participant pool.

IV. Application Evaluation and Selection for Renewal Programs

Renewal applications are not required to be evaluated by peer reviewers. Program staff and consultants will evaluate renewal applications using quarterly reports, site visit reports, the renewal applications, the State Commission narrative and information from the Management Information System (MIS) system (MIS information could include retention rates and diversity of AmeriCorps Members, impact data, etc.). Evaluation of renewal applications will be based on progress to date (50%) and year two/three plans (50%).

V. State-Funded Program Review Processes

A. *Commission Role and Responsibilities.*—As in 1996, each State Commission will be responsible for conducting a complete review of its program applications and preparing recommendations to the Corporation for programs to fund from its formula allotment and under the competitive pool. It is up to each State Commission to design its review processes and decide how to use the State

Commissioners—as long as all conflict of interest requirements are followed and the process meets Corporation standards as described in the State administrative application guidelines. Commissioners can participate in the review and recommendation processes and as the decision-makers after staff have prepared their recommendations.

B. *Renewal Applications.*—States have the option to renew programs that have completed only one or two years of operation under funding from the Corporation. Those that have received three years of funding from the Corporation must apply as new programs. The process for evaluating the program's progress and plans for the upcoming year has not change from that followed in 1996 and described above in section IV.

C. *New Applications*—Each state must develop a process that uses groups of experts to evaluate the comparable quality of all the applications received. The experts can either be outsiders to the Commission or members of the staff and board or a combination of these individuals. Each state must use the minimum criteria issued by the Corporation to evaluate the quality of the applications as described in Section III, but may add other criteria determined by the State.

Once comparable quality has been established, the results of that review are analyzed by the commission and recommendations submitted to the commission board for decisions. During this process, the commission may bring into the selection process additional factors that the state Commission Board and staff have approved and previously published in the state's application guidelines. Examples of such factors are:

- Geographic diversity
- Program model diversity
- Member diversity
- Preferences and priorities
- Diversity among priorities and issue areas

D. *Corporation Review of Competitive Applications*—As mandated by the Act, the Corporation is responsible for making decisions concerning competitive programs. Therefore, it must conduct a complete quality review of the AmeriCorps State Competitive program applications submitted by the states. The Corporation will convene panels of outside experts to evaluate the quality of these applications. Staff will analyze the panel results, then make recommendations for funding, taking into consideration other preferences and priorities published in the application guidelines or mandated by statute. The Corporation will consider factors such as:

- Capacity of the state commission to monitor and oversee programs
- Geographic diversity across the country
- Program model diversity
- Member diversity
- Diversity among priorities and issue areas

The capacity of State Commissions will be evaluated according to the criteria published in the Guidelines for State Administrative Fund Applications.

VI. AmeriCorps National and AmeriCorps Tribes and Territories Review Process

The National Direct applications will come directly to the Corporation and the Corporation will conduct both a peer review (using outside experts to determine comparable quality using criteria listed above) and a staff analysis and recommendation process identical to the process describe above for the States.

Dated: July 31, 1996.

Deborah Jospin,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 96–19874 Filed 8–5–96; 8:45 am]

BILLING CODE 6050–28–P–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 96–59]

36(b) Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–59, with attached transmittal and policy justification pages.

Dated: July 31, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

23 JUL 1996

In reply refer to:
I-04234/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-59, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $200 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-59

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$200 million
TOTAL	$200 million

(iii) Description of Articles or Services Offered:
Logistics support for the 767 AWACS aircraft to include test sets and ground support equipment, maintenance of system software and related services, spare and repair parts, publications and technical documentation, U.S. Government and contractor technical and logistics services, and other related elements of program support.

(iv) Military Department: Air Force (QBI, QBP, QBJ, GHT, JAF, and JAG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 23 JUL 1996

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - Logistics Support for the 767 AWACS Aircraft

The Government of Japan has requested the purchase of logistics support for the 767 AWACS aircraft to include test sets and ground support equipment, maintenance of system software and related services, spare and repair parts, publications and technical documentation, U.S. Government and contractor technical and logistics services, and other related elements of program support. The estimated cost is $200 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Asia.

Japan previously purchased four AWACS aircraft and needs this logistics support to help maintain the operational readiness of its extended Airborne Early Warning (AEW) and command, control and communications (C3) systems. Japan will have no difficulty absorbing this logistics support into its armed forces.

The sale of the logistics support services and equipment will not affect the basic military balance in the region.

The prime contractor is the Boeing Aerospace Company, Seattle, Washington. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will require the assignment of six U.S. Government personnel and six contractor representatives to Japan for periods ranging from three years up to five years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–19885 Filed 8–5–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–65]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–65, with attached transmittal and policy justification pages.

Dated: August 1, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

26 JUL 1996

In reply refer to:
I-04592/95ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-65 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $100 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Separate Cover:
Classified Annex

Same ltr to:
House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-65

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 13 million
Other	$ 87 million
TOTAL	$100 million

(iii) Description of Articles or Services Offered:
The KNOX Class Fast Frigate the "USS OUELLET" with weapons and ammunition to include eight HARPOON missiles, 4,000 rounds of 5"/54 and 20,000 rounds of 20mm PHALANX Close-in-Weapon System (CIWS) ammunition, miscellaneous chaff cartridges, sonobuoys and other related ammunition items, United States shipyard/port support services and post transfer activities relating to the "cold ship" turnover of the "USS OUELLET" from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair, overhaul, refurbishment and calibration of all shipboard systems and equipment, publications and technical data/drawings, personnel training and training equipment, spare and repair parts, follow-on maintenance of weapon systems and shipboard equipment, support equipment and other elements of logistics necessary to prepare the frigate for transfer to Thailand in a "Safe to Steam" condition with all systems operational.

(iv) Military Department: Navy (SCC)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover

(vii) Date Report Delivered to Congress: 26 JUL 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand - KNOX Class frigate "USS OUELLET" with Weapons, Ammunition, and Support Services

The Government of Thailand has requested the purchase of the KNOX Class Fast Frigate the "USS OUELLET" with weapons and ammunition to include eight HARPOON missiles, 4,000 rounds of 5"/54 and 20,000 rounds of 20mm PHALANX Close-in-Weapon System (CIWS) ammunition, miscellaneous chaff cartridges, sonobuoys and other related ammunition items, United States shipyard/port support services and post transfer activities relating to the "cold ship" turnover of the "USS OUELLET" from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair, overhaul, refurbishment and calibration of all shipboard systems and equipment, publications and technical data/drawings, personnel training and training equipment, spare and repair parts, follow-on maintenance of weapon systems and shipboard equipment, support equipment and other elements of logistics necessary to prepare the frigate for transfer to Thailand in a "Safe to Steam" condition with all systems operational. The estimated cost is $100 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in southeast Asia.

Acquisition of the fast frigate "USS OUELLET" will provide the Royal Thai Navy an anti-surface and anti-submarine capability upgrade to its existing force structure thereby improving its ability to safeguard sea lines of communications as well as territorial and exclusive economic zones. Thailand will have no difficulty absorbing this naval vessel into its armed forces.

The sale of this naval vessel with support will not affect the basic military balance in the region.

New production HARPOON missiles will be procured from the McDonnell-Douglas Missile Systems Company, St. Charles, Missouri. There are no offset agreements proposed in connection with this sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Thailand. A number of U.S. contractor representatives however, of varying skills and technical disciplines, will be required to provide in-country technical support for the ship transfer program.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–19446 Filed 8–5–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–46]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 96–46, with attached transmittal and policy justification pages.

Dated: August 1, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

26 JUL 1996

In reply refer to:
I-02634/96

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-46 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $106 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 56 million
Other	$ 50 million
TOTAL	$106 million

(iii) Description of Articles or Services Offered:
One PERRY class frigate (USS GALLERY-FFG26), weapons and ammunition to include 35 STANDARD SM-1 missiles, 12 MK-46 MOD 5 torpedoes, 50 rounds of 40mm and 4,000 rounds of 20mm PHALANX Close-in-Weapon System (CIWS) ammunition, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to the "hot ship" transfer of the USS GALLERY from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, TARTAR HARPOON modification kits with containers, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the USS GALLERY for transfer to Egypt in a "Safe to Steam" condition with all shipboard systems operational.

(iv) Military Department: Navy (GEF, ABO, ABP and ABQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 26 JUL 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - PERRY Class Frigate, Weapons, Ammunition and Support

The Government of Egypt has requested the purchase of one PERRY class frigate (USS GALLERY-FFG26), weapons and ammunition to include 35 STANDARD SM-1 missiles, 12 MK-46 MOD 5 torpedoes, 50 rounds of 40mm and 4,000 rounds of 20mm PHALANX Close-in-Weapon System (CIWS) ammunition, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to the "hot ship" transfer of the USS GALLERY from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, TARTAR HARPOON modification kits with containers, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the USS GALLERY for transfer to Egypt in a "Safe to Steam" condition with all shipboard systems operational. The estimated cost is $106 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt needs this third outfitted PERRY class frigate to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability previously started with the U.S. provided KNOX class frigates. This ship program will enable Egypt to continue providing security for the Suez Canal and its shipping lanes in the Mediterranean Sea. Egypt will have no difficulty absorbing this ASW vessel into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor involved for the MK 46 MOD 5 torpedo will be Alliant Techsystems Incorporated, Keyport, Washington. There are no offset agreements proposed in connection with this sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Egypt. Egypt will, however, require approximately six U.S. contractor representatives, of varying skills and technical disciplines, to provide in country technical support for the ship transfer for a period of up to three years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–19947 Filed 8–5–96; 8:45 am]
BILLING CODE 5000–04–C

Office of the Secretary; Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Investigative Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities, and the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Koehle, Assistant Director for Executive Personnel and Classification, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (202) 697–8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB; specific PRB panel assignments will be made from this group. Executives listed will service a one-year renewable term, effective July 1, 1996.

Office of the Secretary of Defense

Chairman

Vincent P. Roske, Jr.

Members

W. Douglas Smith
Warren Hall
Sallie Wake
George Ullrich
Jack Mester
Nancy Spruill
Margaret Munson
J. Michael Gilmore
William Lowry
George Look
Bob Jackson
Mary Tompkey
Sheila Dryden
John Ello
Michael Parmentier
Paul Koffsky
Kurt Milholm
Walter Bergmann
Clifford Bernath
Jennifer Buck
Tom Bozek
Jane Alexander
David Armstrong
Julie Aviles
Gary Christle
Dick Donnelley
David Drabkin
Al Goldberg
Michael Ioffredo
Ray Miller
Margaret Myers
Anthony Passarella
Earl Payne
James Reardon
Patricia Sanders
Carl Smith
Jean Storck
Rick Sylvester
Nick Toomer
Austin Yamada
Michael Yoemans

Dated: August 1, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19948 Filed 8–5–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 7, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 31, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.

Title: Study of Changes in How Public School Districts Provide Compensatory Education Services to Eligible Students Attending Private Schools Under the Improving America's Schools Act of 1994.

Frequency: One time only.

Affected Public: Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 840
Burden Hours: 1,260

Abstract: ED proposes to survey local Title I directors and representatives of private-school organizations in their districts. The purpose of the survey is to determine how changes in Chapter 1/Title I legislation have affected (1) the number of private-school students

receiving Title I services; (2) consultation between public-school and private-school administrators; and (3) the educational services provided to private-school students. ED will use this information to prepare mandated reports to Congress and to provide effective technical assistance and information to State and local education agencies providing Title I services to private-school students.

[FR Doc. 96–19887 Filed 8–5–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT96–85–000]

Colorado Interstate Gas Company; Notice of Refund Report

July 31, 1996.

Take notice that on July 26, 1996, Colorado Interstate Gas Company (CIG) tendered for filing with the Commission its refund report pursuant to Gas Research Institute (GRI) Docket No. RP96–271–000.

CIG states that on July 12, 1996, it refunded to its transportation customers their respective share of the refunds received from GRI for the period January 1, 1995 through December 31, 1995.

CIG states that copies of its filing have been served on CIG's transportation customers, interested state commissions, and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–19897 Filed 8–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–83–000]

Florida Gas Transmission Company; Notice of Refund Report

July 31, 1996.

Take notice that on July 26, 1996, Florida Gas Transmission Company (FGT) tendered for filing with the Commission a refund report in compliance with the Commission's February 22, 1995 Order Approving Refund Methodology for 1994 Overcollections in Docket No. RP95–124–000 (Order).

FGT states that on June 28, 1996, it received $1,011,385 refund from the Gas Research Institute (GRI), representing an overcollection of the 1995 GRI Tier 1 funding target level set for Northwest by GRI. On July 12, 1996, in compliance with the Commission's Order, FGT states that it sent the GRI refund, pro rata, to its eligible firm shippers based on amounts paid through GRI surcharges during 1995.

FGT states that copies of its refund report have been served on all affected parties and interested state commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–19900 Filed 8–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–84–000]

Mojave Pipeline Company; Notice of Report of GRI Refunds

July 31,1996.

Take notice that on July 26, 1996, Mojave Pipeline Company (Mojave) submitted for filing its Report of Gas Research Institute (GRI) Refunds for overcollections during the calendar year 1995.

Mojave states that on June 28, 1996, Mojave received a refund from GRI for overcollections during 1995 in the amount of $134,256.00. Mojave states that on July 12, 1996, it distributed refunds to eligible firm shippers.

Mojave states that copies of its refund report is being served upon all affected interstate pipeline system transportation customers of Mojave and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–19896 Filed 8–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–82–000]

Northwest Pipeline Corporation; Notice of Refund Report

July 31, 1996.

Take notice that on July 26, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing with the Commission a refund report in compliance with the Commission's February 22, 1995 Order Approving Refund Methodology for 1994 Overcollections in Docket No. RP95–124–000 (Order).

Northwest states that on June 28, 1996, it received a $1,073,192 refund from the Gas Research Institute (GRI), representing an overcollection of the 1995 GRI 1 funding target level set for Northwest by GRI. On July 12, 1996, in compliance with the Commission's Order, Northwest states that it sent the GRI refund, pro rata, to its eligible firm customers who received nondiscounted service during 1995.

Northwest states that copies of its refund report has been served upon its affected customers and upon interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–19899 Filed 8–5–96; 8:45 am]

BILLING CODE 6727–01–M

[Docket No. GT96–81–000]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

July 31, 1996.

Take notice that on July 26, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission its Refund Report in compliance with the Commission's ''Order Approving Refund Methodology for 1994 Overcollections'' issued February 22, 1995 in Gas Research Institute's (GRI) Docket No. RP95–124–000.

Williston Basin states that on July 12, 1996, refunds totaling $133,997 were mailed to Williston Basin's applicable firm transportation shippers. Such refunds were based on the proportion of each applicable firm shipper's demand and commodity GRI charges paid during the 1995 calendar year to the total applicable firm shipper's GRI charges paid during the 1995 calendar year.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19898 Filed 8–5–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30417; FRL–5389–2]

Mann Lake Ltd.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by September 5, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30417] and the file symbol (61671–G) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30417]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Diana M. Horne, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8367; e-mail: horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Mann Lake Ltd., County Road and First Street, Hackensack, MN 56452, to register the pesticide product, Formite Formic Acid (EPA File Symbol 61671–G), containing the active ingredient formic acid at 65 percent, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for use in honey bee hives for the control of tracheal mites. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30417] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs,

Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 26, 1996.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19965 Filed 8–5–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–668; FRL–5389–1]

Pesticide Tolerance Petition; Notice of filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received a pesticide petition from the Interregional Research Project No. 4, (IR–4), on behalf of Mann Lake Ltd., requesting exemption from the requirement of a tolerance for formic acid in or on certain agricultural commodities.

DATES: Written comments, identified by the docket control number [PF–668], must be submitted to EPA by September 5, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–668]. No CBI should be submitted through e-mail. Electronic comments on this notice of filing may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the SUPPLEMENTARY INFORMATION section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Diana M. Horne, Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, 703–308–8367; e-mail address: horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from IR–4, Cook College, P.O. Box 231, Rutgers, The State University of New Jersey, New Brunswick, NJ 08903–0231, on behalf of Mann Lake, Ltd., County Road 40 and First St., Hackensack, MN, 56452, pesticide petition (PP) 6E4700 under section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing to amend 40 CFR part 180 by exempting tolerances for residues of the biopesticide formic acid in or on honey and beeswax. The proposed analytical method for determining residues is by gas chromatography.

A record has been established for this notice of filing under docket number [PF–668] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a.

Dated: July 26, 1996.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19967 Filed 8–5–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

July 31, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 7, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0390.

Title: Broadcast Station Annual Employment Report.

Form Number: FCC 395–B.

Type of Review: Extension/Revision.

Affected Public: Business or other for-profit.

Number of Respondents: 14,000.

Estimated Time Per Response: 0.88 hours.

Total Annual Burden: 12,320 hours.

Needs and Uses: The Annual Employment Report (FCC 395–B) is required to be filed by all licensees and permittees of AM, FM, TV, international and low power TV broadcast stations. It is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies each staff by gender, race, color and/or national origin in each of the nine major job categories. The data is used by FCC staff to monitor a broadcast station's efforts to afford equal employment opportunity. The data is also used to assess industry trends.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–19879 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

July 31, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before October 7, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form Number: FCC 396–A.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Number of Respondents: 2,526.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 2,526 hours.

Needs and Uses: FCC Form 396–A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station. The data is reviewed by FCC analysts to determine if stations will provide equal employment opportunity to all qualified persons without regard to race, color, religion, sex or national origin.

OMB Number: 3060–0394.

Title: Section 1.420 Additional procedures in proceedings for amendment of FM, TV or Air-Ground Table of Allotments.

Form Number: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Number of Respondents: 30.

Estimated time per response: 20 minutes—2 hours (20 minutes consultation—1–2 hours contract attorney).

Total annual burden: 10 hours.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit

certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

OMB Number: 3060–0175.

Title: Section 73.1250 Broadcasting emergency information.

Form Number: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Number of Respondents: 50.

Estimated time per response: 1 hour.

Total annual burden: 50 hours.

Needs and Uses: Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings. Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington, D.C., setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station. The report is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

OMB Number: 3060–0423.

Title: Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

Form Number: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Number of Respondents: 80 petitioners.

Estimated time per response: 20 minutes—8 hours (20 minutes consultation; 8 hours contracted attorney).

Total annual burden: 26 hours.

Needs and Uses: Section 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that a petition to deny or informal objection was filed under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

OMB Number: 3060–0452.

Title: Section 73.3589 Threats to file petitions to deny or informal objections.

Form Number: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Number of Respondents: 15 AM/FM/TV stations.

Estimated time per response: 20 minutes—1 hour (20 minute consultation time; 1 hour contracted attorney).

Total annual burden: 5 hours.

Needs and Uses: Section 73.3589 requires an applicant or licensee to file with the FCC a copy of any written agreement related to the dismissal or withdrawal of a threat to file a petition to deny or informal objection and an affidavit certifying that neither the would-be petitioner nor any person or organization related to the would-be petitioner has not or will not receive any consideration in excess of legitimate and prudent expenses incurred in threatening to file. The data is used by FCC staff to ensure that a threat to file a petition to deny or informal objection was made under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

OMB Number: 3060–0251.

Title: Section 74.833 Temporary authorizations.

Form Number: None.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Number of Respondents: 6 low power auxiliary stations.

Estimated time per response: 2 hours.

Total annual burden: 12 hours.

Needs and Uses: Section 74.833 requires that requests for special temporary authorization be made by informal applications for low power auxiliary station operations which cannot be conducted in accordance with Section 74.24 of the FCC's rules and for operations of a temporary nature. (Section 74.24 states that classes of broadcast auxiliary stations may be operated on a short-term basis under the authority conveyed by a Part 73 licensee without prior authorization from the FCC, subject to certain conditions.) The data is used by FCC staff to insure that the temporary operation of a low power auxiliary station will not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–19880 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

July 31, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 5, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain—t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: On April 3, 1996 the Commission submitted the following collection to OMB for review and approval. The Commission inadvertently did not publish the Federal Register Notice request comments upon submission of this collection. Therefore we are requesting comments.

OMB Approval Number: 3060–0641

Title: Amendment to Parts 2 and 90 of the Commission's Rules to provide for the use of 200 Channels outside of the Designated Filing Areas in the 896–901 MHz Bands Allotted to the Specialized Mobile Radio Pool, 2nd Order on Reconsideration & 7th R&O for the 900 MHz Specialized Mobile Radio Service.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit.

Estimated Time Per Response: The Commission estimates the following: 4 hours per respondent to prepare ownership and gross revenue information for small business; 30 minutes per respondent to disclose the terms of joint bidding agreements and maintaining files on transfer of disclosure information; and 2 hours per respondent to provide information to show compliance with coverage requirements. Additionally, the Commission estimates approximately 75% of the respondents may hire a contractor to prepare the information. The time estimated for obtaining these services is 30 minutes per respondent for each requirement.

Total Annual Burden: 1,139 hours.

Costs to the Respondents: The Commission estimates an average salary for a contractor of $200 an hour. The cost for hiring these contractors is approximately $284,251.

Needs and Uses: The information will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be a licensee. Without such information the Commission could not determine whether to issue the licenses to the applicants that provides telecommunications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to ensure the market integrity of the auction. This collection has been revised to include the burden for any licenses that may be re-auctioned.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–19881 Filed 8–5–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

"FEDERAL REGISTER" NUMBER: 96–19745.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 8, 1996, 10 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA:

Advisory Opinion 1996–30: Robert F. Bauer on behalf of the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–20167 Filed 8–2–96; 3:08 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/address	Date reissued
2247	Sina International Forwarders, Inc 1666. North McCadden Place, Hollywood, CA 90028	July 16, 1996.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–19904 Filed 8–5–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 26, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. New York Central Mutual Fire Insurance Company, Edmeston, New York; to acquire an additional 3.74 percent, for a total of 13.62 percent, of the voting shares of CNB Financial Corp., Canajoharie, Montgomery, New York, and thereby indirectly acquire Central National Bank, Canajoharie, New York.

Board of Governors of the Federal Reserve System, July 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–19918 Filed 8–5–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, August 12, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20164 Filed 8–2–96; 2:44 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9259]

California Dental Association; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order prohibits the 19,000 member professional association from restricting, regulating, impeding, declaring unethical, or interfering with the advertising or publishing of the prices, terms or conditions of sale of dentists' services and the solicitation of patients, patronage or contracts to supply dentists' services. In addition, the final order requires, among other things, the respondent to update its Code of Ethics to comply with the provisions of the Commission's order and to publish the Commission's order and complaint, as well as an announcement describing the order's effect, in the California Dental Association Journal.

DATES: Complaint issued July 9, 1993. Final order issued March 25, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Sally Maxwell, FTC/S–3115, Washington, D.C. 20580. (202) 326–2674.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 96–19942 Filed 8–5–96; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Final Order, and Statements of Commissioners Azcuenaga and Starek are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[Dkt. 8548]

National Dairy Products Corp.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: This order reopens a 1967 consent order—which prohibited National Dairy Products Corp. and subsequently its successor, Kraft Foods, Inc., from engaging in territorial price discrimination in the sale of its jellies, preserves and other food products—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued June 28, 1967. Set aside order issued November 8, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of National Dairy Products Corp. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 15 U.S.C. 13)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 96–19943 Filed 8–5–96; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Consent Order and Set Aside Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[Dkt. 9205]

Occidental Petroleum Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The order reopens a 1994 modified consent order that settled allegations that Occidental's acquisition of Tenneco would substantially reduce competition in the U.S. market for mass and suspension PVC and required the Commission's prior approval before acquiring the stock or PVC assets of any PVC producer in the United States. This order modifies the consent order by deleting the prior approval requirements in Paragraph VI of the consent order pursuant to the Commission's Prior Approval Policy, under which the Commission presumes that the public interest requires reopening cases and setting aside the prior approval provisions in outstanding merger orders, making them consistent with the policy.

DATES: Consent order issued February 3, 1994. Modifying order issued November 16, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Occidental Petroleum Corporation, et al. The prohibited trade practices and/or corrective actions as set forth at 59 FR 15735, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 96–19944 Filed 8–5–96; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Senior Executive Service: Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the standing Performance Review Board Roster.

DATES: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Elliott H. Davis, Director of Personnel, Federal Trade Commission (FTC), 6th & Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–2022.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall, among other things, review and evaluate the initial appraisal of a senior executive's performance by the supervisor, and make appropriate recommendations to the appointing authority.

The following persons are appointed to the FTC's Performance Review Board Roster: Office of the Chairman: James Hamill, Lorraine Miller, Susan DeSanti; Office of the Inspector General: Frederick Zirkel; Office of the Executive Director: Robert Walton, Rosemarie Straight, Alan Proctor, James Giffin, Richard Arnold; General Counsel: Stephen Calkins, Jay Shaffer, Ernest Isenstadt, Christian White; Office of Secretary: Donald Clark; Bureau of Competition: William Baer, George Cary, Mark Whitener, Ann Malester, Michael McNeely, Phillip Broyles, Walter Winslow, Robert Leibenluft; Bureau of Consumer Protection: Joan Bernstein, Teresa Schwartz, Lydia Parnes, David Medine, Elaine Kolish, Eileen Harrington, Dean Graybill, C. Lee Peeler; Bureau of Economics: Jonathan Baker, Ronald Bond, Gary Roberts, Paul Pautler.

Donald S. Clark,

Secretary.

[FR Doc. 96–19941 Filed 8–5–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–20]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Reliability and Validity Assessment of the Use of Scales of Stressful Life Events in Black Women of Reproductive Age—(0920–0356)—Reinstatement—A CDC review of studies of psychosocial factors and adverse pregnancy outcome supports the hypothesis that high levels of exposure to stressful life experiences put black women at increased risk for adverse reproductive outcome, particularly Preterm Delivery (PTD) and Very Low Birth Weight (VLBW). The purpose of this study is to evaluate the reliability and validity of existing instruments that measure stressful life events in black women of reproductive age. Respondents will consist of reproductive age residents who live in the Atlanta area and who attend a health care facility that has a behavioral prenatal unit. Approximately one half of the women will be pregnant at the time of data collection.

Women enrolled in the study respond to a series of demographic and psychosocial questionnaires. Women are also asked to provide a 24 hour urine sample and saliva sample. Both samples are used to correlate reported levels of stress with laboratory measures of stress.

Participation in this study is voluntary and participants will receive a reimbursement for their time. A written informed consent will be obtained and oversight will be provided by local institutional review.

The study is ongoing and by December 31, 1996, approximately two-thirds of data collection will be completed. In January 1997, we need to continue data collection so that we will have 100 women for the validity study and 29 women for the reliability study. To complete the validity study, 100 women will be interviewed and will submit one 24 hour urine collection and a saliva sample. To complete the reliability study, 29 women will be interviewed on two separate occasions to determine whether responses to the structured stress scales are consistent. These women will also submit a 24 hour urine collection and a saliva sample. the total estimated cost to respondents is at $8,616.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Reliability study group—African-American Women for the ages of 18 to 45	29	1	13	377
Validity study group—African-American Women for the ages of 18 to 45	100	1	7	700
Total				1,077

Dated: July 31, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–19935 Filed 8–5–96; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements in 42 CFR 485.56, 485.58, 485.60; *Form No.*: HCFA–359, HCFA–360, HCFA-R–55; *Use*: In order to participate in the Medicare program as a CORF, providers must meet Federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to HCFA; *Frequency*: Annually; *Affected Public*: Business or other for profit, not for profit institutions, State, local, or tribal governments; *Number of Respondents:* 162; *Total Annual Responses:* 324; *Total Annual Hours:* 526 (reporting), 77,014 (record keeping).

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 30, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–19992 Filed 8–5–96; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0051), Washington, DC 20503.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performances.

Bureau form number: None.

Frequency: Annual proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 500.

Annual burden hours: 17,200 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: June 4, 1996.

P. Patrick Leahy,

Chief Geologist.

[FR Doc. 96–19993 Filed 8–5–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[CO–056–1610–00]

Notice of Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of Zapata Falls recreation area in Alamosa County, Colorado.

SUMMARY: Notice is hearby given that effective August 5, 1996, public lands described below are closed to all public use Monday through Friday under the authority and requirement of 43 CFR 8364.1. This closure effects those portions of BLM lands located in T.39N., R.13E. S½ Section 18, T.28S., R.73W., SWSW Sec. 7, N½ Sec. 17, N½ Sec. 18. The purpose of this closure is to insure public safety during construction work. The site is going through the last stage of construction to improve the picnic area by installing grills, picnic tables, benches, an information kiosk and developing trails. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure order issued under this subpart may be subject to the penalties provided in 8360.0–7 of this title. Notice of this closure will be posted at the site. San Luis Resource Area Office and at the Canon City District Office.

DATES: This emergency closure is effective August 5, 1996 through September 30, 1996.

ADDRESSES: Comments can be directed to the Acting Area Manager, San Luis Resource Area, 1921 State Ave., Alamosa, CO 81101 or District Manager, Canon City District Office , 3170 East Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Fred Martinez, Acting Area Manager at (719) 589–4975.

Donnie R. Sparks,

District Manager.

[FR Doc. 96–19930 Filed 8–5–96; 8:45 am]

BILLING CODE 4310–JB–P

[MT–960–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held September 9–10, 1996, at the BLM District Office, Dickinson, North Dakota, beginning at 8:00 a.m. each day. The meeting will focus on land exchanges in South Dakota, weed issues, and other natural-resource concerns; a field trip to the Schnell Ranch Recreation Area may be included in the meeting agenda. The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management.

The meeting is open to the public. A public comment period is set for 8:00 a.m. on September 10th. The public may make oral statements to the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jon Pinner, Administrative Officer, Dakotas District Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: July 30, 1996.

Douglas J. Burger,

District Manager.

[FR Doc. 96–19914 Filed 8–5–96; 8:45 am]

BILLING CODE 4310–DN–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before JULY 27, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 21, 1996.

Beth Savage,

Acting Keeper of the National Register.

ARKANSAS

Randolph County

Randolph County Courthouse, Jct. of Broadway and N. Marr Sts., SW corner, Pocahontas, 96000910

CALIFORNIA

Fresno County

Dinkey Creek Bridge, Off Dinkey Creek Rd., W of Camp Fresno, Sierra National Forest, Dinkey Creek, 96000911

CONNECTICUT

New London County

Hallville Mill Historic District, Hallville Rd., Hall's Mill Rd., and CT 2A on Hallville Pond, Preston, 96000913

Poquetanuck Village Historic District, Roughly, along Main St. between CT 117 and Middle Rd. and along School House and Cider Mill Rd., Preston, 96000912

FLORIDA

Jackson County

Norton, Robert Lee, House, 2045 Church St., Cypress, 96000914

GEORGIA

McIntosh County

Behavior Cemetery, S end of Sapelo Island, 1.25 mi W of Hog Hammock, Hog Hammock vicinity, 96000915

First African Baptist Church at Raccoon Bluff, E side of Sapelo Island, approximately 2 mi. N of Hog Hammock, Hog Hammock vicinity, 96000916

Hog Hammock Historic District, E side of Sapelo Island, Hog Hammock, 96000917

KANSAS

Johnson County

Blackfeather Farm, 8140 W 183rd St., Stilwell, 96000918

MARYLAND

Worcester County

Fassitt House, 12025 Fassitt Ln., Berlin vicinity, 96000921

Martin, James, House, 207 Ironshire St., Snow Hill, 96000922

Purnell, George Washington, House, 201 E. Market St., Snow Hill, 96000920

Williams Grove, 11842 Porfin Dr., Berlin vicinity, 96000919

MASSACHUSETTS

Essex County

Brown Stocking Mill Historic District, 24—32 Broadway Ave., 3—41 Brownville Ave., 10 Burleigh Ave., 3—5 Burleigh Pl., and 35—47 Topsfield Rd., Ipswich, 96000924

Ipswich Mills Historic District, Roughly bounded by Union St., Boston and Maine RR tracks, and the Ipswich River, Ipswich, 96000923

NORTH CAROLINA

Macon County

First Presbyterian Church, 471 Main St., Highlands, 96000925

Mecklenburg County

Matthews Commercial Historic District, 157—195 and 156—196 N. Trade St., 118 E. Charles St., Matthews, 96000928

Perquimans County

Old Neck Historic District, Roughly bounded by US 17, NC 1302, NC 1300, Suttons Cr., and Perquimans River, Hertford vicinity, 96000929

OHIO

Auglaize County

Blume High School, 405—409 S. Blackhoof St., Wapakoneta, 96000933

Hamilton County

May, David and Mary, House, 3723 Washington Ave., Cincinnati, 96000931

Madison County

First United Methodist Church, 52 N. Main St., London, 96000930

Miami County

Piqua High School, 316 N. College St., Piqua, 96000927

Scioto County

Second Presbyterian Church, 801 Waller St., Portsmouth, 96000926

Wood County

Housley, R. A., House, 24155 Front St., Grand Rapids, 96000932

TENNESSEE

Dickson County

Dickson Post Office, 201 W. College St., Dickson, 96000934

TEXAS

Gonzales County

Gonzales Commercial Historic District, Roughly bounded by Water, Saint Andrew, Saint Peter, and Saint Matthew Sts., Gonzales, 96000935

Potter County

Potter County Courthouse and Library, 501 S. Taylor St., Amarillo, 96000938

Santa Fe Building, 900 S. Polk St., Amarillo, 96000939

Smith County

Smith County Jail, 1881, 309 Erwin St., Tyler, 96000937

Travis County

McCallum, Arthur N. and Jane Y., House, 613 W. 32nd St., Austin, 96000936

UTAH

Salt Lake County

Central City Historic District, Roughly bounded by S. Temple, 900 South, 500

East, and 700 East Sts., Salt Lake City, 96000940

WYOMING

Laramie County

Downtown Cheyenne Historic District (Boundary Increase III), Roughly bounded by 18th, Carey, 16th, and Warren Sts., Cheyenne, 96000909

[FR Doc. 96–19919 Filed 8–5–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Redress Administration

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Redress Payments for Japanese Americans: Guidelines for Individuals Who Involuntarily Relocated to Japan During the War, and Guidelines under *Ishida* v. *United States.*

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulations, part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officers, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection. Existing Collection in Use without a OMB Number.

(2) The title of the form/collection. Redress Payments for Japanese Americans: Guidelines for Individuals Who Involuntarily Relocated to Japan during the War and Guidelines under *Ishida* v. *United States.*

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Redress Administration, Civil Rights Division, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Individuals or households. Other: None. This collection contains the forms which persons of Japanese ancestry will use to apply for redress compensation under the Civil Liberties Act of 1988.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 140 respondents: Declaration at 10 minutes per response; 2,000 respondents: Declaration at 10 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 356 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: August 1, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–19970 Filed 8–5–96; 8:45 am]

BILLING CODE 4410–13–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Applicant Survey.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on May 29, 1996, at 61 FR 26933, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulations, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department or Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarify of the information to be collected; and

(4) Minimize the burden of the collected of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–942. Human Resources Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandates equal opportunity in the recruitment of applicants for Federal employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 respondents at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,950 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 31, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–19921 Filed 8–5–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Notice of information collection under review; Fiscal Year 1996 Church Arson Prevention Grant Program.

DATES: The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for October 7, 1996.

ADDRESSES: Additional comments, suggestions, requests for information, or need a copy of the proposed information collection instrument with instructions, should be addressed to Chief Andrew Mitchell, United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531. Information can also be obtained from Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Chief Andrew Mitchell at (202) 616–3469.

SUPPLEMENTARY INFORMATION: Overview of this information collection:

(1) Type of Information Collection: New collection of information.

(2) Title of the Form/Collection: Fiscal Year 1996 Church Arson Prevention Grant Program Form.

(3) Agency form number, if any, and the applicable component of the United States Department of Justice sponsoring the collection: Bureau of Justice Assistance.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Units of county governments. Other: None. P.L. 90–351, as amended, enacted the Fiscal Year 1996 Church Arson Prevention Grant Program. This program awards grant funds to units of county governments for the purposes of reducing crime and improving public safety. The Application Form will be completed by each eligible unit of county government applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond: 1291 responses at 15 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: annual burden 645.5 hours (including opportunity cost).

Request for Comments

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: July 31, 1996.

Robert B. Briggs,

Department of Clearance Officer, United States Department of Justice.

[FR Doc. 96–19920 Filed 8–5–96; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; State Criminal Alien Assistance Program (SCAAP).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact

Linda McKay (202) 514–6638, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Revised collection of information.

(2) Title of the Form/Collection: State Criminal Alien Assistance Program Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. This program is administered under the authority of 8 U.S.C. 1252(j) to reimburse States and localities for costs expended in the incarceration of undocumented criminal aliens. The Application Form will be completed by each eligible State and local applicant and will provide information regarding eligible inmate population and incarceration costs for verification and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3500 responses at 60 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 1, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–19969 Filed 8–5–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Survey to examine the relationship between juvenile delinquency and gang and nongang affiliation of Southeast Asian refugee youths.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility:

(2) evaluate the accuracy of the agencies/component 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.

Overview of this information collection:

(1) Type of information collection: New survey to examine the relationship between juvenile delinquency and gang and nongang affiliation of Southeast Asian refugee youths.

(2) The title of the form/collection: Delinquency and Criminal Street Gang Affiliation Among Southeast Asian-American Youth Survey.

The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Untied States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Primary: Delinquent and non-delinquent youth involved in gang or non-gang law violating groups and a parent or guardian. Other: None. The information collected is used to document the proportion of total juvenile delinquency for which gang and non-gang involved law-violating youth are responsible and to document the contribution of gang membership versus that of other law-violating youth groups to serious, violent and chronic juvenile careers.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be 800 respondents and it will take about one hour to respond to the questions for a total of 800 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 800 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 31, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–19921 Filed 8–5–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility

requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,320; Fort Smith Furniture, Fort Smith, AR
TA–W–32,440; Val Hall, Inc., Eugene, OR
TA–W–32,406; Unifi, Inc., Polyester Div., Staunton, VA
TA–W–32,385; Rocky Mount Mills, Rocky Mount, NC
TA–W–32,473; The G & O Manufacturing Co., New Haven, CT
TA–W–32,476; Vanguard Products Corp., Berkeley Springs, WV

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,441; Plymouth Resources, Inc., Tulsa, OK
TA–W–32,337; Reeves Brothers, Inc., Woodruff, SC
TA–W–32,519; Automed, Inc., Arden Hills, MN
TA–W–32,348; General Motors Corp., Med-Size Car Div., North Tarrytown Assembly Plant, North Tarrytown, NY
TA–W–32,418; Eaton Corp., Engine Components Operations Annex, Marshall, MI
TA–W–32,122; Lightolier, Compton, CA
TA–W–32,319; Paragron Trade Brands, Inc., Oneonta, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,552; Alvarado Cattle Co., Presidio, TX
TA–W–32,376; IPC Corinth Div., Inc., Corinth, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,468; Dover Elevator Systems, Inc., Walnut, MS

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,501; C.F. Hathaway, Waterville, ME: September 7, 1996.
TA–W–32,413 A & B; Carolina Dress Corp., Hayesville, NC, Hiawassie, GA, Blairsville, GA: May 23, 1995.
TA–W–32,444; Triangle Auto Spring Co., Columbia, TN: May 29, 1995.
TA–W–32,360 TA–W–32,361, TA–W–32,362; AA Production, Inc., Lubbock, TX, Sacramento, CA, Grand Junction, CO: May 8, 1995.
TA–W–32,453; E.I. DuPont, Parlin, NJ: June 3, 1995.
TA–W–32,391; Telex Communication, Inc., Le Sueur, MN: May 9, 1995.
TA–W–32,511; ROL Manufacturing of America, Brownsville, TX: June 10, 1995.
TA–W–32,357; GRD Steel, Monongahela, PA: April 30, 1995.
TA–W–32,356; Unisys Corp., Midwest Operations, Roseville, MN: April 29, 1995.
TA–W–32,471; Lee Thomas, Inc., Los Angeles, CA: May 29, 1995.
TA–W–32,298; Tamps Mill Div. of Ameristeel (Formerly Florida Steel Corp), Tampa, FL: April 22, 1995.
TA–W–32,497; Lakedale Manufacturing, Inc., Fayetteville, NC: June 13, 1995.
TA–W–32,369; Command Enterprise Corp., Monticello, FL: May 14, 1995.
TA–W–32,539; Digital Equipment Corp., Storage Manufacturing, Colorado Springs, CO: June 27, 1995.
TA–W–32,420; E.D. Smith, Inc., Byhalia, MS: May 30, 1995.
TA–W–32,433; Paramount Headwear, Inc., Bernie, MO: June 2, 1995.
TA–W–32,485; Paramount Headwear, Inc., Advance, MO: June 14, 1995.
TA–W–32,390; Spartus Corp., Louisville, MS: May 7, 1995.
TA–W–32,426; Ochoco Lumber Co., dba St. Joe Lumber Co., Princeton, ID: May 23, 1995.
TA–W–32,475; Miss Elaine, Inc., Centralia, IL: June 6, 1995.
TA–W–32,481; Chase Ergonomics, Inc., Albuquerque, NM: June 7, 1995.
TA–W–32,546; DM IV, Inc., Centerville, TN: June 26, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01027; Rocky Mount Mills, Rocky Mount, NC
NAFTA–TAA–00970; Lightolier, Compton, CA
NAFTA–TAA–01077; Beaufab Mills, Inc., Stroudsburg, PA

NAFTA–TAA–01021; Bel Aire Bridal, Inc., Charisma By Bel Aire, Torrance, CA
NAFTA–TAA–01049; The Goodyear Tire & Rubber Co., Air Springs Manufacturing Div., Green, OH
NAFTA–TAA–01069; Columbia Gas System, Columbia Natural Resources, Inc., Charleston, WV
NAFTA–TAA–01009; Shaw Industries, Inc., Yarn Div., Trenton, SC
NAFTA–TAA–01059; Rissler & McMurry Co., Welding Div., Casper, WY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01070; Blue Mountain Forest Products, Long Creek, or: June 5, 1995.
NAFTA–TAA–01091; Lakedale Manufacturing, A Div., of K and R Sportswear, Inc., Fayetteville, NC: June 18, 1995.
NAFTA–TAA–01087; Chase Ergonomics, Inc., Albuquerque, NM: June 25, 1996.
NAFTA–TAA–01076; United Sports Apparel, Pelham, TN: June 5, 1995.
NAFTA–TAA–01078; Truck-Lite Co., Inc., Falconer, NY: May 31, 1996.
NAFTA–TAA–01072; General Electric, GE Motor and Industrial Systems, Erie, PA: June 10, 1995.
NAFTA–TAA–01100; Automed, Inc., Arden Hills, MN: June 17, 1995.
NAFTA–TAA–01081; Nestaway Canal Wire Facility, Nestaway Div of Axia, Inc., Canal Winchester, OH.
NAFTA–TAA–01068 & A; Hickory Hills Industries, Inc., Savannah Manufacturing Co., Savannah, TN and Hickory Hills Industries, Inc., Clifton Contracting Co., Clifton, TN: June 7, 1995.
NAFTA–TAA–01085; Lee Thomas, Inc., Los Angeles, CA: May 29, 1995.
NAFTA–TAA–01054; Frank H. Fleer Corp., Philadelphia, PA.
NAFTA–TAA–01060; Mini World, Inc., Provo, UT: May 23, 1995.
NAFTA–TAA–01061; St. Joe Lumber Co., Ochoco Lumber Co., Princeton, ID: May 23, 1995.
NAFTA–TAA–01045; Pioneer Manufacturing, Inc., Salisbury, NC: May 24, 1995.
NAFTA–TAA–01114; Beck/Arnley Worldparts Corp., Pittsburgh, PA: June 27, 1995.
NAFTA–TAA–01121; Maclin Co., Industry, CA: June 26, 1995.
NAFTA–TAA–01101; Jatco Enterprises, Inc., Shellman, GA: June 24, 1995.
NAFTA–TAA–01005; Lanz, L.L.C., Lanz Clothing Co., Culver City, CA: May 3, 1995.
NAFTA–TAA–01095; International Rectifiers, Hexfet America Facility, Temecula, CA: June 16, 1995.

I hereby certify that the aforementioned determinations were issued during the month of July 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 26, 1996.

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19981 Filed 8–5–96; 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 16, 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 16, 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, D.C. this 15th day of July, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 07/15/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,547	ASARCO, Inc. (USWA)	Omaha, NE	07/01/96	Refined Lead, Antimony Oxide & Bismuth.
32,548	Stonehinge Products (Co.)	Springfield, KY	05/21/96	Golf Bags.
32,549	Clear Lake Footwear (Co.)	England, AR	06/26/96	Men's Shoes.
32,550	J and M Apparel, Inc. (Co.)	Finger, TN	06/21/96	Ladies' Loungewear.
32,551	Rohm Tech, Inc. (Co.)	Malden, MA	07/01/96	Leather Processing Chemicals.
32,552	Alvarado Cattle Company (Co.)	Presidio, TX	03/26/96	Trucking of Cattle into Mexico & Back.
32,553	Eatonton Sewing Plant (Co.)	Eatonton, GA	06/04/96	Ladies' Panties.
32,554	Concord Fabrics, Inc. (Wkrs)	New York, NY	06/27/96	Printed Woven Textiles.
32,555	Flexel, Inc. (UNITE)	Tecumseh, KS	06/25/96	Cellophane.
32,556	Lodestar Ind. Contractor (Co.)	Colville, WA	07/03/96	Environmental & Conveyor System.
32,557	Cluett, Peabody & Co. (Comp)	Atlanta, GA	07/02/96	Men's Shirts.

APPENDIX—Continued

[Petitions Instituted on 07/15/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,558	Warner's of Warnaco (Wkrs)	Barbourville, KY	06/27/96	Men's Apparel.

[FR Doc. 96–19979 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,900; BHP PETROLEUM (AMERICAS) INC. Texas and TA–W–31,900A; TA–W–31,900B]

New Mexico; 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 February 26, 1996, applicable to all workers of BHP Petroleum (Americas), Inc., Houston, Texas. The notice was published in the Federal Register on March 19, 1996 (61 FR 11,224).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The Department's review of the certification revealed that workers at the subject firm's Midland, Texas, and Farmington, New Mexico, facilities were inadvertently excluded from the certification. Accordingly, the Department is amending the certification to include workers of BHP Petroleum (Americas) Inc., Midland, Texas, and Farmington, New Mexico. The workers were engaged in employment related to the production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of BHP Petroleum (Americas) Inc., Midland, Texas, and Farmington, New Mexico, who were adversely affected by imports.

The amended notice applicable to TA–W–31,900 is hereby issued as follows:

All workers of BHP Petroleum (Americas) Inc., Houston, Texas (TA–W–31,900), and the facility in Midland, Texas (TA–W–31,900A), and the facility in Farmington, New Mexico (TA–W–31,900B), who became totally or partially separated from employment on or after January 24, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of July, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19976 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,404]

Brasher Garment Cutting, Parsons, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 3, 1996 in response to a worker petition which was filed on behalf of former workers at Brasher Garment Cutting, located in Parsons, Tennessee (TA–W–32,404).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 23rd day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19982 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 101]

Breed Technologies, Inc., Breed Automotive, L.P., Brownsville, TX; Notice of Revised Determination on Reconsideration

On May 3, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the Federal Register on May 24, 1996 (61 FR 26220).

The workers were denied TAA because they did not produce an article within the meaning of Section 222(3) of the Trade Act of 1974, as amended. The workers performed warehouse functions.

New investigation findings on reconsideration shows that in addition to late production warehouse and pre-shipping preparation, the workers were producing air bags and sensors. The functions at the Brownsville, Texas location were shifted to Mexico. The company is importing the airbags and sensors to the United States from Mexico.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Breed Technologies, Inc., Breed Automotive, L.P., Brownsville, Texas were adversely affected by increased imports of articles like or directly competitive with air bags and sensors produced at the subject firm.

All workers of Breed Technologies, Inc., Breed Automotive, L.P., Brownsville, Texas, who became totally or partially separated from employment on or after March 1, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19974 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,234; and TA–W–32, 234B]

The Carborundum Company, et al.; 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 30, 1996, applicable to all workers of the Carborundum Company, W.H. Wendel Technology Center, Niagara Falls, New York and The Carborundum Company, Corporate Headquarters, Niagara Falls, New York. The notice was published in the Federal Register on June 20, 1996 (61 FR 31553).

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' Structural Ceramics Division, Niagara Falls, New

York location. The workers are engaged in the production of ceramic-based products.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of ceramic-based products.

Accordingly, the Department is amending the certification to cover the workers of The Carborundum Company, Structural Ceramics Division, Niagara Falls, New York.

The amended notice applicable to TA–W–32,234 is hereby issued as follows:

All workers of The Carborundum Company, W.H. Wendel Technology Center, Niagara Falls, New York (TA–W–32,234) and The Carborundum Company, Structural Ceramics Division, Niagara Falls, New York (TA–W–32,234B) who became totally or partially separated from employment on or after March 29,1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC; this 25th day of July 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–19977 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,179A and 179B]

Dallco Industries, Inc.; 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 22, 1996, applicable to all workers of Dallco Industries, Inc., headquarters and production facility, York, Pennsylvania and production facility, Adams County, Pennsylvania. The notice was published in the Federal Register on June 6, 1996 (61 FR 28900). The certification was amended on July 1, 1996, to include workers of the subject firm's Mount Union, Pennsylvania production facility. The amended notice was published in the Federal Register on July 12, 1996 (61 FR 36759).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Department's review of the certification, revealed that workers at the subject firm's Mount Union, Pennsylvania production facility were already covered under a worker certification, petition number TA–W–32,081. Accordingly, the Department is amending the certification for TA–W–32,179 to exclude the workers of Dallco Industries, Inc., Mount Union, Pennsylvania. Other findings show that workers of the Dallco Industries, Inc. production facility located in Adams County, Pennsylvania had previously been assigned the petition number TA–W–32,179B. That petition number will remain as is. All workers of the subject are engaged in employment related to the production of ladies' loungewear, sleepwear, sportswear and children's clothing.

The amended notice applicable to TA–W–32,179A and TA–W–32,179B is hereby issued as follows:

All workers of Dallco Industries, Inc., headquarters and production facility, York, Pennsylvania (TA–W–32,179A) and the production facility in Adams County, Pennsylvania (TA–W–32,179B), who became totally or partially separated from employment on or after March 12, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C.; this 18th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19985 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,761 & 761A]

Dawson Home Fashions, Incorporated; Colorama and DHF Administration Divisions; 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 February 23, 1996, applicable to all workers of Dawson Home Fashions, Incorporated, Colorama and DFH Administration Divisions, Passaic, New Jersey. The notice was published in the Federal Register on March 19, 1996 (61 FR 11224).

At the request of the State Trade Coordinator, 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' New York, New York location. The workers were engaged in sales operations for Dawson Home Fashions production facilities.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of vinyl and fabric shower curtains and provided administrative, accounting, human resources, sales and customer service support. Accordingly, the Department is amending the certification to cover the workers of Dawson Home Fashions, Incorporated, Colorama and DFH Administration Divisions, New York, New York.

The amended notice applicable to TA–W–31,761 is hereby issued as follows:

All workers of Dawson Home Fashions, Incorporated, Colorama and DFH Administration Divisions, Passaic, New Jersey (TA–W–31,761), and Dawson Home Fashions, Incorporated, Colorama and DFH Administration Divisions, New York, New York (TA–W–31,761A) who became totally or partially separated from employment on or after December 11, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19986 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 543; TA–W–31, 543B]

OshKosh B'Gosh, Hermitage Springs, TN and Celina, TN; 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 an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on June 13, 1996, applicable to all workers of OshKosh B'Gosh, McEwen, Tennessee OshKosh B'Gosh, Hermitage Springs, Tennessee and OshKosh B'Gosh, Red Boiling Springs, Tennessee. The notice was published in the Federal Register on July 3, 1996 (61 FR 34877).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Celina, Tennessee location. The workers are engaged in the production of children's and men's bib overalls.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of children's and men's bib overalls. Accordingly, the Department is

amending the certification to cover the workers of OshKosh B'Gosh, Celina, Tennessee.

The amended notice applicable to TA–W–31,543 is hereby issued as follows:

''All workers of OshKosh B'Gosh, Hermitage Springs, Tennessee (TA–W–31,543) and OshKosh B'Gosh, Celina, Tennessee (TA–W–31,543B) who became totally or partially separated from employment on or after October 3, 1934 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of July 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19973 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31–049]

OXY USA, Incorporated, Including OXY Crude Sales Operating in the State of 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 June 16, 1995, applicable to all workers of OXY USA, Incorporated, located in the State of Texas. The notice was published in the Federal Register on July 7, 1995 (60 FR 35435).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that workers of OXY Crude Sales operating in the State of Texas were inadvertently excluded from the worker certification. Based on these new findings, the Department is amending the certification to include OXY Crude Sales workers of OXY USA, Incorporated operating in the State of Texas. The workers of OXY Crude Sales supported the production of oil and gas for OXY USA, Incorporated in the State of Texas.

The intent of the Department's certification is to include all workers at OXY USA, Incorporated, adversely affected by imports.

The amended notice applicable to TA–W–31,049 is hereby issued as follows:

All workers of OXY USA, Incorporated including OXY Crude Sales operating in the State of Texas who became totally or partially separated from employment on or after May 12, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 22nd day of July, 1996.

Russell Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 96–19978 Filed 8–5–96; 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 of 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 show below, not later than August 16, 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 16, 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, D.C. this 22nd day of July, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 7/22/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,559	United Technologies Auto (Comp)	Newton, IL	07/12/96	Electrical Wiring Harnesses.
32,560	Bortz Chocolate, Inc (Wkrs)	Reading, PA	07/12/96	Chocolates.
32,561	Kingstree Knits (Wkrs)	Midway, GA	07/11/96	T-Shirts.
32,562	Columbia Natural Resource (Comp)	Charleston, WV	07/11/96	Gas.
32,563	KL Manufacturing Co (Wkrs)	Post Falls, ID	07/01/96	Sportswear.
32,564	Beck Arnley World Parts (Comp)	Pittsburgh, PA	07/02/96	Automobile Brake Shoes.
32,565	Koomey, Inc (Wkrs)	Brookshire, TX	07/03/96	Oilfield Equipment.
32,566	Decaturville Mfg (Wkrs)	Parsons, TN	07/05/96	Children's Jeans.
32,567	Robertshaw Controls Co (Comp)	Grove City, OH	07/08/96	Electronic Controls.
32,568	Globe Metallurgical, Inc (Wkrs)	Niagara Falls, NY	06/25/96	Ferro and Silicon Alloys.
32,569	National Castings, Inc (UAW)	Cicero, IL	06/18/96	Steel Castings.
32,570	Safety Stitch, Inc (Comp)	Harrisville, WV	07/11/96	Ladies' Jackets, Blazers, Blouses.
32,571	Pellamy Manufacturing (Comp)	Richlands, NC	07/01/96	Ladies' Sportswear.
32,572	Pauline Knitting Indus. (Wkrs)	Salisbury, NC	07/09/96	Knit Fabrics.
32,573	Thomson Consumer Elect. (Comp)	Syracuse, NY	07/08/96	Engineering Designs of Audio Products.
32,574	Chevron Pipe Line Co (Wkrs)	Houston, TX	07/01/96	Pipe Line Oil Transportation.
32,575	NC Foods (IBT)	Watsonville, CA	06/28/96	Frozen Broccoli and Cauliflower.
32,576	Bethlehem Steel Corp (USWA)	Bethlehem, PA	07/12/96	I-Beams, Wide Flange, Shapes—Steel.
32,577	Uniroyal Technology Corp. (USWA)	Mishawaka, IN	07/02/96	Adhesives and Sealants.

APPENDIX—Continued

[Petitions instituted on 7/22/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,578	Seagraves Leather Corp. (Comp)	East Wilton, ME	06/25/96	Tanned Skins.
32,579	Mr. Casuals (Comp)	Troutdale, VA	07/12/96	Men's, Ladies' and Childrens' Apparel.
32,580	El Paso Apparel Group Inc (UNITE)	El Paso, TX	07/10/96	Ladies' Apparel.
32,581	ARCO Corporate (Wkrs)	Denver, CO	07/12/96	Environmental Clean Up.
32,582	OMSC Shirt Corp. (Comp)	Morgantown, WV	07/12/96	Men's Dress and Sport Shirts.
32,583	Greenfield Research Inc. (Wkrs)	Hermann, MO	05/07/96	Automobile Seat Covers.

[FR Doc. 96–19980 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,469]

Wallace & Tiernan, Incorporated Belleville, NJ; Notice of Revised Determination on Reopening

On July 22, 1996, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on July 3, 1996, because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The denial notice will soon be published in the Federal Register.

The workers at Wallace & Tiernan, Incorporated located in Belleville, New Jersey produced hydraulic diaphragm pumps, diaphragm metering pumps and gravimetric and volumetric belt feeders. The workers are not separately identifiable by product line. The company official has provided new information regarding company imports of pumps and chemical feeders. Findings on reopening show that the company has increased its reliance on imports of pumps and chemical feeders from Wallace & Tiernan's foreign operations. All workers will be separated from employment at the Belleville production facility when the subject firm closes in September 1996.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with pumps and chemical feeders produced by the subject firm contributed importantly to the declines in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Wallace & Tiernan, Inc., Belleville, New Jersey, who became totally or partially separated from employment on or after May 29, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 23rd day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19975 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–01015]

AVX Corporation, Myrtle Beach, SC; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 13, 1996, applicable to workers of AVX Corporation located in Myrtle Beach, South Carolina. The notice was published in the Federal Register on July 3, 1996 (61 FR 34875).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The affected workers were involved in the testing and packaging operations in the production of ceramic capacitors. New information provided by the company shows that workers are separately identifiable by product line. Accordingly, the Department is amending the certification to limit coverage to those workers of the subject firm in Myrtle Beach involved in testing and packaging operations related to production of ceramic capacitors.

The intent of the Department's certification is to include those workers of AVX Corporation who were adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–01015 is hereby issued as follows:

Workers of AVX Corporation, Myrtle Beach, South Carolina, involved in testing and packaging operations related to the production of ceramic capacitors, who became totally or partially separated from employment on or after May 7, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19972 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00634]

Lockheed Martin, Ocean, Radar and Sensor Systems, Utica, NY; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued an Amended Certification for NAFTA Transitional Adjustment Assistance on November 30, 1995, applicable to workers of Lockheed Martin, Ocean, Radar & Sensor Systems located in Utica, New York. The notice was published in the Federal Register on December 12, 1995 (60 FR 63736).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that workers providing support services related to the production of printed circuit boards and inspection operations are being excluded from eligibility for NAFTA–TAA.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports from Canada or Mexico. Accordingly, the Department is again amending the

certification to include all support service workers engaged in employment related to the production of printed circuit boards and inspection operation of the printed circuit board assemblies at the Utica location of Lockheed Martin, Ocean, Radar & Sensor Systems.

The amended notice applicable to NAFTA–00634 is hereby issued as follows:

All workers, including support service staff, engaged in employment related to the production of printed circuit boards and all workers, including support service staff, engaged in employment related to the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division, Utica, New York who became totally or partially separated from employment on or after October 5, 1994, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19987 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–01025]

Mullen Lumber Inc., Molalla, OR; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on June 13, 1996, for all workers of Mullen Lumber located in Molalla, Oregon. The notice was published in the Federal Register on July 3, 1996 (61 FR 34875).

The Department, on its own motion, reviewed the certification for workers of Muller Lumber Inc. Findings show that workers of the subject firm produced douglas fir and hemlock moldings, wainscoting and flooring.

The certification review revealed that Mullen Lumber, Molalla, Oregon produces higher grade lumber products that are not affected by increased imports of those products from Canada or Mexico.

Since there are no adversely affected workers of the subject firm, the continuation of the certification would serve no purpose and the certification has been terminated.

Signed at Washington, D.C., this 17th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19984 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–TAA–00965]

Sony Electronics, Carol Stream, IL; 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 Sony Electronics, Carol Stream, Illinois. 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.

NAFTA–TAA–00965; Sony Electronics, Carol Stream, Illinois (July 19, 1996)

Signed at Washington, DC this 22nd day of July, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19983 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Operator Dust Data Card

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondents' 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 (PRA 95) [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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Mine Operator Dust Data Card. MSHA is particularly interested in comments which:

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 must respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the person listed in the Contact section of this notice.

DATES: Submit comments on or before October 7, 1996.

ADDRESSES: Submit written comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy.

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, MSHA, (703) 235–8378.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 842, and 30 C.F.R. Parts 70, 71, and 90 require coal mine operators to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air. Regulations promulgated under the Mine Act further require the mine operator during each bimonthly period to collect and submit dust samples to MSHA for analysis to determine compliance with the standards, along with reporting certain information to MSHA on a dust data

card that accompanies the dust samples. See 30 C.F.R. §§ 70.209, 71.209, and 90.209.

Specific occupations/work positions, areas of the mine, and miners are designated by regulation or by the mine operator's ventilation and dust control plan. These sites are designated for sampling because there is a past history of high respirable dust levels or because a miner has already demonstrated evidence of the early stages of coal workers' pneumoconiosis.

II. Current Actions

This request for collection of information contains provisions whereby mine operators can continue to verify their compliance with mandatory regulations.

Type of Review: Extension (without change).

Agency: Mine Safety and Health Administration.

Title: Mine Operator Dust Data Card.

OMB Number: 1219–0011.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 70.209, 71.209 and 90.209.

Total Respondents: 1,580.

Frequency: Bi-monthly.

Total Responses: 64,000.

Average Time per Response: 61 minutes.

Estimated Total Burden Hours: 65,667 hours.

Estimated Total Burden Cost: $1,514,232.

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 31, 1996.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 96–19990 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–43–M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: July 29, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–94–010–C.

FR Notice: 59 FR 6975.

Petitioner: SBM Coal Company.

Reg Affected: 30 CFR 75.360(b)(5).

Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section and physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the M and R Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–94–011–C.

FR Notice: 59 FR 6975.

Petitioner: SBM Coal Company.

Reg Affected: 30 CFR 75.1202–1(a)

Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the M and R Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–012–C.

FR Notice: 59 FR 6975.

Petitioner: SBM Coal Company.

Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the M and R Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–023–C.

FR Notice: 59 FR 10172.

Petitioner: Mountain Coal Company.

Reg Affected: 30 CFR 75.380(d)(4).

Summary of Findings: Petitioner's proposal to allow the width of the alternate escapeway in the belt entry for each longwall panel to be maintained at a width of a minimum of 48 inches for a maximum distance of 1,050 feet immediately out by the stageloader; to designate the intake entry as the primary escapeway and belt entry as the alternate escapeway with both escapeways on intake air and maintained to a minimum of 6 feet in width for their entire distance, except for a distance of a maximum of 1,050 feet in the alternate escapeway beginning at the stage-loader considered acceptable alternative method. Granted for the West Elk Mine with conditions for the ''monorail area'', the area immediately out by the stage-loader for a maximum distance of 1,050 feet, in the belt entry of each longwall panel.

Docket No.: M–94–042–C.

FR Notice: 59 FR 21780.

Petitioner: Peabody Coal Company.

Reg Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; and to

instruct all persons during safety meetings on the requirements for operating or maintaining battery-powered machines considered acceptable alternative method. Granted for the Big Mountain No. 16 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–94–044–C.
FR Notice: 59 FR 24728.
Petitioner: K & L Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–045–C.
FR Notice: 59 FR 24728.
Petitioner: K & L Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–047–C.
FR Notice: 59 FR 24728.
Petitioner: K & L Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–94–072–C.
FR Notice: 59 FR 35147.
Petitioner: Chestnut Coal Company.
Reg Affected: 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section and physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the No. 10 Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–94–075–C.
FR Notice: 59 FR 35147.
Petitioner: Chestnut Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–076–C.
FR Notice: 59 FR 35147.
Petitioner: Chestnut Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 10 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–082–C.
FR Notice: 59 FR 35148.
Petitioner: K & S Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the First Chance Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–083–C.
FR Notice: 59 FR 35148.
Petitioner: K & S Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the First Chance Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–088–C.
FR Notice: 59 FR 35148.
Petitioner: Shadle Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Shadle Slope Mine with conditions for annual revisions and supplements of the mine maps.

Docket No.: M–94–089–C.
FR Notice: 59 FR 35149.
Petitioner: Shadle Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the Shadle Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–090–C.
FR Notice: 59 FR 35149. Petitioner: Shadle Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the Shadle Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–092–C.

FR Notice: 59 FR 35149.
Petitioner: Shadle Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the Shadle Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–94–097–C.
FR Notice: 59 FR 38203.
Petitioner: Helvetia Coal Company.
Reg Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers, or one portable fire extinguisher with twice the required capacity, at each temporary electrical installation instead of using one fire extinguisher and rock dust at such installations considered acceptable alternative method. Granted for the Lucerne No. 6 Extension Mine with conditions for the temporary electrical installations provided the Petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations.

Docket No.: M–94–099–C.
FR Notice: 59 FR 38203.
Petitioner: Keystone Coal Mining Corporation.
Reg Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers, or one portable fire extinguisher with twice the required capacity, at each temporary electrical installation instead of using one fire extinguisher and rock dust at such installations considered acceptable alternative method. Granted for the Emilie No. 1 Mine, Emilie No. 4 Mine, Jane Mine, Urling No. 1 Mine, Margaret No. 11 Mine, and Plumcreek Mine with conditions for the temporary electrical installations provided the Petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations.

Docket No.: M–94–102–C.
FR Notice: 59 FR 40924.
Petitioner: H. L. & W. Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the No. 2 Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–94–104–C.
FR Notice: 59 FR 40924.
Petitioner: H. L. & W. Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the Slope No. 2 Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–105–C.
FR Notice: 59 FR 40924.
Petitioner: H. L. & W. Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the Slope No. 2 Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–106–C.
FR Notice: 59 FR 40924.
Petitioner: H. L. & W. Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Slope No. 2 Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–124–C.
FR Notice: 59 FR 46268.
Petitioner: C & C Coal Company (now L & R Coal Company).
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the Primrose Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–125–C.
FR Notice: 59 FR 46268.
Petitioner: C & C Coal Company (now L & R Coal Company).
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the Primrose Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–126–C.
FR Notice: 59 FR 46268.
Petitioner: C & C Coal Company (now L & R Coal Company).
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Primrose Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–133–C.
FR Notice: 59 FR 46269.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; and to instruct all persons on the requirements

for operating or maintaining battery-powered machines considered acceptable alternative method. Granted for the Lightfoot No. 1 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–94–134–C.
FR Notice: 59 FR 46269.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; and to instruct all persons on the requirements for operating or maintaining battery-powered machines considered acceptable alternative method. Granted for the Lightfoot No. 2 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–94–136–C.
FR Notice: 59 FR 5007.
Petitioner: Triton Coal Company.
Reg Affected: 30 CFR 77.1607(u).
Summary of Findings: Petitioner's proposal to use a portable hydraulic unit to supply power to the necessary functions of disabled equipment in order to move it safely considered acceptable alternative method. Granted for the Buckskin Mine with conditions for the use of a portable hydraulic unit for braking and steering and a towing sling or choke cable in lieu of a towbar with safety chains.

Docket No.: M–94–142–C.
FR Notice: 59 FR 52839.
Petitioner: Ram Head Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the Primrose Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–143–C.
FR Notice: 59 FR 52839.
Petitioner: Ram Head Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the Primrose Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–144–C.
FR Notice: 59 FR 52839.
Petitioner: Ram Head Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Primrose Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–146–C.
FR Notice: 59 FR 52839.
Petitioner: Arch of Illinois.
Reg Affected: 30 CFR 77.206(c).
Summary of Findings: Petitioner's proposal to use a SAF–T–CLIMB fall prevention system that meets Federal Specifications No. RR–S–001301, and complies with OSHA regulations 29 CFR 1910.27 considered acceptable alternative method. Granted for the Arch of Illinois Preparation Plant with conditions for the use of SAF–T–CLIMB fall prevention system at every permanently attached vertical ladder used at counterweight towers during maintenance work on the overload conveyor system.

Docket No.: M–94–158–C.
FR Notice: 59 FR 59434.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.364(b)(2)&(4).
Summary of Findings: Petitioner's proposal to establish two positive return evaluation points, one in the No. 6 entry and one in the No. 4 entry, to measure the return airflow; to maintain and check evaluation points Nos. 17 and 18 at least once every twenty-four hours; and to designate a certified person to make these examinations and record the results in an approved book considered acceptable alternative method. Granted for the Lightfoot No. 1 Mine with conditions for a portion of the return aircourse in the 1 Right Mains near the portal, including three of the four adjacent mine seals for the worked-out area of 2 Butt Right.

Docket No.: M–94–161–C.
FR Notice: 59 FR 59435.
Petitioner: Pontiki Coal Corporation.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt haulage entries as intake air courses to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses considered acceptable alternative method. Granted for the Pontiki No. 1 Mine at the end with conditions to allow air coursed through conveyor belt entries to be used to ventilate working places.

Docket No.: M–94–162–C.
FR Notice: 59 FR 59435.
Petitioner: Pontiki Coal Corporation.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt haulage entries as intake air courses to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses considered acceptable alternative method. Granted for the Pontiki No. 2 Mine at the end with conditions to allow air coursed through conveyor belt entries to be used to ventilate working places.

Docket No.: M–94–175–C.
FR Notice: 59 FR 67736.
Petitioner: L. V. Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 4 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–176–C.
FR Notice: 59 FR 67736.
Petitioner: L. V. Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the No. 4 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines,

limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–177–C.
FR Notice: 59 FR 67736.
Petitioner: L. V. Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 4 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–179–C.
FR Notice: 60 FR 3436.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contactors to provide undervoltage grounded phase protection instead of using circuit breakers, and to use the breakers for short circuit and overcurrent protection considered acceptable alternative method. Granted for the Lightfoot No. 1 Mine with conditions to allow the use of contactors to provide undervoltage, grounded phase, and overload protection and monitor the grounding conductors for 480-volt belt conveyor drives and other loads from combination power center/ belt starter units located at the mine.

Docket No.: M–94–180–C.
FR Notice: 60 FR 3436.
Petitioner: Eastern Associated Coal Corporation.
Reg Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contactors to provide undervoltage grounded phase protection instead of using circuit breakers, and to use the breakers for short circuit and overcurrent protection considered acceptable alternative method. Granted for the Lightfoot No. 2 Mine with conditions to allow the use of contactors to provide undervoltage, grounded phase, and overload protection and monitor the grounding conductors for 480-volt belt conveyor drives and other loads from combination power center/ belt starter units located at the mine.

Docket No.: M–94–181–C.
FR Notice: 60 FR 3436.
Petitioner: M & H Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime methane concentration at the equipment reaches 0.5 percent, either during operation or during a pre-shift examination considered acceptable alternative method. Granted for the Mercury Slope Mine with conditions for the use of nonpermissible battery-powered locomotives and non-permissible electric drags and associated non-permissible electric components located within 150 feet from pillar workings.

Docket No.: M–94–186–C.
FR Notice: 60 FR 3437.
Petitioner: Mt. Top Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the Mt. Top Coal Company Mine with conditions for firefighting equipment in the working section.

Docket No.: M–94–187–C.
FR Notice: 60 FR 3437.
Petitioner: Mt. Top Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the Mt. Top Coal Company Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–94–188–C.
FR Notice: 60 FR 3437.
Petitioner: Mt. Top Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Buck Mountain Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–94–189–C.
FR Notice: 60 FR 3437.
Petitioner: Knott County Mining Company.
Reg Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contactors for undervoltage protection instead of using circuit breakers considered acceptable alternative method. Granted for the Brimstone Mine No. 1 and the Hollybush Mine No. 1 with conditions to allow the use of contactors to provide undervoltage, grounded phase, and overload protection and monitor the grounding conductors for 480-volt belt conveyor drive motors and water pump motors greater than 5 horsepower.

[FR Doc. 96–19994 Filed 8–5–96; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on August 27–28, 1996 at the Spokane Research Center of the National Institute for Occupational Safety and Health (NIOSH), 315 East Montgomery Street, Spokane, Washington. The meetings of the full Committee are open to the public and will begin at 8:30 a.m. on both days. The meeting will conclude at approximately 5:00 p.m. on August 27 and at approximately 12:00 p.m. on August 28, 1996.

On August 27, OSHA will brief the ACCSH regarding the status of construction-related activities. In particular, the Agency will report on the status of rulemaking efforts regarding fall protection (subpart M). Also, State Plan State representatives will provide their perspectives regarding OSHA's construction-related rulemaking and enforcement activities.

After a lunch break, the Committee will hear comments on OSHA's construction-related rulemaking and enforcement activities from the Agency's Construction Industry Partners. The Committee will also receive a briefing regarding the NIOSH research program and a tour of the Spokane Research Center.

On August 28, the work groups on Fall Protection, Safety and Health Programs, Confined Spaces and Health and Safety for Women in Construction will report back to the full Advisory Committee and the full Committee will discuss the reports from the work

groups. In addition, the Committee will discuss participation in the planning of a Musculoskeletal Disorders Best Practices Conference.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894.

Signed at Washington, DC, this 30th day of July 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–19988 Filed 8–5–96; 8:45 am]

BILLING CODE 4510–26–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Senior Executive Service (SES) Performance Review Board; Notice of Establishment

SUMMARY: Notice is hereby given of the appointment of the ONDCP SES Performance Review Board.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Edward H. Jurith, General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, D.C. 2050; telephone: 202–395–6709; FAX: 202–395–6708.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR Part 430, subpart C and Sec. 430.307 thereof in particular, one or more Senior Executive Service performance boards. As a small executive agency, ONDCP has just one board. The board shall review and evaluate the initial appraisal of each ONDCP senior executive's performance by his or her supervisor, the senior executive's written response, if any, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive.

The following have been selected as regular members of the SES Performance Review Board for the Office of National Drug Control Policy:

Patricia A. Seitz (Chair), Assistant Director for Legal Affairs, Office of National Drug Control Policy

Dr. Albert E. Brandenstein, Director, Counter Drug Technology Assessment Center, Office of National Drug Control Policy

Dr. John T. Carnevale, Assistant Director for Programs, Budget and Research, Office of National Drug Control Policy

Approved: July 17, 1996.

Janet Crist,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 96–19945 Filed 8–5–96; 8:45 am]

BILLING CODE 3180–02–U

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–6659]

Federal Register Notice of Amendment To Change Reclamation Milestone Date in source material license SUA–551 Held by Petrotomics Company for its Shirley Basin, Wyoming Uranium Mill

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–551 to change a reclamation milestone date.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Petrotomics Company's (Petrotomics') Source Material License SUA–551 for Shirley Basin Wyoming to change a reclamation milestone date. This amendment was requested by Petrotomics by letter dated May 22, 1996, and its receipt by NRC was noticed in the Federal Register on June 28, l996.

The license amendment modifies License Condition 50 to change the completion date for a site-reclamation milestone. The new date approved by the NRC extends completion of placement of final radon barrier on a 9-acre portion of the tailings pile by four years, and two months. Petrotomics justifies the delays for (1) maintaining, throughout the course of reclamation of the site, an area that can be utilized to place contaminated material that may be encountered in accomplishing this work; (2) disposal of the evaporation pond dike material; and (3) allowing continued pumping and maintenance of well 12–DC, located in the southern part of the area, if necessary. Based on the review of Petrotomics' submittal, which indicates the proposed work is scheduled to be completed as expeditiously as practicable, and the fact that the added risk to the public health and safety is not significant, the NRC staff considers Petrotomics' request acceptable.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: Petrotomics' license, including an amended License Condition 50, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 31st day of July 1996.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–19933 Filed 8–5–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal Hydraulic Phenomena; Postponement

A meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena scheduled to be held on August 20 and 21, 1996, at 11545 Rockville Pike, Rockville, Maryland, has been postponed to a future date as a result of the unavailability of necessary supporting documents. Notice of this meeting was published in the Federal

Register on Monday, July 29, 1996 (61 FR 39483).

For further information contact: Mr. Paul A. Boehnert, the cognizant ACRS staff engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: July 31, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–19934 Filed 8–5–96; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) this notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Peace Corps Volunteer Application. A copy of the information collection may be obtained from Stuart Moran, Office of Volunteer Recruitment and Selection, United States PEACE CORPS, 1990 K Street, NW., Washington, DC 20526. Mr. Moran may be contacted by telephone at (202) 606–2080. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need For and Use of This Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps service.

Respondents Obligation to Reply: Required to obtain benefits.

Burden on the Public:

a. Annual reporting burden: 90,000 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 3 hrs.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 30,000.

f. Estimated cost to respondents: $36.51.

This notice is issued in Washington, DC on July 31, 1996.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 96–19909 Filed 8–5–96; 8:45 am]

BILLING CODE 6051–01–M

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation. Section 22 of the Peace Corps Act (22 U.S.C. 2051 et. seq.) mandates that ''all persons employed or assigned to duties under the Act shall be investigated to insure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President.'' A copy of the information collection may be obtained from Stuart Moran, Office of Volunteer Recruitment and Selection, United States PEACE CORPS, 1990 K Street, NW, Washington, DC 20526. Mr. Moran may be contacted by telephone at (202) 606–2080. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: National Agency Check Questionnaire.

Need For and Use of This Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to insure that potential Volunteer's assignment is consistent with the national interest in accordance with the standards and procedures established by the President.

Respondents: Individuals who have applied for Peace Corps service and have been nominated to a specific program..

Respondents Obligation to Reply: Required to obtain benefits.

Burden on the Public.

a. Annual reporting burden: 2,500 hrs.

b. Annual record keeping burden: 0 hrs.

c. Estimated average burden per response: 15 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 10,000.

f. Estimated cost to respondents: $3.81.

This notice is issued in Washington, DC on July 31, 1996.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 96–19910 Filed 8–5–96; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Currently Approved Information Collection: RI 25–41

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 2995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for extension of a currently approved information collection. RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity to children who are age 18 or older.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete the form. The annual burden is 1,800 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received by October 7, 1996.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–19884 Filed 8–5–96; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Evidence of Marital Relationship, Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits.

The RRB proposes revisions to all of the forms utilized in the collection to incorporate language required by the Paperwork Reduction Act of 1995 and to add additional language outlining possible criminal penalties for making a false or fraudulent statement.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (min)	Burden (hrs)
G–124:			
In person	125	15	31
By mail	75	20	25
G–124a	300	10	50
G–237:			
In person	75	15	19
By mail	75	20	25
G–238:			
In person	150	3	8
By mail	150	5	13
G–238a	150	10	25
Total	1,100	.....	196

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–19995 Filed 8–5–96; 8:45 am]

BILLING CODE 7905–01–M

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220–0107.

Under the 1988 amendments to Section 2 of the Railroad Retirement Act (RRA), a railroad employee's retirement annuity or an annuity paid to the spouse of a railroad employee is subject to work deduction in the Tier II component of the annuity and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). LPE is defined as the last person,

company, or instituting, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(F)(1) of the RRA for earnings from any non-railroad employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL–231–F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed for determining if any work deduction should be applied because an annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary.

The RRB proposes to revise Form RL–231–F to incorporate language required by the Paperwork Reduction Act of 1995.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (min)	Burden (hrs)
RL–231–F	600	30	300
Total	600		300

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–19996 Filed 8–5–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 17A–19 and Form X–17A–19 SEC File No. 270–148 OMB Control No. 3235–0133

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following for public comment.

Rule 17a–19 requires National Securities Exchanges and Registered National Securities Associations to file Form X–17A–19 with the Commission whenever a change in membership status occurs in order to notify the Commission that a change in designated examining authority is necessary.

It is anticipated that approximately 8 National Securities Exchanges or Registered National Securities Associations will make 3,600 total annual responses pursuant to Rule 17a–19. The total annual burden is estimated to be 900 hours.

Written 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 29, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19936 Filed 8–5–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

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 meeting during the week of August 5, 1996.

A closed meeting will be held on Thursday, August 8, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. 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.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 8, 1996, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Opinions.

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: August 2, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20182 Filed 8–2–96; 4:00 pm]

BILLING CODE 8010–01–M

[Release No. 34–37504; File No. SR–CBOE–96–01]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Increase SPX Position and Exercise Limits, To Increase SPX Firm Facilitation, Index Hedge, and Money Managers Exemptions, and To Extend Broad-Based Index Hedge Exemption To Broker-Dealers

July 31, 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 July 25, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 2 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange has requested that the proposed rule change be given accelerated approval. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In light of discussions with the Commission on June 4 and 10, 1996, the CBOE proposes Amendment No. 2 to File No. SR–CBOE–96–01,[3] which relates to increasing the S&P 500 index option (''SPX'') position and exercise limits, to increasing the SPX firm facilitation, index hedge, and money manager exemptions, and to extending the broad-based index hedge exemption to broker-dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In Interpretation .01(c) to CBOE Rule 24.4, language is added to include a further clarification of ''at or about the same'' time with respect to the time frame in which an options transaction may be hedged to qualify for an index hedge exemption. It is expected that the hedge will be established concurrent with or immediately following the execution of the options transaction, absent good cause.[4]

In Interpretation .01(c)(ii) to CBOE Rule 24.4, the reference to ''exchange-listed products'' is deleted to clarify that only positions in exchange-listed index options or index warrants may qualify for the index hedge exemption. This deletion addresses the possibility that a hybrid or structured product could be used to secure an index hedge exemption when, in fact, the structured product does not closely track or resemble other indices included in the group of acceptable hedging instruments.

In Interpretation .01(f)(5) to CBOE Rule 24.4, language is added to require that neither side of the collar transaction can be in-the-money at the time the position is established. This is consistent with the Commission's approval of the NASD's definition of a collar transaction pursuant to its hedge exemption rule, as well as with the Exchange's original intention. In addition, the reference to ''a.m. settled'' is replaced to allow for other ''non-p.m. settled'' contracts to be considered for the collar exemption.

In Interpretation .01(f)(6) to CBOE Rule 24.4, the reference to ''a.m. settled'' contracts is replaced with ''non-p.m. settled'' contracts.

In Interpretation .01(f)(7) to CBOE Rule 24.4, the ''a.m. settled'' reference is replaced with ''non-p.m. settled'' contracts and the noted collar language in paragraph (5) is added: ''neither side of the short call, long put transaction can be in-the-money at the time the position is established.''

In Interpretation .03 to CBOE Rule 24.4, the Exchange believes that the SPX reporting requirement should not apply to market-maker accounts in that the Exchange's Department of Financial Compliance routinely monitors market-maker risk. Therefore, it is not necessary for a market-maker to report hedging information to the Exchange because this information is available through other means.

Finally, the Exchange would like to address the Commission's concern with respect to the ability of the Exchange to monitor customer accounts that maintain large unhedged option positions (*i.e.*, positons between the current 45,000 limit and the proposed 100,000 contracts limit). As detailed in the filing and in the Exchange's surveillance procedures, the monitoring of customer accounts maintaining large SPX option positions will be achieved through several avenues. First, as contained in the proposed filing (Interpretation .03), accounts maintaining positions between 45,000 and 100,000 contracts will be required to identify whether such positions are hedged and, if so, provide information regarding the hedge. In the event a large unhedged, potentially risky position is identified, the Exchange will notify the clearing firm and assess the circumstances of the transactions. In addition, the Exchange will review with the firm its view of the exposure in the account, whether the account is approved and suitable for the noted strategies, and whether additional margin has been collected. In an extreme situation where an account maintains an unhedged SPX option position in excess of 45,000 contracts, the Exchange may impose additional margin, if warranted, upon the account or impose additional capital charges upon the clearing firm carrying the account to the extent of the margin deficiency resulting from the higher margin requirement. New Interpretation .04 to CBOE Rule 24.4 addresses these additional requirements.

Because the proposals outlined in this Amendment should enhance the depth and liquidity of the market for both members and investors in general, the Exchange believes this rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 16 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36738 (January 19, 1996), 61 FR 2324 (January 25, 1996) (notice of File No. SR–CBOE–96–01).

[4] The CBOE notes that extreme market conditions, the implementation of circuit breakers, or the lack of liquidity may affect a market participant's ability to establish a hedge within the noted time frame.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to Amendment No. 2 to File No. SR–CBOE–96–01 and should be submitted by August 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19938 Filed 8–5–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–37502; File No. SR–NASD–96–22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Temporary Approval of Proposed Rule Change To Extend Certain SOES Rules Through January 31, 1997

July 30, 1996.

I. Introduction

On June 10, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The NASD proposes to extend through January 31, 1997 certain changes to The Nasdaq Stock Market, Inc.'s (''Nasdaq'') Small Order Execution System (''SOES'') that were originally implemented in January 1994 for a one-year pilot period (''January 1994 Amended SOES Rules'').[3] These rules subsequently were modified in January 1995 (''January 1995 Amended SOES Rules''),[4] further modified in March 1995 (''March 1995 Amended SOES Rules''),[5] extended in September 1995 (''September 1995 Amended SOES Rules'')[6] and further extended in January 1996 (''January 1996 Amended SOES Rules'').[7] The January 1996 Amended SOES Rules are scheduled to expire on July 31, 1996, and the NASD seeks to extend these rules until January 31, 1997. Without further Commission action, the SOES rules would revert to those in effect prior to January 1994.

Notice of the proposed rule change appeared in the Federal Register on July 5, 1996.[8] No comments were received in response to the Commission release. For the reasons discussed below, this order approves the proposed rule change until January 31, 1997.

II. Description of the Current and Prior Proposals

The NASD proposed to extend until January 31, 1997 the January 1996 Amended SOES Rules. Specifically, the NASD proposes to extend until January 31, 1997 the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature.

III. Discussion

The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[9] In evaluating a given proposal, the Commission examines the record before it and relevant factors and information.[10] The Commission believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Amended SOES Rules on a one-year pilot basis effective January 7, 1994). *See also* Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

The changes contained in the January 1994 Amended SOES Rules were as follows:

(1) A reduction in the maximum size order eligible for SOES execution from 1,000 shares to 500 shares;

(2) A reduction in the minimum exposure limit for ''unpreferenced'' SOES orders from five times the maximum order size to two times the maximum order size, and the elimination of exposure limits for ''preferenced'' orders (''SOES Minimum Exposure Limit Rule'');

(3) An automated function for updating market maker quotations when the market maker's exposure limit has been exhausted (market makers using this update function may establish an exposure limit equal to the maximum order size for that security) (''SOES Automated Quotation Update Feature''); and

(4) The prohibition of short sale transactions through SOES.

[4] Securities Exchange Act Release No. 35275 (Jan. 25, 1995) 60 FR 6327 (Feb. 1, 1995).

The January 1995 Amended SOES Rules excluded the feature of the January 1994 Amended SOES Rules relating to the prohibition of short sale transactions through SOES.

[5] Securities Exchange Act Release No. 35535 (Mar. 27, 1995), 60 FR 16690 (Mar. 31, 1995).

The March 1995 Amended SOES Rules excluded the following two features of the January 1994 Amended SOES Rules:

(1) A reduction in the maximum size order eligible for SOES execution from 1,000 shares to 500 shares; and

(2) The prohibition of short sales transactions through SOES. (This prohibition also was excluded from the January 1995 Amended SOES Rules.) *See supra,* note 4.

[6] Securities Exchange Act Release No. 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995). The September 1995 Amended SOES Rules were identical to the March 1995 Amended SOES Rules, and extended the effectiveness of such rules until January 31, 1996.

[7] Securities Exchange Act Release No. 36795 (January 31, 1996), 61 FR 4504 (February 6, 1996). The January 1996 Amended SOES Rules were identical to the September 1995 and March 1995 Amended SOES Rules, and extended the effectiveness of such rules until July 31, 1996.

[8] Securities Exchange Act Release No. 37377 (June 27, 1996), 61 FR 35284 (July 5, 1996).

[9] 15 U.S.C. § 78s(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards. *See* S. Rep. No. 75, 94th Cong., 1st. Sess. 13 (1975).

[10] In the Securities Acts Amendments of 1975, Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best

Continued

that approval of the proposal through January 31, 1997 meets the above standards. Specifically, the Commission believes that the current minimum exposure limit and automated quotation update feature are appropriate while the Commission considers NAqcess, the NASD's latest proposal for handling small orders from retail customers.[11]

The Commission believes that a sufficient basis exists for approving the NASD's proposal to continue the current operation of SOES.[12] The system provided and continues to provide retail investors, through automation, an enhanced opportunity to obtain execution of orders in size up to 1,000 shares and, accordingly, has improved access to the Nasdaq market.

In addition, as a result of the March 1995 Amended SOES Rules, the SOES minimum exposure limit was increased from 1,000 shares to 2,000 shares. Moreover, the March 1995 Amended SOES Rules continued the methodology for calculating a market maker's outstanding exposure limit that excluded orders executed pursuant to a preferencing arrangement. Under the SOES Rules prior to the January 1994 Amended SOES Rules, both preferenced and unpreferenced orders were considered when calculating a market maker's remaining exposure limit. Thus, in relative terms, the 2,000 share exposure limit potentially provides greater liquidity under certain conditions[13] compared to the pre-January 1994 Amended SOES Rules' 5,000 share minimum exposure limit.

The Commission continues to believe that the current operation of SOES has eliminated economically significant restrictions imposed on order entry firms by the January 1994 Amended SOES Rules. The Commission believes that while the proposal does not restore the pre-January 1994 Amended SOES Rules' minimum exposure limit, it provides customers fair access to the Nasdaq market and reasonable assurance of timely executions. In this regard, the maximum order size is consistent with the Firm Quote Rule[14] and the size requirement prescribed under the NASD rules governing the character of market maker quotations.[15] Moreover, a market maker's minimum exposure limit for unpreferenced orders is double its minimum size requirement prescribed under these rules.

The Commission also believes that extending the automated update function is consistent with the Act and, in particular, the Firm Quote Rule.[16] The update function provides market makers the opportunity to update their quotations automatically after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes.[17]

IV. Conclusion

As indicated above, the Commission has determined to approve the extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through January 31, 1997. In light of the balance of factors described above, the Commission believes extension of the reduction in the minimum exposure limit, the limitation of the exposure limit to unpreferenced orders, and the provision for an automatic quotation update feature are consistent with the Act.

The Commission, in the exercise of the authority delegated to it by Congress, and in light of its experience regulating securities markets and market participants, has determined that approval of these changes to the SOES Rules until January 31, 1997 is consistent with maintaining investor protection and fair and orderly markets, and that these goals, on balance, outweigh possible anti-competitive effects on order entry firms and their customers.

Accordingly, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11).

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register. In addition to the reasons discussed in this order, the Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the proposal is an extension of the amended SOES Rules that have been in effect since March 1995; that the information presently before the Commission leads to the conclusion that the current minimum exposure limit and automated quotation update function are appropriate features for SOES while the Commission considers the NASD's NAqcess proposal; and that without Commission action on or before July 31, 1996, the SOES rules would revert to those in effect prior to January 1994, resulting in a temporary lapse in continuity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the instant rule change SR–NASD–96–22 be, and hereby is, approved, effective August 1, 1996 through January 31, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19902 Filed 8–5–96; 8:45 am]

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execution. Congress granted the Commission ''broad, discretionary powers'' and ''maximum flexibility'' to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission ''the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system.'' S. Rep. No. 75, 94th Cong., 1st Sess. 7 (1975).

[11] *See* Securities Exchange Act Release Nos. 36548 (December 1, 1995), 60 FR 63092 (December 8, 1995); and 37302 (June 11, 1996) 61 FR 3154 (June 20, 1996). The comment period for the NAqcess proposal, as amended, closed on July 26, 1996, and to date the Commission has received approximately 600 comments on the proposal. The Commission's evaluation of the NAqcess proposal may affect its evaluation of any future submissions relating to SOES.

[12] In reaching this conclusion, the Commission does not rely on the data or economic analysis submitted by the NASD. *See* Securities Exchange Act Release Nos. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995); 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995); 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995); and 36795 (January 31, 1996) 61 FR 4504 (February 6, 1996).

[13] That is, depending upon the mix of preferenced and unpreferenced orders.

[14] 17 CFR 240.11Ac1–1(c).

[15] *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2(a), (CCH) ¶ 1819.

[16] The SOES automated update function is also consistent with the NASD's autoquote policy which generally prohibits autoquote systems, but allows automatic updating of quotations ''when the update is in response to an execution in the security by that firm.'' *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2 (CCH) ¶ 1819.

[17] The Firm Quote Rule requires market makers to execute orders at prices at least as favorable as their quoted prices. 17 CFR 11Ac1–1(c)(2). The Rule also allows market makers a reasonable period of time to update their quotations following an execution; allows market makers to reject an order if they have communicated a quotation update to their exchange or association; and provides for a size limitation on liability at a given quote. 17 CFR 240.11Ac1–1(c)(3)(ii). *See also*, Securities Exchange Act Release No. 14415 (Jan. 26, 1978), 43 FR 4342 (Feb. 1, 1978).

[Release No. 34–37499; File No. SR–NYSE–96–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Retroactive Reduction of the Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on July 23, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment would make retroactive, to January 1, 1996, the new fee schedule for Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge that was the subject of SR–NYSE–96–14 and was approved by the SEC by Release Number 34–37430 dated July 12, 1996.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This rule change proposes to apply the recent reduction of odd-lot fees retroactively to January 1, 1996, thus conferring a benefit upon the members of the Exchange and responding to the needs of our constituents with respect to overall competitive market conditions.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission notes that, in File No. SR–NYSE–96–14, the NYSE incorporated odd-lot orders into its ''no charge'' policy for SuperDot equity public agency transactions, but excluded odd-lot orders of nonmember competing market makers from this policy. In addition, the NYSE lowered the Specialist Odd-Lot Charge from $0.004 per share to $0.00135 per share. *See* Securities Exchange Act Release No. 37430 (July 12, 1996), 61 FR 37784. *See also* Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438 (allowing the NYSE to exclude the orders of nonmember competing market makers from its ''no charge'' policy).

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b) (4)[3] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons during using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–96–20 and should be submitted by August 27, 1996.

[3] 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19903 Filed 8–5–96; 8:45 am]

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[4] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–37507; File No. SR–NYSE–96–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Pilot for Entry of Limit-at-the-Close Orders

July 31, 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 July 1, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and exchange Commission (''SEC'' or ''Commission'') the proposed rule change and on July 31, 1996, filed Amendment No. 1 to the proposed rule change,[3] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously publishing an order granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the current pilot[4] for the entry of limit-at-the-close (''LOC'') orders to offset a published market-at-the-close (''MOC'') order imbalance of 50,000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Michael Walinskas, Senior Special Counsel, SEC, dated July 30, 1996.

[4] *See* Securities Exchange Act Release No. 35854 (June 16, 1995), 60 FR 32723.

shares or more in all stocks for which MOC order imbalances are published.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A LOC order is one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. Currently, LOC orders may be entered only to offset published imbalances of market-on-close (''MOC'') orders.[5] On expiration days,[6] MOC imbalances of 50,000 shares or more: (1) In the so-called ''pilot'' stocks;[7] (2) in stocks being added to or dropped from an index; and (3) in any other stock with the approval of a Floor Official must be published on the tape as soon as practicable after 3:40 p.m.[8] On non-expiration days, the same listed types of imbalances must be published as soon as practicable after 3:50 p.m. LOC orders must be entered between 3:40 and 3:55 p.m. on expiration days and between 3:50 and 3:55 p.m. on non-expiration days. On expiration days, LOC orders are irrevocable once entered, except in the case of legitimate error.[9] On non-expiration days LOC orders are irrevocable after 3:55 p.m., except in the case of legitimate error.[10]

In June 1995, the permitted use of LOCs was expanded from five stocks to all stocks that have published MOC order imbalances of 50,000 shares or more in the hope that this would stimulate use of this order type.[11] LOCs were approved by the SEC on a pilot basis, and the pilot is scheduled to expire at the end of July. To date, the use of LOCs has remained limited. LOCs are restricted by time of entry and by the fact that they must offset published MOC imbalances. The Exchange is proposing to extend the LOC pilot for an additional year.[12] The Exchange continues to believe that the LOC order type may prove to be a useful means to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close.[13]

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 NW., Washington, DC 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 Room at 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–96–18 and should be submitted by August 27, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6[14] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

As noted in the Commission's approval of the current pilot, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the

[5] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. See NYSE Rule 13.

[6] The term ''expiration days'' refers to both (1) The trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently (''Expiration Fridays'') and (2) the trading day on which end of calendar quarter index options expire (''QIX Expiration Days'').

[7] The term ''pilot stocks'' refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors (''S&P'') 500 stocks and any component stocks of the Major Market Index (''MMI'') not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

[8] In Securities Exchange Act Release No. 36404 (October 20, 1995), 60 FR 55071, the Commission approved an amendment to the pilot program relating to MOC orders to allow imbalance publications of 50,000 shares or more to be made not only in the pilot stocks, but also in stocks being added to or dropped from an index, and in any other stock with the approval of a Floor Official. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, and Elisa Metzger, Special Counsel, SEC, on July 29, 1996.

[9] Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, and Elisa Metzger, Special Counsel, SEC, on July 29, 1996.

[10] *Id.*

[11] Telephone conversation between Betsy Minkin, Regulatory Development Project Manager, NYSE, and Elisa Metzger, Special Counsel, SEC, on July 31, 1996.

[12] Amendment No. 1 withdrew a proposed amendment to the LOC pilot which would permit the entry of LOC orders at any time during the trading day up to 3:40 p.m. on expiration days, and 3:50 p.m. on non-expiration days.

[13] The NYSE modified its electronic display book, such that LOC orders are prioritized relative to other LOC orders by time of entry, but are required to yield priority to all conventional limit orders on the specialist's book at the same price. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Special Counsel, SEC, on July 29, 1995.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response.

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a market dislocation which could make member firms and their customers unwilling to acquire significant positions.

The Commission continues to believe preliminarily that LOC orders should provide the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances both on expiration and non-expiration days. As a practical matter, the Commission believes that LOC orders will appeal to certain market participants who otherwise might be reluctant to commit capital at the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, a LOC order will allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders could become a useful investment vehicle for curbing excess price volatility at the close.[16]

The Commission also finds that the NYSE has established appropriate procedures for the handling of LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those procedures. Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customer orders on the specialist's book will not be disadvantaged by this proposal. In addition, the Commission believes that the proposed 3:55 p.m. deadline for LOC order entry strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies. Similarly, in the Commission's opinion, the prohibition on canceling LOC orders is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of order flow and its potential impact on the closing price.

The Commission is approving LOC order entry for all stocks for which MOC order imbalances are published on a pilot basis contingent on the extension or permanent approval of the MOC procedures.[17] During the pilot program, the Commission expects the NYSE to monitor the effectiveness of its LOC order procedures.

The Commission therefore requests that the NYSE submit a report to the Commission, by May 31, 1997, describing its experience with the pilot program. At a minimum, this report should contain the following data for each expiration day: (1) for all stocks which had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., the names of those stocks and the size of the imbalance; (2) for each stock listed in (1) above, the size of the MOC order imbalance at 4:00 p.m. and an appropriate measure of the size of conventional limit order and LOC order interest, on the opposite side of the market from the imbalance, at 4:00 p.m., (3) for each stock listed in (1) above, (i) the price of the transaction effected closest in time to 3:40 p.m., the price of the last regular way trade and the closing price, (ii) the change in price of the closing transaction, measured as a percentage, from the last regular way trade and from the transaction effected closest in time to 3:40 p.m., (iii) historical data analyzing price volatility for the same stock on expiration days prior to the implementation of this pilot program; and (4) the average price volatility for all stocks listed in (1) above. The NYSE report also should contain, for one week per calendar quarter (including at least one week with no expiration days) the data described herein, as modified to reflect the MOC procedures for non-expiration days. Any requests to modify this pilot program, to extend its effectiveness or to seek permanent approval for the pilot procedures also should be submitted to the Commission, by May 31, 1997, as a proposed rule change pursuant to Section 19(b) of the Act.

V. Conclusion

The Commission finds good cause for approving the rule filing prior to the thirtieth day after the date of publication of the notice of filing thereof in the Federal Register, in that accelerated approval is appropriate to extend the pilot program until July 31, 1997 without interruption.

It is therefore ordered, pursuant to Section 19(b)(2)[18] of the Act, the proposed rule change, including Amendment No. 1, extending the pilot for the entry of LOC orders until July 31, 1997, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19939 Filed 8–5–96; 8:45 am]

BILLING CODE 8010–01–M

[16] Furthermore, the Commission notes that LOC orders could allow the NYSE to accomplish this goal without diminishing any benefit to investors from trading strategies that rely on MOC orders to guarantee a fill at the closing price.

[17] The pilot program for MOC procedures expires on October 31, 1996. *See* Securities Exchange Act Release No. 36404 (October 20, 1995), 60 FR 55071.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[Release No. 34–37497; File No. SR–Phlx–96–21]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Index Options Exercise Advices

July 30, 1996.

I. Introduction

On July 7, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 1042A, Exercise of Option Contracts, and Floor Procedure Advice (''Advice'') G–1, to be retitled Index Option Exercise Advice Forms, requiring the submission of an index option exercise advice form for all

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

non-expiration exercises. In this manner, the Exchange will eliminate the rule's current 25 contract threshold.

The proposed rule change appeared in the Federal Register on June 25, 1996.[3] No comments were received on the proposed rule change. The Phlx subsequently filed Amendment No. 1 to the proposed rule change on July 26, 1996.[4] This order approves the Phlx's proposal.

II. Background and Description

Exchange Rule 1042A and Advice G–1 govern the exercise of index options.[5] Specifically, Exchange Rule 1042A(a)(i) requires that a memorandum to exercise any American-style index option must be received or prepared by the Phlx member organization no later than 4:30 p.m. on the day of exercise.[6] In addition, Exchange Rule 1042A(a)(ii) and Advice G–1 require the submission of an exercise advice form to the Exchange when exercising 25 or more American-style index option contracts.

Pursuant to Exchange Rule 1042A(b), however, these requirements are not applicable on the last business day before expiration, generally an ''expiration Friday.'' [7] The above requirements are also not applicable to European-style index options which, by definition, cannot be exercised prior to expiration. Lastly, the Exchange notes that the procedures for exercising equity option contracts, contained in Exchange Rule 1042, are not affected by this rule proposal.

As stated above, the Phlx proposes to amend Exchange Rule 1042A and Advice G–1 by requiring the submission of an index option exercise advice form all non-expiration exercises. In this manner, the Exchange is eliminating the rule's current 25 contract threshold.

According to the Phlx, the purpose of this change is to enhance surveillance efforts in determining compliance with the exercise cut-off time. Currently, the submission of an exercise advice form where 25 more contracts are exercised creates an audit trail for the Exchange to examine when ascertaining compliance with the exercise cut-off time. Thus, by eliminating the 25 contract threshold, all non-expiration exercises will require the submission of an exercise advice form. By providing a more complete audit trail for smaller exercises, the Phlx believes that its surveillance efforts will be enhanced.

The Exchange also believes that eliminating the 25 contract threshold should prevent the confusion associated with having to calculate the number of index option contracts being exercised for each Phlx index as exercise advices will be required for all non-expiration exercises. In addition, the Exchange notes that the requirement of Exchange Rule 1042A(a)(i) to prepare a memorandum to exercise applies to all non-expiration exercises, not just to those over 25 contracts. Thus, according to the Phlx, because member organizations are already preparing such memorandum, the additional preparation of an advice form will not impose a substantial burden.

The Phlx notes that because Advice G–1 is based on Exchange Rule 1042A and contains certain pertinent provisions of the rule for easy reference on the trading floor, specified reference to Exchange Rule 1042A is proposed to be added to Advice G–1.

The Phlx, in administering advices such as Advice G–1 as part of its minor rule violation enforcement and reporting plan (''minor rule plan''), [8] understands that infractions cited pursuant to the plan are minor in nature. Thus, in order to bolster the distinction between minor and serious violations, the Phlx proposes that Advice G–1 expressly state that the listed schedule of fines for the infractions of the applicable Exercise Advice Form procedures are only applicable to minor infractions.[9] The Phlx notes, however, that by including certain provisions of Exchange Rule 1042A into Advice G–1 it is not implying that all violations of Advice G–1 are minor in nature. Exchange Rule 1042A was intended to govern exercise memorandum and advice procedures in order to prevent abuses and fraudulent activity; incorporating part of the rule into an advice does not diminish this critical purpose. Rather, as with many other important, substantive provisions in Exchange rules that are codified into Advices,[10] this system merely allows for the efficient handling of minor violations.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5), [11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and will serve to protect investors and the public interest. Specifically, the Commission believes that the amendments to Exchange Rule 1042A and Advice G–1 requiring that the amendments to Exchange Rule 1042A and Advice G–1 requiring the submission of an index option exercise advice form for all non-expiration exercises will benefit market participants by enhancing the Phlx's surveillance efforts through a more complete audit trail. The Commission also believes that the proposal will reduce the confusion associated with members' having to calculate the number of index option contracts being exercised for each Phlx index, as exercise advices will be required for all non-expiration exercises.

In addition, the Commission believes that the Phlx's proposal to incorporate part of Exchange Rule 1042A into Advice G–1 will serve as any easy reference on the trading floor, without

[3] *See* Securities Exchange Act Release No. 37321 (June 18, 1996), 61 FR 32877 (June 25, 1996).

[4] In Amendment No. 1, the Phlx proposed to delete the phrase ''industry (narrow-based)'' from paragraph (a)(i) of Exchange Rule 1042A because the requirements of that paragraph apply to all index options. Previously, there were separate paragraphs for industry and market index options, but once they were combined, deleting the reference to ''industry'' was overlooked. *See* Securities Exchange Act Release No. 37077 (April 5, 1996), 61 FR 16156 (April 11, 1996) (File No. SR–Phlx–95–86). This change will correct the omission. *See* letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading Operations, Phlx, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated July 26, 1996 (''Amendment No. 1'').

[5] The Exchange notes that with respect to index option contracts, clearing members are also required to follow the procedures of the Options Clearing Corporation (''OCC'') for tendering exercise notices. Exercise notices are the exercise instructions required by OCC and are distinct from exercise advices which are required by Exchange rules.

[6] *See* Securities Exchange Act Release No. 37077 (April 5, 1996), 61 FR 16156 (April 11, 1996) (File No SR–Phlx–95–86). In this regard, the Exchange has attempted to create a level playing field among option investors by maintaining a cut-off time to ensure that all exercise decisions occur promptly after the close of trading. Consequently, to prevent fraud and unfairness, a long option holder is prohibited from exercising index options on non-expiration days based on information obtained after the cut-off.

[7] *See* Securities Exchange Act Release No. 36903 (February 28, 1996), 61 FR 9001 (March 6, 1996) (File No. SR-Phlx-96–01).

[8] *See* Exchange Rule 970.

[9] Advice G–1 states that the fine schedule provides sanctions for infractions of the index option Exercise Advice Form procedures which are minor in Nature. Any violation of the procedure which has been deemed serious by the Phlx will be referred directly to the Exchange's Business Conduct Committee where stronger sanctions may result. The Phlx notes, however, that this language does not affect the other floor procedure advices administered pursuant to the plan which do not specifically contain this statement; infractions cited pursuant to the plan are minor in nature regardless of whether this specific language was added to the advice.

[10] *See, e.g.,* Advice F–15 which pertains to the Exchange's position and exercise limits.

[11] 15 U.S.C. § 78f(b) (1988).

diminishing the rule's purpose of preventing abuses and fraudulent activity of the Exchange's exercise memorandum and advice procedures.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice to filing thereof in the Federal Register. Specifically, because Amendment No. 1 is non-substantive in nature and therefore raises no new regulatory issues, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–21 and should be submitted by August 27, 1996.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to require the submission of an index option exercise advice form for all non-expiration exercises, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–96–21), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[12] 15 U.S.C. § 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19937 Filed 8–5–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2880]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 25, 1996, I find that Cook, De Kalb, Du Page, Grundy, Kane, Kendall, La Salle, Ogle, Stephenson, Will, and Winnebago Counties in the State of Illinois constitute a disaster area due to damages caused by severe storms and flooding beginning on July 17, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on September 23, 1996, and for loans for economic injury until the close of business on April 25, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Bureau, Carroll, Jo Daviess, Kankakee, Lake, Lee, Livingston, Marshall, McHenry, Putnam, Whiteside, and Woodford Counties in Illinois; Green, Lafayette, and Rock Counties in Wisconsin; and Lake County, Indiana.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 288006. For economic injury the numbers are 897500 for Illinois; 897600 for Wisconsin; and 897700 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 30, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–19955 Filed 8–05–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2861; Amendment #2]

Indiana; Declaration of Disaster Loan Area

The above-numbered Declaration, approved on July 3, 1996, is hereby amended to correct the deadline for filing applications for economic injury loans which was inadvertently published as March 3, 1997 in the original declaration. The correct filing deadline is April 3, 1997.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 31, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 30, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–19951 Filed 8–05–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2861; Amendment #1]

Indiana; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, effective July 23, 1996, the above-numbered Declaration is hereby amended to include Montgomery and Posey Counties in the State of Indiana as a disaster area due to damages caused by severe storms and flooding which occurred April 28 through May 25, 1996.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Boone, Clinton, Fountain, Hendricks, Parke, Putnam, and Tippecanoe in the State of Indiana may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been declared under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is

August 31, 1996, and for loans for economic injury the deadline is April 3, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–19952 Filed 8–05–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2881]

Indiana; Declaration of Disaster Loan Area

Huntington County and the contiguous counties of Allen, Grant, Wabash, Wells, and Whitley in the State of Indiana constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on July 17 and 18, 1996. Applications for loans for physical damage may be filed until the close of business on September 30, 1996 and for economic injury until the close of business on April 30, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere 8.000.	
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 288106 and for economic injury the number is 897800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 30, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–19956 Filed 8–05–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2883]

Kentucky; Declaration of Disaster Loan Area

Lincoln County and the contiguous counties of Boyle, Casey, Garrard, Pulaski, and Rockcastle in Commonwealth of Kentucky constitute a disaster area as a result of damages caused flooding which occurred on July 19, 1996. Applications for loans for physical damage may be filed until the close of business on September 30, 1996 and for economic injury until the close of business on May 1, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without Credit available Elsewhere	4.000

The number assigned to this disaster for physical damage is 288306 and for economic injury the number is 898200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 31, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–19950 Filed 8–05–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2875; Amendment #1]

North Carolina; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, effective July 26, 1996, the above-numbered Declaration is hereby amended to include Pamlico County in the State of North Carolina as a disaster area due to damages caused by severe storms, high wind, flooding, and related effects of Hurricane Bertha which occurred July 10–13, 1996.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 16, 1996, and for loans for economic injury the deadline is April 18, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–19953 Filed 8–05–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2882]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 26, 1996, I find that Armstrong, Blair, Cambria, Clarion, Clearfield, Crawford, Greene, Indiana, Jefferson, and Venango Counties in the State of Pennsylvania constitute a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred on July 19, 1996. Applications for loans for physical damages may be filed until the close of business on September 24, 1996, and for loans for economic injury until the close of business on April 28, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl. Niagara Falls, NY 14303, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allegheny, Bedford, Butler, Cameron, Centre, Clinton, Elk, Erie, Fayette, Forest, Huntingdon, Mercer, Somerset, Warren, Washington, and Westmoreland Counties in Pennsylvania; Ashtabula and Trumbull Counties in Ohio; and Marshall, Monongalia, and Wetzel Counties in West Virginia.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125

	Percent
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 288206. For economic injury the numbers are 897900 for Pennsylvania; 898000 for Ohio; and 898100 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 30, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–19957 Filed 8–5–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2878]

West Virginia (And Contiguous Counties in Pennsylvania); Declaration of Disaster Loan Area

Monongalia County and the contiguous counties of Marion, Preston, Taylor, and Wetzel in the State of West Virginia, and Fayette and Greene Counties in the Commonwealth of Pennsylvania constitute a disaster area as a result of damages caused by flooding which occurred July 18 and 19, 1996. Applications for loans for physical damage may be filed until the close of business on September 27, 1996 and for economic injury until the close of business on April 29, 1997 at the address listed below: U.S. Small Business Administration Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor Niagara Falls, New York 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 287806 for West Virginia and 287906 for Pennsylvania. For economic injury the numbers are 97300 for West Virginia and 897400 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–19954 Filed 8–5–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Written Reevaluation/Technical Report on Changes to the Proposed JFK Airport Access Program, New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of written reevaluation/technical report and request for comments.

SUMMARY: The FAA is making available and invites public comment on changes to the proposed JFK Airport Access Program in New York, New York.

DATES: Comments must be received on or before September 20, 1996.

ADDRESSES: Requests to obtain a copy of the Technical Report, and written comments on the project changes should be made to:

Mr. Laurence Schaefer, Federal Aviation Administration, AEA–620, John F. Kennedy International Airport, Jamaica, NY 11430, Telephone: 718–553–3340; Fax: 718–995–9219

Mr. Charles Andreski, New York State Department of Transportation, Region II, Hunters Point Plaza, 47–40 21st Street, Long Island City, NY 11101, Telephone: 718–482–4631; Fax: 718–482–4660

FOR FURTHER INFORMATION CONTACT: Messrs. Schaefer and Andreski as listed herein.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) and the New York State Department of Transportation (NYSDOT) are Joint Lead Agencies for purposes of implementing the procedures required by the National Environmental Policy Act of 1969, as amended, on a proposed transportation system access improvement project sponsored by the Port Authority of New York and New Jersey (Project Sponsor) to John F. Kennedy International (JFK) Airport located in Queens, New York. The purpose of this notice is to inform the public that there are changes in the proposed project since publication of the Draft Environmental Impact Statement (DEIS-Notice of Availability published Volume 59, No. 121 of the Federal Register, dated June 24, 1994) which are described in the FAA Written Reevaluation/Technical Report. This document is now available for public comment.

In response to issues raised during the NEPA review process for the originally proposed project and in light of the anticipated level of available funding for construction of the project, the Project Sponsor has concluded that an 8.4-mile long portion of the original 22 mile system in Queens using the same general alignment between Jamaica Station and JFK, an on-airport link to Howard Beach Station, and within the JFK Central Terminal Area, together comprise the proposed action. Each of the three segments has already been evaluated in the DEIS. The project sponsor has also focused its consideration of guideway technologies to light rail and refers to the revised project as the JFK-Light Rail System (LRS) Project.

The primary purpose of the proposed Project remains to improve ground access for air passengers and airport employees by providing a safe, quick, reliable and efficient means of travel to, from and on the Airport. Providing connecting links to the regional transit system will help the Airport realize its effective capacity and continue operating successfully.

Projected system ridership has changed as a result of the modification to the originally proposed project. In light of these changes, the FAA has analyzed the currently proposed project with respect to the following transportation system operational and related impacts: (1) Vehicular and pedestrian traffic at access locations; (2) system operational characteristics; (3) enplanements; (4) highway travel; and (5) air quality and noise including both airside and groundside impacts. The effects of the changes in system scope and ridership will not result in environmental impacts that differ substantially from those disclosed in the DEIS.

The FAA's Written Reevaluation/Technical Report contains the following information: Revised project description; review of the project purpose and need; revised alternatives analysis; revised ridership data; and identification and assessment of the environmental consequences of the project changes.

The FAA and NYSDOT will respond to comments received on the Written

Reevaluation/Technical Report on changes to the proposed JFK Airport Access Program, in addition to pertinent comments previously received on the DEIS, in the final EIS which it intends to issue on the proposed project. For information purposes, copies of the DEIS and the Written Reevaluation/Technical Reports are available for public review at the following locations:

Queens

Office of the Queens Borough President, Office of Planning & Environment, Room 226, Second Floor, 120–55 Queens Boulevard, Kew Gardens, NY 11424, 9 am–5 pm
Community Board #1, 36–01 35th Avenue, Astoria, NY 11106, 9:30 pm–3 pm
Community Board #3, 34–33 Junction Boulevard, Jackson Heights, NY 11372
Community Board #8, 8126 150th Street, Jamaica, NY 11435
Community Board #9, Queens Borough Hall, Rm 312, 120–55 Queens Boulevard, Kew Gardens, NY 11424
Community Board #10, 115–01 161st Street, South Ozone Park, NY 11420
Community Board #12, 90–28 161st Street, Jamaica, NY 11432
Community Board #13, Queens Reform Church, 219–41 Jamaica Avenue, Queens Village, NY 11428
Community Board #14, 1931 Mott Avenue, Rm 311, Far Rockaway, NY 11691
Sunnyside Library, 43–06 Greenpoint Avenue, Long Island City, NY 11104, (718) 784–3033
Forest Hills Library, 108–19 7th Avenue, Forest Hills, NY 11375, (718) 268–7934
North Forest Park Library, 98–27 Metropolitan Ave., Forest Hills, NY 11375, (718) 261–5512
Ozone Park Library, 92–24 Rockaway Blvd., Ozone Park, NY 11417, (718) 845–3127
Woodside Library, 54–22 Skillman Ave., Woodside, NY 11377

Long Island

Long Island Association, Inc., 80 Hauppauge Road, Commack, NY 11725, 9 am–5 pm
Nassau County Planning Commissioner, 400 County Seat Drive, Mineola, NY 11501, 9 am–4:45 pm
Village of Valley Stream, Department of Planning, Village Hall, 123 S. Central Avenue, Valley Stream, NY 11580, 9 am–5 pm

Issued in Jamaica, New York, July 31, 1996.

William J. DeGraaff,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–20007 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Cyril E. King Airport, St. Thomas, U.S. Virgin Islands at the Alexander Hamilton Airport, St. Croix, U.S. Virgin Islands

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Use the Revenue From a Passenger Facility Charge (PFC) at Cyril E. King Airport, St. Thomas, U.S. Virgin Islands at the Alexander Hamilton Airport, St. Croix, U.S. Virgin Islands under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 5, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gordon A. Finch, Executive Director of the Virgin Islands Ports Authority at the following address: Virgin Islands Ports Authority, P.O. Box 301707, St. Thomas, Virgin Islands U.S.A. 00803–1707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Virgin Islands Ports Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to Use the Revenue From a Passenger Facility Charge (PFC) at Cyril E. King Airport, St. Thomas, U.S. Virgin Islands at the Alexander Hamilton Airport, St. Croix, U.S. Virgin Islands under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 29, 1996, the FAA determined that the application to Use the Revenue From A Passenger Facility Charge (PFC) at Cyril E. King Airport, St. Thomas, U.S. Virgin Islands at the Alexander Hamilton Airport, St. Croix, U.S. Virgin Islands submitted by the Virgin Island Ports Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 17, 1996.

The following is a brief overview of PFC Application No. 96–05–U–00–STT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1995.

Proposed charge expiration date: December 1, 1997.

Total estimated PFC revenue: $3,342,000.

Brief description of proposed project(s): Passenger Terminal.

Renovation and Expansion (at Alexander Hamilton Airport) Class or classes of air carriers which the public agency has requested not be required to collect PFCs: none.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Virgin Island Ports Authority.

Issued in Orlando, Florida on July 29, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96–20009 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Luis Muñoz Marin International Airport, San Juan, Puerto Rico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Luis Muñoz Marin International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 5, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District, Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Herman Sulsona, Ph.D., Executive Director of the Puerto Rico Ports Authority at the following address: Puerto Rico Ports Authority, P.O. Box 362829, San Juan, Puerto Rico 00936–2829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Puerto Rico Ports Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, (407) 648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Luis Muñoz Marin International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 29, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Puerto Rico Ports Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 16, 1996.

The following is a brief overview of PFC Application No. 96–03–C–00–SJU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1996.

Proposed charge expiration date: August 31, 2004.

Total estimated PFC revenue: $108,643,937.

Brief description of proposed project(s):

PWE–1–Design/Construct Second Westerly Crossfield Taxiway.

PWE–2–Expand and Improve Terminal B.

PWE–3–Design/Construct Dual Crossfield Taxiway(s) East of the Passenger Terminal Complex.

PWE–5–Design/Construct Additional Apron at Terminal A/B.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: none.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Puerto Rico Ports Authority.

Issued in Orlando, Florida on July 29, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96–20008 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Newark International Airport, Newark, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Newark International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 5, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Roy Pleasant, Director of Information Services for the Port Authority of New York & New Jersey, at the following address: Suite 2121, One World Trade Center, New York, New York 10048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port Authority of New York & New Jersey under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York 11530 (Tel 516–227–3803). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application use the revenue from a PFC at Newark International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the Port Authority of New York & New Jersey submitted an application to use the revenue from a PFC for the construction of a monorail connecting the on airport monorail system with a monorail station at the North East Corridor. Due to the absence of a formal environmental finding for this project, the application was deemed not substantially complete within the requirements of section 158.25 of Part 158. On July 18, 1996, the FAA signed a Record Of Decision approving the Environmental Impact Statement for the subject project. On July 18, 1996, the FAA determined that the PFC application was substantially complete. The FAA will approve or disapprove the application, in whole or in part, no later than November 15, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1995.

Proposed charge expiration date: January 1, 2001.

Total estimated PFC revenue: $255,015,000.

Brief description of proposed projects: The PFC funds will be utilized to fund the construction of the monorail connecting the on airport monorail system with a monorail station at the North East Corridor.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi, except commuter air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Fitzgerald Federal Building, John F. Kennedy Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port Authority of New York & New Jersey.

Issued in Jamaica, New York state on July 29, 1996.

William Degraaff,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–20010 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To impose and use the revenue From a Passenger Facility Charge (PFC) at Norfolk International Airport, Norfolk, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Norfolk International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 5, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth R. Scott, Executive Director of the Norfolk Airport Authority at the following address: Norfolk International Airport, Norfolk, Virginia 23518–5897.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Norfolk Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046 (Tel. (703) 285–2570). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Norfolk International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 2, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Norfolk Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 22, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1997.

Proposed charge expiration date: July 1, 2012.

Total estimated PFC revenue: $65,661,523.

Brief description of proposed projects:

—Construct Arrivals Terminal Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator Filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Norfolk International Airport Authority.

Issued in Jamaica, New York on July 30, 1996.

William DeGraaff,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–20006 Filed 8–5–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32923]

Norfolk Southern Railway Company—Lease Exemption—CSX Transportation, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts, from the prior approval requirements of 49 U.S.C. 11323–25, the lease by Norfolk Southern Railway Company (NSR) of approximately 13 miles of rail line from CSX Transportation, Inc. (CSXT), subject to standard labor protective conditions. The line to be leased extends from the western end of Middlesboro Yard at milepost CV–215 to the eastern end of CSXT's tunnel at Cumberland Gap, TN, at milepost CV–219.5, and includes two related branches, the Bennett's Fork Branch between milepost MR–216.1 near Queensbury, KY, and milepost MR–221, near Motch, KY, and the Stony Fork Branch between milepost MS–219 at Stony Fork Junction, KY, and milepost MS–221, near Pioneer, KY (including one mile of track leased to Bell County Coal Corporation). NSR has agreed to grant back trackage rights so that CSXT may continue to serve shippers on these lines.

DATES: This exemption will be effective September 5, 1996. Petitions to stay must be filed by August 21, 1996. Petitions to reopen must be filed by September 3, 1996.

ADDRESSES: Send pleadings referring to STB Finance Docket No. 32923 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioners' representatives: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191, and John Humes, Jr., CSX Transportation, Inc., 500 Water St. J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 30, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19932 Filed 8–5–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

federal register

Tuesday
August 6, 1996

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 434 and 435

Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 434 and 435

[Docket No. EE-RM–79–112–C]

RIN 1904–AA69

Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing and request for public comment.

SUMMARY: The Department of Energy today proposes a rule that would establish building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to the requirements of the Energy Conservation and Production Act. The proposed rule would revise the current interim Federal standards to conform generally with the format of the current voluntary building energy codes. The proposed rule would incorporate changes from the interim rule in the areas of lighting, mechanical ventilation, motors, building envelopes, and fenestration rating procedures, and test procedures for heating and cooling equipment.

DATES: Written comments on the proposed rule (10 copies) must be received by the Department by 4 p.m. on or before November 4, 1996. A public hearing will be held on September 4, 1996, beginning at 9 a.m. at the address listed below. Requests to speak must be received by the Department by 4 p.m. on or before August 28, 1996. Ten copies of the statement to be given at the public hearing must be received by the Department by 4 p.m. August 29, 1996.

ADDRESSES: Address written comments, requests for copies of the technical support documents and oral statements, requests to speak at the hearing, and requests for speaker lists to: Energy Code for Federal Commercial Buildings, Docket No. EE-RM–79–112–C, Buildings Division, EE–431, Office of Codes and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7574. *FAX comments will not be accepted.* The public hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585–0121. Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., except Federal holidays.

For more information concerning public participation see Section VIII, Public Comment Procedures.

FOR FURTHER INFORMATION CONTACT:

Ronald B. Majette, Buildings Division, EE–432, Office of Codes and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Tel: 202–586–0517

Francine B. Pinto, Esq., Office of General Counsel, GC–72, U.S. Department of Energy, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585–0103, Tel: 202–586–7432

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Authority

Section 305(a) of the Energy Conservation and Production Act (ECPA), as amended, 42 U.S.C. 6834(a), requires DOE to establish by rule Federal building energy standards for new Federal buildings. In developing this proposed rule, DOE is directed to consult with other federal agencies as well as private and state associations and other appropriate persons.

The proposed rule must contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IES) Standard 90.1–1989 (Standard 90.1–1989) for commercial buildings and of the Model Energy Code (MEC), 1992, for residential buildings. MEC 1992 exempts multi-family high-rise residential buildings (over three stories in height above ground) which comply with Standard 90.1–1989. As a result, Standard 90.1–1989 is the applicable standard under Section 305 of ECPA for high-rise residential buildings.

Section 305(a) requires that the standards contain energy efficiency measures that are technologically feasible and economically justified. Since ECPA, as amended, establishes that the new standards meet, at a minimum, the requirements of Standard 90.1–1989, technological feasibility and economic justification need not be established for these minimum requirements. DOE is interpreting this minimum requirement to include those addenda to Standard 90.1–1989 which were in effect at the time the Energy Policy Act of 1992 (EPACT), which amended ECPA, was enacted. Since these addenda were part of Standard 90.1–1989 at the time EPACT was enacted, they are part of the baseline against which the proposed rule is compared for purposes of assessing its energy and economic impacts.

Section 305(a)(2)(B) requires that to the extent practicable, the new federal building energy standards use the same format as the appropriate voluntary building energy code. The proposed rule would revise the current interim federal standards to conform generally with the format and language of the codified version of Standard 90.1–1989. The addenda to Standard 90.1–1989 included in the proposed rule are also generally incorporated in their codified form.

Section 305(a)(2)(c) further requires that the proposed rule be established in consultation with the Environmental Protection Agency (EPA) and other Federal agencies and, where appropriate, contain measures with

regard to radon and other indoor air pollutants.

Section 305(c) states that the standards proposed in today's rule be reviewed and, if appropriate, updated at not less than five year intervals.

The standards proposed today are required to become effective no later than one year after the rule is issued. (*See* section 305(a)(1)). Section 305(d) continues in effect the interim energy performance standards (otherwise known as ''interim rule'' or ''interim standards'') for new Federal buildings as they existed before the date of the enactment in 1992 of EPACT until the standards established under subsection (a) become effective.

Section 306 addresses Federal compliance. Section 306(a) provides that each Federal agency and the Architect of the Capitol must adopt procedures to assure that new Federal buildings will meet or exceed the Federal building energy standards proposed here. Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal Building unless the building meets or exceeds the appropriate Federal building energy standards established under section 305.

B. Background

On January 30, 1989, the Department issued an interim rule (10 CFR part 435, subpart A) establishing energy conservation voluntary performance standards for the design of new commercial and multi-family high rise residential buildings; these standards are mandatory for Federal buildings.

The Department's interim standards and Standard 90.1–1989 were developed in conjunction with one another and contain similar energy efficiency provisions. ASHRAE and IES are professional engineering societies which have undertaken the responsibility of sponsoring a voluntary industry consensus standard for the design of energy efficient commercial and multi-family high rise buildings.

The Department's interim rule and Standard 90.1–1989 followed a parallel development track. ASHRAE/IES provided technical expertise that ensured the practicality of the interim standards and Standard 90.1–1989. DOE contributed technical expertise and research results in the development of these two standards.

Because Standard 90.1–1989 is written as a standard of professional practice, it cannot be directly adopted as a building code. The Department in 1993 requested ASHRAE to assist DOE in producing a version of Standard 90.1–1989 and its addenda in code format. This joint effort was undertaken to assist States in responding to Section 304(b) of ECPA and to assist DOE in establishing Federal building energy efficiency standards. The resulting code, published by ASHRAE/IES in November 1993 is entitled ''Energy Code for Commercial and High-Rise Residential Buildings.'' This code has been approved by the Council of American Building Officials (CABO) as the basis for its MEC and some of the regional model codes.

Basing the proposed rule on the codified version of Standard 90.1–1989 ensures that the provisions of today's proposed rule would be similar to those being adopted by state and local jurisdictions and widely used in the private sector.

Moreover, ASHRAE/IES periodically modifies their current edition of their standard through an addenda process. Standard 90.1–1989 is the current edition of their standard. ASHRAE/IES has adopted six addenda to Standard 90.1–1989 since it was published in 1989. They are: Addenda b, c, d, e, g, and i. The proposed rule would include these addenda. These addenda are described below in II.D, Table 3. The proposed rule would also include provisions that are substantively the same as those in Addendum f, which has not been adopted by ASHRAE/IES.

DOE has chosen to publish the proposed rule in its entirety so that it is assembled in a unified form for easy access. DOE did not choose to merely publish changes from the codified version of Standard 90.1–1989 because of the integrated nature of the changes (small and large) from that codified version. The Department invites comments on whether Standard 90.1–1989, including appropriate addenda, should be incorporated Standard 90.1 by reference instead of publishing the rule in its entirety as DOE proposes today. If DOE were to incorporate Standard 90.1–1989 by reference, other proposed changes would need to be published as well.

II. Description of the Proposed Rule

A. General

The standards proposed today specify a minimum level of energy efficiency for new Federal commercial and high-rise residential buildings. The proposed rule would revise the current interim Federal standards to conform generally with the format and language of the codified version of Standard 90.1–1989. They do not address the design of residential single family or multi-family low rise buildings, currently addressed by Subpart C of 10 Part 435. Such buildings will be addressed in a separate rulemaking.

The current interim standards for Federal commercial and multi-family high-rise residential buildings are found in Subpart A of 10 CFR Part 435. For clarity and ease of use, the Department is proposing to remove Subparts A and B of Part 435 and add a new Part 434, to contain the building energy efficiency standards for new Federal commercial and multi-family high-rise residential buildings.

Today's proposal contains substantive changes from the interim standard in the areas of lighting, mechanical ventilation, motors, building envelopes, fenestration rating procedures, and heating and cooling test procedures. It includes those addenda which were in effect at the time EPACT was enacted (Addendum 90.1b revising service water heating criteria and updating miscellaneous references to other standards, Addendum 90.1d addressing lighting controls, and Addendum 90.1e updating ventilation requirements).

The proposed rule also includes several addenda adopted by ASHRAE and IES after EPACT was enacted. These include Addenda g, i, and c, addressing building envelopes, heating and cooling equipment test procedures, and motor efficiency, respectively. DOE would also include provisions concerning procedures for calculating fenestration ratings. As previously mentioned, these provisions are substantively the same as Addendum f, now pending consideration by ASHRAE and IES.

The lighting standards in today's proposed rule would differ from both the interim standards and Standard 90.1–1989. The updated lighting provisions are more stringent than Standard 90.1–1989 and reflect new information concerning energy requirements needed to achieve adequate lighting levels.

The proposed rule would provide minimum standards of energy efficiency levels to be required in each new federal commercial and high-rise residential building. The individual specifications for lighting, HVAC, envelope, and other aspects of buildings found in subpart D of the proposed rule determine the minimum level of energy efficiency required for a particular building. This ''prescriptive path'' provides a simple means of ensuring design specifications that meet the proposed code.

Flexibility is a key feature of the proposed code. While some of the specific design requirements of subpart D apply in all cases, this proposed rule provides for flexibility in many other areas if building designers can show that the overall building energy use or

energy cost compares favorably to the baseline energy use or energy cost based on subpart D of the proposed rule. Tradeoffs among systems and among building shell components can be made using the DOE version of the Lighting Standard (LTGSTD) and Envelope Standard software (ENVSTD), respectively. Building-wide trade-offs among energy efficiency features or the inclusion of entirely new efficiency features, including passive and active renewable features, can be made as well. Subpart E allows building-wide flexibility as long as the net result equals or reduces energy costs. Subpart F allows these trades to be made if predicted total building energy use is below that expected using the ''prescriptive path.'' These alternative paths are especially valuable as a means for building designers to take full advantage of the energy savings potential of new technologies. The computer software referenced above will be included as part of the Technical Support Document.

B. Format and Structure of the Proposed Rule

ASHRAE and IES have published Standard 90.1–1989 in a code format that does not differ in any significant technical or substantive respect from the standard itself. DOE has based the proposed rule on this codified version of Standard 90.1–1989, published by ASHRAE and IES in 1993, by adopting verbatim significant portions of it. Section II(E) of this notice discusses the substantive differences between the proposed rule and the statutory baseline.

The codified version is expected to be widely used by state and local code making bodies as they update their codes. The designers and builders of Federal buildings, who also design and construct State and private sector buildings, will be familiar with the requirements of the codified version, their importance, and how to meet them. Therefore, the consistency of the proposed rule with industry-wide practices would facilitate implementation by federal agencies of the final rule.

Copies of the ASHRAE Energy Code and ASHRAE/IES Standard 90.1–1989 may be purchased from ASHRAE, 1791 Tullie Circle, NE., Atlanta, GA 30329 (1–800–5–ASHRAE).

C. Comparison of the Proposed Rule With the Interim Standard

The design and construction of new commercial and multi-family high-rise residential federal buildings is currently governed by interim energy efficiency standards issued in 1989. Table 1 provides a ''cross-walk'' from the elements of the current interim federal commercial and multi-family high-rise residential building standard to the proposed rule to facilitate a comparison between the two standards. Column 1 of the table lists all of the sections of the interim standard and column 2 lists the location of sections within the proposed rule which include or refer to the same topic.

TABLE 1.—SUBJECT CROSS-WALK BETWEEN THE CURRENT INTERIM FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH RISE STANDARD AND THE PROPOSED FEDERAL RULE

Interim standards	Proposed rule
435.97 Purpose and 435.98 Scope	434.100 Administration and Enforcement.
435.99 General Definitions and Acronyms	434.200 Definitions.
435.100 Explanation of numbering systems for standards	434.99 Explanation of numbering systems for standards.
435.101 Implementation and compliance procedures for Federal agencies.	434.100 Administration and Enforcement—
435.102 Principles of effective energy building design	434.102 Compliance.
	Not included—Moved to Federal Users Manual, Performance standards for New Commercial and Multi-Family High Rise Residential Buildings. U.S. Department of Energy. March 1994.
435.103 Lighting	434.401.3 Lighting Systems and Equipment.
435.104 Auxiliary Systems and Equipment.	434.401.3 Lighting Systems & Equipment.
434.400 Building Design Requirements	434.403 Building Mechanical Systems and Equipment.
	434.404 Building Service Systems and Equipment.
435.105 Building Envelope	434.402 Building Envelope Assembles & Materials.
434.300 Design Conditions	434.300 Design Conditions.
434.400 Building Design Requirements; 402 Building Envelope Assemblies & Materials.	434.402 Building Envelope Assembles & Materials.
435.106 Electric Power and Distribution	434.401 Electric Systems and Equipment.
435.107 Heating Ventilation and Air-Conditioning (HVAC) Systems	434.403 Building Mechanical Systems and Equipment.
434.400 Building Design Requirements; 403 Building Mechanical Systems and Equipment.	434.403 Building Mechanical Systems and Equipment.
435.108 Heating ventilation and air-conditioning (HVAC) equipment	434.403 Building Mechanical Systems and Equipment.
435.109 Service water heating systems	434.404 Building Service Systems & Equipment.
434.400 Building Design Requirements	434.403 Building Mechanical Systems and Equipment.
435.110 Energy management	434.403 Building Service Systems and Equipment.
435.111 Building energy cost compliance alternative	434.102 Compliance.
	434.500 Building energy cost compliance alternative.
435.112 Building energy compliance alternative	434.102 Compliance.
	434.600 Building energy Compliance Alternative.
	434.700 Reference Standard.

D. Comparison of Codified Version of Standard 90.1–1989 to the Proposed Rule and Comparison Between Standard 90.1–1989 Addenda and the Proposed Rule

This section provides a ''cross-walk'' between the proposed rule and the codified version of Standard 90.1–1989 as well as a ''cross-walk'' between the proposed rule and Standard 90.1–1989 Addenda. The codified version published November 1993, includes all of the addenda adopted by ASHRAE to date in their codified form. Addendum f, dealing with fenestration, is pending consideration by ASHRAE. As a result, it is not included in the codified version of Standard 90.1–1989.

Table 2.—SUBJECT CROSS WALK BETWEEN CODIFIED VERSION OF STANDARD 90.1–1989 AND THE PROPOSED FEDERAL RULE

Codified 90.1–1989	Proposed rule
	434.99 Explanation of Numbering System.
CHAPTER 1 ADMINISTRATION AND ENFORCEMENT	Subpart A—Administration and Enforcement—General
100 General	
100.1 Title	
100.2 Purpose	434.100 Purpose.
101 Scope	434.101 Scope.
102 Compliance	434.102 Compliance.
103 Referenced Standards	434.103 Reference Standards.
104 Validity	434.104 Validity.
105 Materials	434.105 Materials and Equipment.
106 Plans and Specifications	434.106 Plans and Specifications.
107 Inspections	434.107 Inspections.
CHAPTER 2 DEFINITIONS	Subpart B—Definitions
201 Definitions	434.201 Definitions.
CHAPTER 3 DESIGN CONDITIONS	Subpart C—Design Conditions
301 Design Criteria	434.301 Design Criteria.
301.1 Exterior Design Conditions	301.1 Exterior Design Conditions.
301.2 Indoor Design Conditions	301.2 Indoor Design Conditions.
CHAPTER 4 BUILDING DESIGN REQUIREMENTS	Subpart D—Building Design Requirements
ELECTRIC SYSTEMS AND EQUIPMENT	
401 Electrical Power and Lighting Systems	434.401 Electrical Power and Lighting Systems.
401.1 Electrical Distribution Systems	401.1 Electrical Distribution Systems.
401.1.1 Check Metering	401.1.1 Check Metering.
401.1.2 Electrical Schematic	401.1.2 Electrical Schematic.
401.2 Electric Motors	401.2 Electric Motors.
401.2.1 Efficiency	401.2.1 Efficiency.
LIGHTING SYSTEMS AND EQUIPMENT	
401.3 Lighting Power Allowance	401.3 Lighting Power Allowance.
401.3.1 Building Exteriors	401.3.1 Building Exteriors.
401.3.2 Building Interiors	401.3.2 Building Interiors.
401.3.3 Lighting Power Control Credits	401.3.3 Lighting Power Control Credits.
401.3.4 Lighting Controls	401.3.4 Lighting Controls.
401.3.5 Ballasts	401.3.5 Ballasts.
BUILDING ENVELOPES	
402 Building Envelope Assemblies and Materials	434.402 Building Envelope Assemblies and Materials.
402.1 Calculations and Supporting Information	402.1 Calculation and Supporting Information.
402.1.1 Materials Properties	402.1.1 Materials Properties.
402.1.2 Thermal Performance Calculations	402.1.2 Thermal Performance Calculations.
402.1.3 Gross Areas of Envelope Components	402.1.3 Gross Areas of Envelope Components.
402.2 Air Leakage and Moisture Migration	402.2 Air Leakage and Moisture Migration.
402.2.1 Air Leakage	402.2.1 Air Barrier System.
402.2.2 Exterior Envelope Joints and Penetrations	402.2.2 Building Envelope.
402.2.3 Moisture Migration	402.2.3 Moisture Mitigation.
402.3 Thermal Performance Criteria	402.3 Thermal Performance Criteria.
402.3.1 Roofs; Floors and Walls Adjacent to Unconditioned Spaces.	402.3.1 Roofs; Floors and Walls Adjacent to Unconditioned Spaces.
402.3.2 Below-Grade Walls and Slabs-on-Grade	402.3.2 Below-Grade Walls and Slabs-on-Grade.
402.4 Exterior Walls	402.4 Exterior Walls.
402.4.1 Prescriptive Criteria	402.4.1 Prescriptive Criteria.
402.4.2 System Performance Criteria	402.4.2 System Performance Criteria.
BUILDING MECHANICAL SYSTEM AND EQUIPMENT	
403 Building Mechanical Systems and Equipment	434.403 Building Mechanical Systems and Equipment.
403.1 Mechanical Equipment Efficiency	403.1 Mechanical Equipment Efficiency.
403.2 HVAC Systems	403.2 HVAC Systems.
403.2.1 Load Calculations	403.2.1 Load Calculations.
403.2.2 Equipment and System Sizing	403.2.2 Equipment and System Sizing.
403.2.3 Separate Air Distribution System	403.2.3 Separate Air Distribution System.
403.2.4 Ventilation and Fan System Design	403.2.4 Ventilation and Fan System Design.
403.2.5 Pumping System Design	403.2.5 Pumping System Design.
403.2.6 Temperature and Humidity Controls	403.2.6 Temperature and Humidity Controls.
403.2.7 Off-Hour Controls	403.2.7 Off-Hour Controls.
403.2.8 Economizer Controls	403.2.8 Economizer Controls.

Table 2.—SUBJECT CROSS WALK BETWEEN CODIFIED VERSION OF STANDARD 90.1–1989 AND THE PROPOSED FEDERAL RULE—Continued

Codified 90.1–1989	Proposed rule
403.2.9 Distribution System Construction and Insulation	403.2.9 Distribution System Construction and Insulation.
403.2.10 Completion	403.2.10 Completion.
BUILDING SERVICE SYSTEMS AND EQUIPMENT	
404 Building Service Systems and Equipment	434.404 Building Service Systems and Equipment.
404.1 Service Water Heating Equipment	404.1 Service Water Heating Equipment Efficiency.
404.1.1 Testing Electric and Oil Storage Water Heaters for Standby Loss.	404.1.1 Testing Electric and Oil Storage Water Heaters for Standby Loss
404.1.2 Unfired Storage Tanks	404.1.2 Unfired Storage Tanks.
404.1.3 Storage Volume Symbols in Table	404.1.3 Storage Volume Symbols in Table.
404.2 Service Hot Water Piping Insulation	404.2 Service Hot Water Piping Insulation.
404.3 Service Water Heating System Controls	404.3 Service Water Heating System Controls.
404.4 Water Conservation	404.4 Water Conservation.
404.5 Swimming Pools	404.5 Swimming Pools.
404.6 Combined Service Water Heating and Space Heating Equipment.	404.6 Combined Service Water Heating and Space Heating Equipment.
The codified version of Standard 90.1–1989, Section 102, Compliance, incorporates by reference the Building Energy Cost Compliance Alternative.	Subpart E—Building Energy Cost Compliance Alternative
	434.501 General.
	434.502 Determination of the Annual Energy Cost Budget.
	434.503 Prototype Building Procedure.
	434.504 Use of the Prototype Building to Determine the Energy Cost Budget.
	434.505 Reference Building Method.
	434.506 Use of the Reference Building to Determine the Energy Cost Budget.
	434.507 Calculation Procedure and Simulation Tool.
	434.508 Determination of the Design Energy Consumption and Design Energy Cost.
	434.509 Compliance.
	434.510 Standard Calculation Procedure.
	434.511 Orientation and Shape.
	434.512 Internal Loads.
	434.513 Occupancy.
	434.514 Lighting.
	434.515 Receptacles.
	434.516 Building Exterior Envelope.
	434.517 HVAC Systems and Equipment.
	434.518 Service Water Heating.
	434.519 Controls.
	434.520 Speculative Buildings.
	434.521 The Simulation Tool.
The Building Energy Compliance Alternative is not in the codified version.	Subpart F—Building Energy Compliance Alternative
	434.601 General.
	434.602 Determination of the Annual Energy Budget.
	434.603 Determination of the Design Energy Use.
	434.604 Compliance.
	434.605 Standards Calculation Procedures.
	434.606 Simulation Tool.
	434.607 Life Cycle Cost Analysis Criteria.
CHAPTER 5 REFERENCE STANDARDS	Subpart G—Reference Standards
501 General	434.701 General.

As stated earlier, this proposed rule is being published in a unified and easy access form in lieu of publishing changes from the codified version of Standard 90.1 due to the integrated nature of the changes (small and large) from the codified version. In addition, this unified approach will facilitate the updating of this rule to reflect new energy efficiency provisions.

DOE worked with the ASHRAE's Standing Standards Project Committee 90.1 and the IES's Energy Management Committee in their development of addenda to Standard 90.1–1989. Today, the DOE is proposing to include some of these addenda in its proposed rule. Table 3 provides a subject cross walk between addenda to Standard 90.1–1989 and the proposed rule.

TABLE 3.—SUBJECT CROSS WALK BETWEEN STANDARD 90.1–1989 ADDENDA AND THE PROPOSED FEDERAL RULE

Standard 90.1–1989 Addenda	Proposed rule
Add. a Not promulgated	

TABLE 3.—SUBJECT CROSS WALK BETWEEN STANDARD 90.1–1989 ADDENDA AND THE PROPOSED FEDERAL RULE—Continued

Standard 90.1–1989 Addenda	Proposed rule
Add. b Revises service water heating criteria and updates miscellaneous references to other standards in Section 11 of ASHRAE Standard 90.1–1989.	Subpart D Building Design Requirements— 404 Includes reference changes and addenda to service water hearing criteria.
Add. c Motors. Makes the motor efficiency requirements more stringent and updates and adds references to NEMA Standards.	Subpart D Building Design Requirements— 401.2 Electric Motors.
Add. d Clarifies the Exception under 6.4.2.5, Lighting controls in spaces used as a whole.	Subpart D Building Design Requirements— 401.3.3 Lighting Power Control Credits.
Add. e Clarifies wording of 9.4.7, Ventilation. Section 9.4.7.2 permits outside air intake to exceed minimum levels provided the system is capable of operating at the minimum levels specified by 6.1.3 of ASHRAE Standard 62.	Subpart D Building Design Requirements— 403.2.4 Ventilation and Fan System Design.
Add. f Fenestration. Not adopted but pending consideration by ASHRAE.	Subpart D Building Design Requirements— 402.4.1.2 Fenestration DOE is proposing substantive provisions that are the same as in proposed Addendum F. DOE's version is written in codified form. Contains corrections in the fenestration thermal performance calculation procedure to meet industry standards. Includes changes to the alternative Component (ACP) Tables to reflect this change.
Add. g Expansion of Table 8C–2, Wall Sections with Metal Studs, Parallel Path Correction Factors. Addresses thicker wall members and new technology for higher performance insulation products.	Subpart D Building Design Requirements— 402.1.2.1 Envelope Assemblies Containing Metal Framing
Add. h Not promulgated	
Add. i Modifications to tables of HVAC equipment performance criteria in Section 10. (These were first included in Addenda a.) Incorporates updated test-procedure reference to the HVAC equipment performance criteria.	Subpart D Building Design Requirements— 403.1 Mechanical Equipment Efficiency.

E. Explanation of Differences Between the Proposed Rule and the Statutory Baseline

This section explains the differences between the proposed rule and the statutory baseline. As noted above, this baseline includes Addenda b, d, and e, since they were in effect at the time EPACT was enacted. The discussion below corresponds to the sections in the proposed rule. Unless otherwise indicated, the proposed rule incorporates the language of the codified version of both Standard 90.1 and its addenda. Minor language changes and citation changes will not be noted.

Subpart A: Administration and Enforcement

Sections 434.100 and 434.101, Purpose and Scope. In these proposed sections, the title, purpose and scope would be changed from the codified version and the statutory baseline to reflect the application to federal sector buildings. These sections would adopt language from the interim rule, with some modifications, which define the purpose of the proposed rule and the categories of buildings covered by this rulemaking. Specifically, the purpose section would use the term ''energy efficiency'' instead of the term ''energy conservation'' which is used in the codified version. Proposed § 434.101, Scope, would delete exception (1), which appears in both the statutory baseline and the codified version. Unlike the statutory baseline, the proposed rule specifically lists all the exceptions within the ''Scope'' section.

Sections 434.104, 106, and 107 Reserved

The proposed rule does not include the sections entitled ''Validity,'' ''Plans and Specifications,'' and ''Inspections'' from the codified version. The statutory baseline does not contain any of these sections either.

Subpart B: Definitions

The proposed rule would change the definition of ''commercial building'' from the codified version by using the definition of ''commercial building'' from the interim rule, which is identical to the definition in ECPA, as amended, 42 U.S.C. 6832(4). The proposed rule would also add several other definitions from the interim rule that are not in the codified version. They are: building code, Federal agency, Federal building and multi-family high-rise residential buildings. All of these definitions, except for multi-family high rise residential buildings, are identical to the definitions in ECPA, as amended, 42 U.S.C. 6832(3), (5), and (6), respectively.

Subpart D: Building Design Requirements

Section 401.2, Electric Motors. This proposed section would include Addendum c regarding motor efficiency. This is not part of the statutory baseline. These revised minimum efficiencies for electric motors are identical to those set forth in section 342(b) of the Energy Policy and Conservation Act (EPCA) as amended by section 122(d) of EPACT. The codified version of Addendum c is used with the exception of Table 401.2.1 of the proposed rule, which is from Table 5.1 of the non-codified version of the addendum. The codified version of Table 401.2.1 is condensed from the non-codified version and does not include as broad a range of motor types. The effect of including Addendum c is to make section 401.2 of the proposed rule more energy efficient than the statutory baseline. *See*, Technical Support Document (TSD), pages 2–3.

Section 401.3.2, Building Interiors. This proposed section would adopt most of the lighting requirements of the interim rule. Those lighting requirements incorporated from the interim rule are more energy efficient than the statutory baseline; the remaining requirements are identical to the statutory baseline. *See*, Technical Support Document, pages 3–7.

The interim federal rule specifies two sets of maximum unit power density

values (UPD). UPD is measured as lighting watts per square foot of floor area. The initial (1989) values are the same as those in the codified version of Standard 90.1–1989. It also contains more energy efficient UPD values that took effect in 1993. The values proposed today have been updated to reflect the results of the detailed assessment of the 1993 interim values made during a demonstration phase of the applicability of the interim rule. These values reflect a goal of progressive energy-conserving practice without prohibiting the design of quality lighting in interior environments.

The proposed rule would include UPD values in Tables 401.3.2b and 401.3.2c that in most cases are more stringent than the statutory baseline for various area/space categories. The proposed rule would adopt 79 of the 106 space types listed at the more stringent 1993 UPD values and 27 of the 106 space types listed at the 1989 UPD values from the interim rule. In no case is more lighting energy allowed than provided for under Standard 90.1–1989. *See,* Technical Support Document, page 4.

In the proposed rule, offices have a high number of recommended UPD values from the 1993 values of the interim rule because the substantial amount of case study and simulation evidence points overwhelmingly to a current capability for further reducing office lighting energy use without sacrificing lighting quality. The large amount of office space in the United States means that even this small improvement in energy efficiency specifications will result in significant additional energy savings. In only one case is a 1993 office value retained at the 1989 UPD value.

Sections 402.1.1.1, Shading Coefficient, and 402.1.2.2, Envelope Assemblies Containing Nonmetal Framing. The reference in the last sentence of Section 402.1.1.1 is Table 41, Chapter 27, of the ASHRAE, Handbook, 1989 Fundamentals Volume rather than the reference found in the codified version to Table 41 of the older 1985 Handbook. The 1985 Handbook is also referenced in the statutory baseline. There is no difference in the content of these tables, simply a different table number in the two versions of the Handbook.

The reference in the last sentence of Section 402.1.2.2 is changed from page 23.2 of Chapter 23 of the ASHRAE, Handbook, 1985 Fundamentals Volume found in the codified version and the statutory baseline, to page 23.2 of Chapter 23 of ASHRAE, Handbook, 1989 Fundamentals Volume. This updated reference is not substantive in nature.

Section 402.1.2.1, Envelope Assemblies Containing Metal Framing. The proposed rule would adopt Addendum 90.1g, which is not part of the statutory baseline. Addendum 90.1g expands proposed Table 402.1.2.1b, Parallel Path Correction Factors, Metal Framed Walls with Studs 16 Gauge or Lighter, to include metal studs and a larger variety of insulation products in exterior wall framing. These technologies are not required. The table is expanded to make it easier for builders to use these technologies. *See,* Technical Support Document, page 9.

Section 402.1.2.4, Fenestration Assemblies. The proposed rule would change the rating method for fenestration (windows and skylights) from that used in the statutory baseline. The proposed Section 402.1.2.4, which mirrors proposed ASHRAE Addendum f, differs from the statutory baseline in two respects. First, the proposed rule would adopt the test procedure of the National Fenestration Rating Council (NFRC), NFRC 100–91, Procedure for Determining Fenestration Product Thermal Properties (currently limited to thermal transmittance value). This test procedure modifies the method of calculating the thermal transmittance of fenestration assemblies (e.g., framing and glazing). Second, the thermal transmittance values in Equation 402.1.2.3, referenced in the proposed section, would be updated to reflect the new rating procedure so that the minimum required window assemblies would be essentially the same as those required under Standard 90.1–1989 using the old rating method. See, Technical Support Document, pages 10–11.

The new testing procedure was developed by a consensus process supported by the Department under section 121 of EPACT. The Department is proposing to adopt the NFRC Test Procedure because this method provides a more accurate measure of energy efficiency. In addition to being the basis for proposed Addendum 90.1f to Standard 90.1–1989 now under consideration by the ASHRAE Standing Standards Project Committee, it is already referred to in Chapter 27 of the *1993 ASHRAE Handbook of Fundamentals.* As noted previously in Section II.D. above, proposed Addendum f is not included in the codified version.

Section 402.4.1.2, Fenestration. The revised tables 402.4.1.1 on maximum wall thermal transmittance overall and 402.4.1.2 on maximum window wall ratio (WWR) were created using the new method of calculating the thermal transmittance of fenestration described above. These revised tables incorporate the changes in fenestration test procedures and required thermal transmittance overall values specified in Section 402.1.2.4.

Section 403.1, Mechanical Equipment Efficiency. The proposed rule adopts the changes set forth in Addendum 90.1i, which are not part of the statutory baseline. These changes update the Test Procedure column in the HVAC Tables 403.1a through 403.1f, to reflect the latest references in mechanical equipment efficiency test procedures to ensure consistency with industry practice. Addendum 90.1i also changes the required minimum cubic feet per minute (cfm) for variable-air-volume (VAV) systems to 300 cfm in order to provide consistency with the minimum requirements of Section 403.2.4, Ventilation and Fan System Design (Addendum 90.1e) *See,* Technical Support Document, pages 12–14 . Addendum 90.1e, which is part of the statutory baseline, permits outside air intake to exceed the minimum levels established by Standard 90.1–1989, to increase indoor air quality and tenant comfort.

Subpart E, Building Energy Cost Compliance Alternative

This provision is part of the statutory baseline. It is incorporated in the codified version of Standard 90.1–1989 by reference only (see Section 102, Compliance). The language of this subpart has been adopted in its entirety from the interim rule, with the exception of paragraphs 11.2.3, 11.2.4 and 11.3.1 found in § 435.111. The language in paragraph 11.2.3, which is contained in Section 502.3 of the proposed rule would be modified to make it more clear. The language in paragraph 11.2.4 would be deleted because it is merely explanatory in nature and does not include any regulatory requirements. The language in paragraph 11.3.1, which is contained in Section 508.1 of the proposed rule, has been modified to avoid confusion regarding which energy supply sources the section applies to.

This subpart sets forth the requirements for using one of two alternative methods of whole building performance compliance. This alternative method is based on a comparison of expected local monthly energy costs for the proposed building design (referred to as the ''design energy cost'') to the expected energy costs of a similar building designed to just meet the specific requirements of subpart D (referred to as the ''energy cost budget'').

Compliance is achieved when the estimated design energy cost is less than or equal to the energy cost budget. Subpart E provides instructions for determining the budget and for calculating energy analysis of prototype or reference building designs configured to meet the prescriptive or systems requirements of the standards.

The prototype or reference building design for the energy cost budget (1) incorporates the minimum technical specifications in proposed subpart D and (2) is based on the least expensive energy source(s) (e.g. electricity, natural gas, or oil) for space and water heating. The reference energy source(s) is not a requirement or recommendation.

This approach allows a designer maximum flexibility in the design process, while ensuring that the building is designed to have energy cost no higher than costs under the other compliance paths. This path provides an opportunity for the energy conservation benefits of innovative designs, materials, and equipment to be used when they cannot be evaluated adequately under either the prescriptive or system performance procedures.

Subpart F, Building Energy Compliance Alternative

This subpart is not found in the statutory baseline or the codified version of Standard 90.1–1989. The Building Energy Compliance Alternative has been adopted in its entirety from the current interim rule (*See* 10 CFR 435.112), with the exception of a portion of paragraph 12.1.7 from § 435.112, which would be deleted to conform to 10 CFR part 436. (*See* Proposed Section 601.7). The proposed rule would also modify the language of paragraphs 12.3.2.1 and 12.7.1 from § 435.112, now contained in proposed Sections 603.2.1 and 607.1, respectively. In the first instance, the modification would clarify the language of the proposed section; in the latter instance, the modification would conform the proposed section to part 436 and simplify it. Finally, a portion of paragraph 12.7.1.4 from § 435.112 would be deleted in order to make proposed Section 607.1.4 accurate.

This subpart provides an additional alternative path for compliance with the proposed rule which is based on a comparison of total energy use rather than energy costs as in subpart E. Compliance under this subpart is demonstrated by showing that the calculated annual energy usage for the proposed building design is equal to or less than a calculated design energy use target based on just meeting the requirements of subpart D.

A life-cycle cost economic analysis is required to evaluate both the choice of energy source(s) and energy reduction strategies. Unlike subpart E, this subpart requires the use of the energy source(s) determined to have the lowest life-cycle cost. Fuel sources selected for the proposed design and prototype or reference buildings are determined by considering the energy costs and other costs and benefits that occur during the expected economic life of the alternative. The procedures set forth in subpart A of 10 CFR part 436 are used to make the determination.

When the proposed design is compared to the prototype or reference building, the same subsystems and fuel sources are used so that the subsystems of each correspond. Life-cycle cost analysis is then used to determine whether proposed features would be cost-effective to the federal government. (Section IV of this preamble discusses federal policies which promote the purchase of cost-effective energy efficiency investments.)

Subpart G, Reference Standards

The proposed rule would adopt the reference section from the codified version of Standard 90.1–1989 with several additions. Several of these changes are described above. In addition, several references to other building industry standards are being updated to be consistent with the current version of those standards. These changed references are: RS–4, *ASHRAE, Handbook of Fundamentals, 1985* which was updated to version 1989 and RS–48 which was updated to version 1993. Specifically, added reference standards include: RS–43, *NEMA MG 10–1983 (R 1988),* Energy Management Guide for Selection and Use of Polyphase Motors, National Electrical Manufacturers Association, Washington, D.C. 20037; RS–44, *NEMA MG 11–1977 (R 1982, 1987),* Energy Management Guide for Selection and Use of Single-Phase Motors, National Electrical Manufacturers Association, Washington, D.C. 20037; RS–45, *ARI Standard 330–93,* Ground-Source Closed Loop Heat Pumps, Air-Conditioning and Refrigeration Institute, Arlington, Va. 22209; RS–46, *ARI Standard 560–92,* Absorption Water Chilling and Water Heating Packages, Air-Conditioning and Refrigeration Institute, Arlington, Va. 22209; RS–47, *ASHRAE, Handbook, 1991 Applications Volume,* American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA 30329; RS–48, ASHRAE, Handbook, 1993 Fundamentals Volume, American Society of Heating, Refrigerating, and Air- Conditioning Engineers, Atlanta, GA 30329; and RS–49, *Codified Version of ASHRAE, Standard 90.1–1989,* Energy Code For Commercial And High-Rise Residential Buildings, including Addenda b, c, d, e, g, and i.

III. Consultation

In developing today's proposal, DOE has consulted with outside parties, including state and local code officials, private sector representatives, and other federal agencies, as required by sections 305(a)(1) of ECPA, as amended.

IV. Energy Impacts

Section 305(a)(2)(A) of ECPA, as amended, requires that the proposed rule meet or exceed Standard 90.1–1989. As stated above, DOE is interpreting the statutory reference to Standard 90.1–1989 to include addenda in effect when EPACT was enacted. The proposed rule includes all of the energy efficiency provisions in the statutory baseline including the addenda in effect as of October 24, 1992. It also includes the three addenda adopted since October 24, 1992 (Addenda c, g and i), and lighting specifications that are not included in either Standard 90.1–1989 or any of its addenda. Further, DOE proposes requirements based upon proposed Addendum f.

Overall, the proposed rule, if adopted, for new federal buildings, would reduce energy use by about 5 percent more than adoption of a rule that meets the statutory baseline. The Department has determined that Addenda g and i, addressing metal stud walls and HVAC performance testing, respectively, as well as proposed Addendum f have no impact on energy use. The Department estimates that Addendum c provides a 0.24 percent reduction in building energy use. This same reduction will be realized nationwide as the electric motor standards of section 342 (b) of the EPCA, as amended, take effect. The Department has also determined that the proposed lighting standards will result in total building energy use which is 4.7 percent less than that allowed by the statutory baseline.

Even though today's proposed rule is more stringent than the statutory baseline, two components of the proposed rule are likely to result in an increase in allowed energy use as compared to the interim rule. First, the interim rule does not include the new ventilation standard found in the statutory baseline, Addendum e of Standard 90.1–1989. Addendum 90.1e requires inclusion of capacity to provide more fresh air to be brought into commercial buildings in order to improve indoor air quality and occupant

comfort. The Department estimates that the additional energy needed to heat, cool, dehumidify and move this additional outdoor air will increase energy use under the proposed rule by 10 to 15 percent from the energy requirements in the interim standard.

Second, for 27 of the 106 space types, the lighting requirements in the proposed rule are less stringent than the 1993 lighting values in the interim rule. The changes are unlikely, however, to have much impact on energy use since the 1993 UPD values proved difficult to implement for these 27 space types.

The energy estimates reported here are based on the minimum specifications found in Subsection D of the proposed rule. Additional cost-effective energy efficiency improvements in new federal commercial buildings are facilitated by this rule through subparts E and F, the alternative paths which provide a means of documenting the energy savings and cost-effectiveness of more energy efficient building designs. Pursuant to section 306 of ECPA, as amended, federal agencies must adopt building standards which meet or exceed the standards of the proposed rule. Utilization of the voluntary code format for this rule would facilitate DOE's consideration and incorporation of new code specifications. The Department is actively involved in the development and analysis of a next-generation voluntary code for commercial buildings.

Several existing programs and policies are also designed to reduce energy use in new federal buildings beyond minimum specifications. The proposed rule is specifically designed to work in conjunction with existing efforts. The life cycle cost analysis provisions found in 10 CFR part 436 allow agencies to determine when additional or alternative efficiency measures would provide net benefits in the form of energy cost savings to ensure that measures selected under the alternative paths are cost-effective to the Federal government. Section 306(a) of Executive Order No. 12902 (59 FR 11463, March 8, 1994), ''Executive Order on Energy Efficiency and Water Conservation at Federal Facilities,'' specifically requires for new Federal facilities that, ''Each agency involved in the construction of a new facility * * * shall: (1) Design and construct such facility to minimize the life cycle cost of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies.'' It also requires agencies to ''ensure that the design and construction of facilities meet or exceed the energy performance standards applicable to Federal residential or commercial buildings as set forth in 10 CFR part 435, local building standards, or a Btu-per-gross square-foot ceiling . . . whichever will result in a lower life cycle cost over the life of the facility.'' Section 306(a)(2). Finally, this Executive Order directs agencies to purchase equipment for buildings that are in the upper 25 percent of energy efficiency for all similar products or at least 10 percent more efficient than the minimum level that meets Federal standards if they are cost-effective and to the extent practicable. Section 507(a)(2). Programs within the Department's Office of Codes and Standards and the Federal Energy Management Program provide agencies with assistance in utilizing life-cycle cost analysis and in identifying and procuring energy efficient shell and equipment options for Federal buildings.

V. Technological Feasibility and Economic Justification

The standards proposed today are technologically feasible and cost effective to the federal government as required by section 305(a)(1) of ECPA, as amended. Those provisions included in the statutory baseline have been part of recommended professional practice since at least October 1992. Addenda adopted or proposed by ASHRAE and IES since EPACT was enacted (Addenda 90.1c, f, g, and i addressing motors, fenestration, metal framing in the building envelope, and heating and cooling equipment test procedures, respectively) will be addressed specifically to explain their technological feasibility and cost effectiveness.

Addendum 90.1c, regarding motors was developed in cooperation with the National Electrical Manufacturers Association and is based on its standards. Motors covered by this criteria are currently being actively marketed by manufacturers and regularly incorporated as cost effective retrofit measures in utility demand side management programs. *See*, Technical Support Document, page 3. Section 342(b) of EPCA, as amended, governs the efficiency of motors manufactured after October 1997. Discussions with manufacturers lead DOE to believe that these products will be cost effective for all new federal buildings at the time this rule would become effective.

Proposed Addendum 90.1f modifies the method of calculating the thermal transmittance of fenestration assemblies based on the National Fenestration Rating Council's procedures for determining fenestration thermal performance. Over 12,000 products have been certified using this procedure. Hence, the Department believes that these procedures are technologically feasible. Furthermore, DOE believes that the U-values specified in the proposed rule based on Addendum f would not change the types of windows from those required by Standard 90.1–1989. A review of the National Fenestration Products Rating Council Certified Product Directory leads DOE to conclude that the proposed changes will not require a change in fenestration from the statutory baseline. *See*, Technical Support Document, pages 10–11.

Addendum 90.1g, expands proposed Table 402.1.2.1b, Parallel Path Correction Factors, Metal Framed Walls with Studs 16 Gauge or Lighter, to include a larger variety of available types of metal studs, spacing of framing members and cavity insulation values which are being used for exterior walls. This was done in light of recent increased interest in metal shed construction. The proposed rule only permits the use of metal studs if the exterior wall is properly insulated; it does not require the use of this technology. The Department believes this technology will be used only in cases where the builder finds it is cost effective to do so. *See*, Technical Support Document, pages 8–9.

Addendum 90.1i updates the test procedures for heating and cooling equipment. Their adoption by equipment manufacturers demonstrates their technological feasibility. Furthermore, since these are established testing procedures used by industry, DOE believes their inclusion in the proposed rule will have no impact on cost. In addition, Addendum 90.1i specifies minimum air changes per hour under various circumstances. DOE believes this will not increase energy use beyond the statutory baseline since Addendum e, adopted prior to October 24, 1992 already allowed this practice. *See*, Technical Support Document, pages 12–14.

The proposed rule adopts those 1993 lighting specifications that proved to be both technologically feasible and cost-effective. (*See* Appendix of the TSD). For each of the 79 space/area types for which the Department is proposing to use the 1993 UPD values from the interim rule, these values proved to be both technologically feasible and cost-effective to the federal government. For each of the 27 space/area types for which the Department is proposing to use the 1989 values from the interim rule (identical to the statutory baseline),

the Department's analysis indicated potential technical difficulties in using the 1993 UPD values while retaining adequate lighting levels for the relevant tasks. In determining the cost-effectiveness of the lighting provisions, the original analysis was adjusted to reflect the estimated lower cost of electricity to the federal government. *See*, Technical Support Document, pages 3–7.

VI. Measures Concerning Radon and Other Indoor Air Pollutants

Section 305(a)(2)(C) of ECPA, as amended, requires the Department to consider, where appropriate, measures with regard to radon and other indoor air pollutants. The Department has consulted with the Environmental Protection Agency and determined that there are no radon standards applicable to the types of buildings covered by the proposed rule.

Ventilation is the only proposed change that has an effect on indoor air quality and thus, on habitability. The proposed rule, through its inclusion of Addendum 90.1e, would adopt the minimum ventilation rates specified by ASHRAE Standard 62–1989, entitled ''Ventilation for Acceptable Indoor Air Quality,'' effectively increasing ventilation in new federal buildings. Improving building ventilation conditions by adjustments to mechanical systems is widely used as a generic mitigation practice for indoor air quality problems. It is widely assumed that such adjustments increase ventilation rates and as a consequence decrease contaminant concentrations, reduce dissatisfaction with air quality and reduce symptom prevalence. A range of experimental and epidemiological studies have been carried out to evaluate these relationships. However, these study results are in dispute.

VII. Findings and Certification

A. Federalism Review

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

This proposed rule would establish standards for new federal commercial and multi-family high rise residential buildings. It does not impose any requirements on State governments. Therefore, the Department finds that today's proposed rule, if finalized, will not have a substantial direct effect on State governments and, therefore, a federalism assessment has not been prepared.

B. Review Under Executive Order on Promulgating Regulations 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department certifies that the proposed rule meets the requirements of section 3(a) and (b) of Executive Order 12988.

C. Regulatory Planning and Review

This regulatory action has been determined to be a significant regulatory action under Executive Order No. 12866, 58 FR 51735 (October 4, 1993), but not economically significant. Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) and OIRA has completed its review.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis and that it be published at the time of publication of general notice of proposed rulemaking for the rule. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' (5 U.S.C. 605).

The proposed rule only imposes requirements on the Federal government for the construction of new Federal commercial and multi-family high rise residential buildings. Therefore, the Department certifies that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

E. Review Under the National Environmental Policy Act

In issuing the interim rule, the Department prepared an Environmental Assessment (EA) of the interim standards for Federal commercial and multi-family high rise residential buildings. The EA concluded that the effect of the proposed standards on a building's habitability as well as on the outdoor environment, the economy and Federal institutions, would be very small. Thus, environmental effects from standards proposed for a minimum level of energy efficiency for new Federal and commercial multi-family high rise residential buildings were determined not to be a major Federal action significantly affecting the quality of the human environment, under the meaning of the National Environmental Policy Act. A Finding of No Significant Impact (FONSI) was issued by DOE on November 3, 1986. The FONSI was then published along with the proposed rule in 52 FR 17052, 17064 (May 6, 1987) and referenced in the interim rule in 54 FR 4551 (January 30, 1989).

The 1989 interim rule that established building energy efficiency standards was mandatory for federal buildings and voluntary for all others. This proposed rule addresses solely federal construction, which represents only 2 percent of total new construction nationwide, and does not include voluntary standards for non-federal construction.

The proposed rule would change energy consumption as compared to the interim rule in the areas of lighting, motors, and HVAC. In conducting the environmental analysis for this proposed rule, the Department found that the proposed changes would produce a 4.7 percent reduction in building energy consumption compared to the 1989 lighting criteria in the interim rule. The proposed rule would also produce a 0.24 percent reduction in building energy consumption due to the proposed efficiency requirements of motors as compared to the interim rule. The proposed rule, however, could increase energy use by 10–15 percent, because of the additional HVAC requirements of Addendum 90.1e, as compared to the interim rule. The net result would be an approximate 5–10 percent increase in total building energy use as compared to the interim rule with the 1989 lighting levels. Since federal construction represents only 2 percent of the total new commercial and multi-family high-rise construction nationally,

the increase in energy consumption nationally would be negligible.

The Department believes that a minimum environmental impact would result from this proposed rule. Further, such effects would fall within the range of impacts that are analyzed in the interim rule's EA. These effects are determined not to be significant in the FONSI published in 1987. Accordingly, DOE determines that after all the environmental effects of the proposed rule are considered, this proposed rule is bounded by the analysis in the EA. Therefore, the preparation of a new EA or an environmental impact statement is not required.

F. Environmental Protection Agency Review

As required by the Federal Energy Administration Act of 1974, 15 U.S.C. 766 (a)(1), a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of the proposed rule on the quality of the environment.

G. Paperwork Reduction Act Review

This proposed rule was examined with respect to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, which directs agencies to minimize Federal information collection and reporting burdens imposed on individuals, small businesses, and State and local governments.

This proposed rule would establish requirements for the design of new Federal commercial and multi-family high rise buildings. It does not impose requirements for the collection or reporting of information to the Federal Government. Accordingly, clearance under the Paperwork Reduction Act of 1980 is not required by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

H. Unfunded Mandates Reform Act Review

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The requirements do not apply if the rule incorporates regulatory requirements that are specifically set forth in law. *See* 2 U.S.C. 1531, 1532.

Furthermore, section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that: (1) Would impose an enforceable duty upon State, local, or tribal governments (except as a condition of Federal assistance); and (2) may result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. 2 U.S.C. 1533.

The rule proposed today would establish building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to section 305(a) of the Energy Conservation and Production Act, as amended. 42 U.S.C. 6834(a). It does not include any Federal requirements that would result in the expenditure of money by State, local, and tribal governments. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

I. Review under Section 32 of the Federal Energy Administration Authorization Act

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with section 32 of the Federal Energy Administration Act of 1974, as amended by section 9 of the Federal Energy Administration Authorization Act of 1977. The findings required of the Department of Energy by section 32 serve to notify the public regarding the use of commercial standards in a proposal and through the rulemaking process. It allows interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a notice of proposed rulemaking. Section 32 also requires that the Department of Energy consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impacts of such standards on competition.

Today's proposed rule adopts, in significant part, the codified version of Standard 90.1–1989, including six addenda adopted by ASHRAE/IES. They are: Addenda b, c, d, e, g, and i. In addition, the proposed rule contains other industry reference standards and sources. They are: ASHRAE, Handbook, 1989, 1993, Fundamentals Volumes, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA. 30329; National Fenestration Rating Council (NFRC) 100–91, Procedure for Determining Fenestration Product Thermal Properties, Silver Spring, MD, 20910; NEMA MG 10–1983 (R 1988), Energy Management Guide for Selection and Use of Polyphase Motors, National Electrical Manufacturers Association, Washington, DC 20037; NEMA MG 11–1977 (R 1982, 1987), Energy Management Guide for Selection and Use of Single-Phase Motors, National Electrical Manufacturers Association, Washington,DC, 20037; ARI Standard 330–93, Ground-Source Closed Loop Heat Pumps, Air-Conditioning and Refrigeration Institute, Arlington,Va. 22209; ARI Standard 560–92, Absorption Water Chilling and Water Heating Packages, Air-Conditioning and Refrigeration Institute, Arlington, Va. 22209; and ASHRAE Handbook, 1991 Applications Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA 30329.

The Department of Energy has evaluated the promulgation of the above standards with regard to compliance with section 32(b). The Department is unable to conclude whether these standards fully comply with the requirements of section 32(b), i.e., that they were developed in a manner which fully provided for public participation, comment, and review. Therefore, DOE now invites public comment on the appropriateness of incorporating these industry standards in its final rule. As required by section 32(c), DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to issuing a notice of Final Rulemaking.

VIII. Public Comment Procedures

A. Participation in Rulemaking

The Department encourages the maximum level of public participation in this rulemaking. Individuals, Federal agencies, architects, engineers, utilities, States and local governments, building

code organizations, builders, builder associations, building owners, building owner association, consumers, and others are urged to submit written data, views, or comments on the proposal. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated in this Notice.

The Department has established a comment period of 90 days following publication of this notice during which interested persons may comment on this proposal. All comments will be available for review in the Department's Freedom of Information Reading Room.

B. Written Comment Procedures

Written comments (ten copies) should be submitted to the address indicated in the ADDRESSES section of this notice and must be received by the time and date indicated in the DATES section of this notice. Comments should be identified on both the outside of the envelope and on the documents themselves with the designation, ''Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings (Docket No. EE–RM–79–112–C).'' In the event any person wishing to provide written comments cannot provide ten copies, alternative arrangements can be made in advance with DOE by calling.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All written comments will be available for examination in the Rule Docket File in the Department's Freedom of Information Office Reading Room at the address provided at the beginning of this notice both before and after the closing date for comments. In addition, a transcript of the proceedings of the public hearings will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, and two copies from which the information claimed to be confidential has been deleted. The Department will make its own determination of any such claim and treat it according to its determination.

C. Public Hearing Procedures

1. Procedure for Submitting Requests to Speak

In order to have the benefit of a broad range of public viewpoints in this rulemaking, the Department will hold a public hearing at the time and place indicated in the **DATES** and **ADDRESSES** sections of this notice. Any person who has an interest in the proposed rule or who is a representative of a group or class of persons that has an interest in the proposed rule may request an opportunity to make an oral presentation. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and received by the time specified in the **DATES** section of this notice.

The persons making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a telephone number where they may be contacted during the day. Each person selected to speak at a public hearing will be notified by the DOE as to the approximate time that they will be speaking. They should bring ten copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with DOE.

2. Conduct of Hearing

The DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation is limited to ten minutes, or based on the number of persons requesting to speak.

A Department official will preside at the hearing. The hearing will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Questions may be asked only by those conducting the hearing. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant or whether time limitations permit it to be presented for a response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel the public hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Actual notice of cancellation will also be given to all persons scheduled to speak. The hearing date may be cancelled in the event no member of the public requests the opportunity to make an oral presentation.

List of subjects in 10 CFR Parts 434 and 435

Buildings, Energy conservation, Engineers, Federal buildings and facilities.

Issued in Washington, DC, on July, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

1. The authority citation for part 435 is revised to read as follows:

Authority: 42 USC 6831–6832; 6834–6836; 42 USC 8253–54; 42 USC 7101 et seq.

§§ 435.97 through 435.112 (Subpart A) [Removed and reserved]

2. Subpart A (§§ 435.97 through 435.112) to part 435 is removed and reserved.

3. A new part 434 is added to Chapter II of Title 10 to read as set forth below:

PART 434—ENERGY CODE FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS

Sec.

434.99 Explanation of numbering system for codes.

Subpart A—Administration and Enforcement—General

434.100 Purpose.
434.101 Scope.
434.102 Compliance.
434.103 Referenced standards (RS).
434.105 Materials and equipment.

Subpart B—Definitions

434.201 Definitions.

Subpart C—Design Conditions

434.301 Design Criteria.

Subpart D—Building Design Requirements—Electric Systems and Equipment

434.401 Electrical power and lighting systems.
434.402 Building envelope assemblies and materials.
434.403 Building mechanical systems and equipment.
434.404 Building service systems and equipment.

Subpart E—Building Energy Cost Compliance Alternative.

434.501 General.
434.502 Determination of the annual energy cost budget.
434.503 Prototype building procedure.
434.504 Use of the prototype building to determine the energy cost budget.
434.505 Reference building method.
434.506 Use of the reference building to determine the energy cost budget.
434.507 Calculation procedure and simulation tool.
434.508 Determination of the design energy consumption and design energy cost.
434.509 Compliance.
434.510 Standard calculation procedure.
434.511 Orientation and shape.
434.512 Internal loads.
434.513 Occupancy.
434.514 Lighting.
434.515 Receptacles.
434.516 Building exterior envelope.
434.517 HVAC systems and equipment.
434.518 Service water heating.
434.519 Controls.
434.520 Speculative buildings.
434.521 The simulation tool.

Subpart F—Building Energy Compliance Alternative

434.601 General.
434.602 Determination of the annual energy budget.
434.603 Determination of the design energy use.
434.604 Compliance.
434.605 Standard calculation procedure.
434.606 Simulation tool.
434.607 Life cycle cost analysis criteria.

Subpart G—Reference Standards

434.701 General.

Authority: 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101, et seq.

§ 434.99 Explanation of numbering system for codes.

(a) For purposes of this part, a derivative of two different numbering systems will be used.

(1) For the purpose of designating a section, the system employed in the Code of Federal Regulations (CFR) will be employed. The number ''434'' which signifies Part 434 in Chapter II of Title 10, Code of Federal Regulations, is used as a prefix for all section headings. The suffix is a two or three digit section number. For example the lighting section of the standards is designated § 434.401.

(2) Within each section, a numbering system common to many national voluntary consensus standards is used. A decimal system is used to denote paragraphs and subparagraphs within a section. For example, in § 434.401, ''401.2.1'' refers to subsection 401, paragraph 2, subparagraph 1.

(b) The hybrid numbering system is used for two purposes:

(1) The use of the Code of Federal Regulation's numbering system allows the researcher using the CFR easy access to the standards.

(2) The use of the second system allows the builder, designer, architect or engineer easy access because they are familiar to this system numbering. This system was chosen because of its commonality among the building industry.

Subpart A—Administration and Enforcement—General

§ 434.100 Purpose.

The provisions of this part provide minimum standards for energy efficiency for the design of new Federal commercial and multi-family high rise residential buildings. The performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

§ 434.101 Scope.

101.1 This part provides design requirements for the building envelope, electrical distribution systems and equipment for electric power, lighting, heating, ventilating, air conditioning, service water heating and energy management. It applies to new Federal multi-family high rise residential buildings and new Federal commercial buildings. The following are not covered:

101.1.1 Buildings, or portions thereof separated from the remainder of the building, that have a peak energy usage for space conditioning, service water heating, and lighting of less than 3.5 Btu/(h•ft^2) of gross floor area.

101.1.2 Buildings of less than 100 square feet of gross floor area.

101.1.3 Heating, cooling, ventilating, or service hot water requirements for those spaces where processes occur for purposes other than occupant comfort and sanitation, and which impose thermal loads in excess of 5% of the loads that would otherwise be required for occupant comfort and sanitation without the process;

101.1.4 Envelope requirements for those spaces where heating or cooling requirements are excepted in subsection 101.1.3 of this section.

101.1.5 Lighting for tasks not listed or encompassed by areas or activities listed in Table 514.1.1.

101.1.6 Buildings that are composed entirely of spaces listed in subsections 101.1.1 and 101.1.3.

101.2 A Federal agency may use this section to include any additions, renovations, repairs, replacements, and/or remodeling in the scope of the code and reference existing procedures in their building or administrative code to cover this application.

§ 434.102 Compliance.

102.1 A covered building must be designed and constructed consistent with the provisions of this part.

102.2 Buildings designed and constructed to meet the alternative requirements of subparts E or F shall be deemed to satisfy the requirements of this part. Such designs shall be certified by a registered architect or engineer stating that the estimated energy cost or energy use for the building as designed is no greater than the energy cost or energy use of a prototype building or reference building as determined pursuant to subparts E or F of this part.

§ 434.103 Referenced standards (RS).

103.1 The standards, technical handbooks, papers and regulations listed in § 434.701, shall be considered part of this part to the prescribed extent of such reference. Where differences occur between the provisions of this part and referenced standards, the provisions of this part shall apply. Whenever a reference is made in this part to an RS standard it refers to the standards listed in § 434.701.

§ 434.105 Materials and equipment.

105.1 Building materials and equipment shall be identified in designs in a manner that will allow for a determination of their compliance with the applicable provisions of this part.

Subpart B—Definitions

§ 434.201 Definitions.

For the purposes of this part, the following terms, phrases, and words shall be defined as provided:

Accessible (as applied to equipment): Admitting close approach; not guarded by locked doors, elevations, or other effective means. (See also ''readily accessible'')

Annual Fuel Utilization Efficiency (AFUE): The ratio of annual output energy to annual input energy that includes any non-heating season pilot input loss.

Area of the space (A): The horizontal lighted area of a given space measured from the inside of the perimeter walls or partitions, at the height of the working surface.

Automatic: Self-acting, operating by its own mechanism when actuated by some impersonal influence, such as a change in current strength, pressure, temperature, or mechanical configuration. (See also ''manual'')

Automatic flue damper device: An electrically operated device, in the flue outlet or in the inlet of or upstream of the draft hood of an individual automatically operated gas-fired appliance, which is designed to automatically open the flue outlet during appliance operation and to automatically close off the flue outlet when the appliance is in a standby condition.

Automatic vent damper device: A device intended for installation in the venting system, in the outlet of or downstream of the appliance draft hood, of an individual automatically operated gas-fired appliance, which is designed to automatically open the venting system when the appliance is in operation and to automatically close off the venting system when the appliance is in a standby or shutdown condition.

(1) *Electrically operated:* an automatic vent damper device that employs electrical energy to control the device.

(2) *Thermally actuated:* an automatic vent damper device dependent for operation exclusively upon the direct conversion of the thermal energy of the vent gases into mechanical energy.

Boiler capacity: The rated heat output of the boiler, in Btu/h, at the design inlet and outlet conditions and rated fuel ro energy input.

Building Code: means a legal instrument which is in effect in a state or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

Building envelope: The elements of a building that enclose conditioned spaces through which thermal energy may be transferred to or from the exterior or to or from unconditioned spaces.

Check metering: Measurement instrumentation for the supplementary monitoring of energy consumption (electric, gas, oil, etc) to isolate the various categories of energy use to permit conservation and control, in addition to the revenue metering furnished by the utility.

Coefficient of performance (COP)—Cooling: The ratio of the rate of heat removal to the rate of energy input, in consistent units, for a complete cooling system or factory assembled equipment, as tested under a nationally recognized standard or designated operating conditions.

Coefficient of performance (COP), heat pump—Heating: The ratio of the rate of heat delivered to the rate of energy input, in consistent units, for a complete heat pump system under designated operating conditions.

Commercial building: A building other than a residential building, including any building developed for industrial or public purposes. Including but not limited to occupancies for assembly, business, education, institutions, food sales and service, merchants, and storage.

Conditioned floor area: The area of the conditioned space measured at floor level from the interior surfaces of the walls.

Conditioned space: A cooled space, heated space, or indirectly conditioned space.

Cooled space: An enclosed space within a building that is cooled by a cooling system whose sensible capacity:

(1) Exceeds 5 Btu/(h•ft ^{2}); or

(2) Is capable of maintaining a space dry bulb temperature of 90°F or less at design cooling conditions.

Daylight sensing control (DS): A device that automatically regulates the power input to electric lighting near the fenestration to maintain the desired workplace illumination, thus taking advantage of direct or indirect sunlight.

Daylighted space: The space bounded by vertical planes rising from the boundaries of the daylighted area on the floor to the floor or roof above.

Daylighted zone:

(1) Under skylights: the area under each skylight whose horizontal dimension in each direction is equal to the skylight dimension in that direction plus either the floor-to- ceiling height or the dimension to an opaque partition, or one-half the distance to an adjacent skylight or vertical glazing, whichever is least.

(2) At vertical glazing: the area adjacent to vertical glazing that receives daylighting from the glazing. For purposes of this definition and unless more detailed daylighting analysis is provided, the daylighting zone depth is assumed to extend into the space a distance of 15 ft or to the nearest opaque partition, whichever is less. The daylighting zone width is assumed to be the width of the window plus either 2 ft on each side, the distance to an opaque partition, or one half the distance to an adjacent skylight or vertical glazing, whichever is least.

Dead band (dead zone): The range of values within which an input variable that can be varied without initiating any noticeable change in the output variable.

Degree-day, cooling: A unit, based upon temperature difference and time, used in estimating cooling energy consumption. For any one day, when the mean temperature is more than a reference temperature, typically 65°F, there are as many degree-days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual cooling degree-days (CDD) are the sum of the degree-days over a calendar year.

Degree-day, heating: A unit, based upon temperature difference and time, used in estimating heating energy consumption. For any one day, when the mean temperature is less than a reference temperature, typically 65°F, there are as many degree-days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual heating degree days (HDD) are the sum of the degree-days over a calendar year.

Dwelling unit: A single housekeeping unit comprised of one or more rooms providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Economizer, air: A ducting arrangement and automatic control system that allows a cooling supply fan system to supply outdoor (outside) air to reduce or eliminate the need for mechanical refrigeration during mild or cold weather.

Economizer, water: A system by which the supply air of a cooling system is cooled directly or indirectly or both by evaporation of water or by other appropriate fluid in order to reduce or eliminate the need for mechanical refrigeration.

Efficiency, HVAC system: The ratio of the useful energy output, at the point of use to the energy input in consistent units, for a designated time period, expressed in percent.

Emergency system (back-up system): A system that exists for the purpose of operating in the event of failure of a primary system. Emergency use: Electrical and lighting systems required to supply power automatically for illumination and equipment in the event of a failure of the normal power supply.

Energy efficiency ratio (EER): The ratio of net equipment cooling capacity in Btu/h to total rate of electric input in

watts under designated operating conditions. When consistent units are used, this ratio becomes equal to COP. (See also ''coefficient of performance''.)

Fan system energy demand: The sum of the demand of all fans that are required to operate at design conditions to supply air from the heating or cooling source to the conditioned space(s) and return it back to the source or exhaust it to the outdoors.

Federal Agency: Means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Federal Building: Means any building to be constructed by, or for the use of, any Federal Agency which is not legally subject to State or local building codes or similar requirements.

Fenestration: Any light-transmitting section in a building wall or roof. The fenestration includes glazing material (which may be glass or plastic), framing (mullions, muntins, and dividers), external shading devices, internal shading devices, and integral (between glass) shading devices.

Fenestration area: The total area of fenestration measured using the rough opening and including the glass or plastic, sash, and frame.

Flue damper: A device, in the flue outlet or in the inlet of or upstream of the draft hood of an individual automatically operated gas-fired appliance, which is designed to automatically open the flue outlet during appliance operation and to automatically close off the flue outlet when the appliance is in a standby condition.

Gross floor area: The sum of the floor areas of the conditioned spaces within the building, including basements, mezzanine and intermediate-floor tiers, and penthouses of headroom height 7.5 ft or greater. It is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings (excluding covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features).

Gross lighted area (GLA): The sum of the total lighted areas of a building measured from the inside of the perimeter walls for each floor of the building.

Heat capacity (HC): The amount of heat necessary to raise the temperature of a given mass 1°F. Numerically, the mass expressed per unit of wall surface multiplied by the specific heat Btu/(ft^2•°F).

Heat trap: Device or piping arrangement that effectively restricts the natural tendency of hot water to rise in vertical pipes during standby periods. Examples are the U-shaped arrangement of elbows or a 360-degree loop of tubing.

Heated space: An enclosed space within a building that is heated by a heating system whose output capacity

(1) Exceeds 10 Btu/(h•ft^2), or

(2) Is capable of maintaining a space dry-bulb temperature of 50°F or more at design heating conditions.

Heating seasonal performance factor (HSPF): The total heating output of a heat pump during its normal annual usage period for heating, in Btu, divided by the total electric energy input during the same period, in watt-hours.

High rise residential building: Hotels, motels, apartments, condominiums, dormitories, barracks, and other residential-type facilities that provide complete housekeeping or transient living quarters and are over three stories in height above grade.

Humidistat: An automatic control device responsive to changes in humidity.

HVAC system: The equipment, distribution network, and terminals that provide either collectively or individually the processes of heating, ventilating, or air conditioning to a building.

Indirectly conditioned space: An enclosed space within the building that is not a heated or cooled space, whose area-weighted heat transfer coefficient to heated or cooled spaces exceeds that to the outdoors or to unconditioned spaces; or through which air from heated or cooled spaces is transferred at a rate exceeding three air changes per hour. (See also ''heated space'', ''cooled space'', and ''unconditioned space''.)

Infiltration: The uncontrolled inward air leakage through cracks and crevices in any building element and around windows and doors of a building.

Integrated part-load value (IPLV): A single-number figure of merit based on part-load EER or COP expressing part-load efficiency for air-conditioning and heat pump equipment on the basis of weighted operation at various load capacities for the equipment.

Lumen maintenance control: A device that senses the illumination level and causes an increase or decrease of illuminance to maintain a preset illumination level.

Manual: Action requiring personal intervention for its control. As applied to an electric controller, manual control does not necessarily imply a manual controller but only that personal intervention is necessary. (See automatic.)

Marked rating: The design load operating conditions of a device as shown by the manufacturer on the nameplate or otherwise marked on the device.

Multi-family high rise residential: A residential building containing three or more dwelling units and is designed to be 3 or more stories above grade.

Occupancy sensor: A device that detects the presence or absence of people within an area and causes any combination of lighting, equipment, or appliances to be adjusted accordingly.

Opaque areas: All exposed areas of a building envelope that enclose conditioned space except fenestration areas and building service openings such as vents and grilles.

Orientation: The directional placement of a building on a building site with reference to the building's longest horizontal axis or, if there is no longest horizontal axis, then with reference to the designated main entrance.

Outdoor air: Air taken from the exterior of the building that has not been previously circulated through the building. (See ''ventilation air'')

Ozone depletion factor: A relative measure of the potency of chemicals in depleting stratospheric ozone. The ozone depletion factor potential depends upon the chlorine and the bromine content and atmospheric lifetime of the chemical. The depletion factor potential is normalized such that the factor for CFC–11 is set equal to unity and the factors for the other chemicals indicate their potential relative to CFC–11.

Packaged terminal air conditioner (PTAC): A factory-selected wall sleeve and separate unencased combination of heating and cooling components, assemblies, or sections (intended for mounting through the wall to serve a single room or zone). It includes heating capability by hot water, steam, or electricity.

Packaged terminal heat pump: A PTAC capable of using the refrigeration system in a reverse cycle or heat pump mode to provide heat.

Plenum: An enclosure that is part of the air-handling system and is distinguished by having a very low air velocity. A plenum often is formed in part or in total by portions of the building.

Private driveways, walkways, and parking lots: Exterior transit areas that are associated with a commercial or residential building and intended for use solely by the employees or tenants and not by the general public.

Process energy: Energy consumed in support of a manufacturing, industrial, or commercial process other than the maintenance of comfort and amenities for the occupants of a building.

Process load: The calculated or measured time-integrated load on a building resulting from the consumption or release of process energy.

Programmable: Capable of being preset to certain conditions and having self-initiation to change to those conditions.

Projection factor: The exterior horizontal shading projection depth divided by the sum of the height of the fenestration and the distance from the top of the fenestration to the bottom of the external shading projection in units consistent with the projection depth.

Prototype building: A generic building design of the same size and occupancy type as the proposed design that complies with the prescriptive requirements of Subpart D and has prescribed assumptions used to generate the energy budget concerning shape, orientation, and HVAC and other system designs.

Public driveways, walkways, and parking lots: Exterior transit areas that are intended for use by the general public.

Public facility restroom: A restroom used by the transient public.

Readily accessible: Capable of being reached quickly for operation, renewal, or inspections without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See also accessible.)

Recooling: Lowering the temperature of air that has been previously heated by a heating system.

Reference building: A specific building design that has the same form, orientation, and basic systems as the prospective design that is to be evaluated for compliance and meets all the criteria listed in subsection 501.2 or subsection 601.2.

Reheating: Raising the temperature of air that has been previously cooled either by refrigeration or an economizer system.

Reset: Adjustment of the controller setpoint to a higher or lower value automatically or manually.

Roof: Those portions of the building envelope, including all opaque surfaces, fenestration, doors, and hatches, that are above conditioned space and are horizontal or tilted at less than 60° from horizontal. (See also ''walls'')

Room air conditioner: An encased assembly designed as a unit to be mounted in a window or through a wall or as a console. It is designed primarily to provide free delivery of conditioned air to an enclosed space, room, or zone. It includes a prime source of refrigeration for cooling and dehumidification and means for circulating and cleaning air and may also include means for ventilating and heating.

Seasonal energy efficiency ratio (SEER): The total cooling output of an air conditioner during its normal annual usage period for cooling, in Btu, divided by the total electric energy input during the same period, in watt-hours.

Service systems: All energy-using or energy-distributing components in a building that are operated to support the occupant or process functions housed therein (including HVAC, service water heating, illumination, transportation, cooking or food preparation, laundering, or similar functions).

Service water heating: The supply of hot water for purposes other than comfort heating and process requirements.

Shading coefficient (SC): The ratio of solar heat gain through fenestration, with or without integral shading devices, to that occurring through unshaded ⅛-in-thick clear double-strength glass.

Shell Building: A building for which the envelope is designed, constructed, or both prior to knowing the occupancy type. (See also ''speculative building'')

Single-Line Diagram: A simplified schematic drawing that shows the connection between two or more items. Common multiple connections are shown as one line.

Skylight: Glazing that is horizontal or tilted less than 60° from horizontal.

Solar energy source: Natural daylighting or thermal, chemical, or electrical energy derived from direct conversion of incident solar radiation at the building site.

Speculative building: A building for which the envelope is designed, constructed, or both prior to the design of the lighting, HVAC systems, or both. A speculative building differs from a shell building in that the intended occupancy is known for the speculative building. (See also ''shell building'')

System: A combination of equipment and/or controls, accessories, interconnecting means, and terminal elements by which energy is transformed so as to perform a specific function, such as HVAC, service water heating, or illumination.

Tandem wiring: Pairs of luminaries operating with lamps in each luminaire powered from a single ballast contained in one of the luminaires.

Task lighting: Lighting that provides illumination for specific functions and is directed to a specific surface or area.

Task location: An area of the space where significant visual functions are performed and where lighting is required above and beyond that required for general ambient use.

Terminal element: A device by which the transformed energy from a system is finally delivered. Examples include registers, diffusers, lighting fixtures, and faucets.

Terminal conductance (C): The constant time rate of heat flow through the unit area of a body induced by a unit temperature difference between the surfaces, expressed in Btu/(h•ft^2•°F). It is the reciprocal of thermal resistance. (See ''thermal resistance'')

Thermal mass: Materials with mass heat capacity and surface area capable of affecting building loads by storing and releasing heat as the interior or exterior temperature and radiant conditions fluctuate. (See also ''heat capacity'' and ''wall heat capacity'')

Thermal mass wall insulation position:

(1) Exterior insulation position: a wall having all or nearly all of its mass exposed to the room air with the insulation on the exterior of that mass.

(2) Integral insulation position: a wall having mass exposed to both room and outside (outside) air with substantially equal amounts of mass on the inside and outside of the insulation layer.

(3) Interior insulation position: a wall not meeting either of the above definitions, particularly a wall having most of its mass external to an insulation layer.

Thermal resistance (R): The reciprocal of thermal conductance 1/C, 1/H, 1/U; expressed in (h•ft^2•°F)/Btu.

Thermal transmittance (U): The overall coefficient of heat transfer from air to air. It is the time rate of heat flow per unit area under steady conditions from the fluid on the warm side of the barrier to the fluid on the cold side, per unit temperature difference between the two fluids, expressed in Btu/(h•ft^2•°F).

Thermal transmittance, overall (U_o): The gross overall (area weighted average) coefficient of heat transfer from air to air for a gross area of the building envelope, Btu/(h•ft^2•°F). The U_o value applies to the combined effect of the time rate of heat flows through the various parallel paths, such as windows, doors, and opaque construction areas, composing the gross area of one or more building envelope components, such as walls, floors, and roof or ceiling.

Thermostat: An automatic control device responsive to temperature.

Unconditioned space: Space within a building that is not a conditioned space. (See ''conditioned space'')

Unitary cooling equipment: One or more factory-made assemblies that normally include an evaporator or cooling coil, a compressor, and a condenser combination (and may also include a heating function).

Unitary heat pump: One or more factory-made assemblies that normally include an indoor conditioning coil, compressor(s), and outdoor coil or refrigerant-to-water heater exchanger, including means to provide both heating and cooling functions.

Variable-air-volume (VAV) HVAC system: HVAC systems that control the dry-bulb temperature within a space by varying the volume of heated or cooled supply air to the space.

Vent damper: A device intended for installation in the venting system, in the outlet of or downstream of the appliance draft hood, of an individual automatically operating gas-fired appliance, which is designed to automatically open the venting system when the appliance is in operation and to automatically close off the venting system when the appliance is in a standby or shutdown condition.

Ventilation: The process of supplying or removing air by natural or mechanical means to or from any space. Such air may or may not have been conditioned.

Ventilation air: That portion of supply air which comes from the outside, plus any recirculated air, to maintain the desired quality of air within a designated space. (See also ''outdoor air'')

Visible light transmittance (VLT): The fraction of solar radiation in the visible light spectrum that passes through the fenestration (window, clerestory, or skylight).

Walls: Those portions of the building envelope enclosing conditioned space, including all opaque surfaces, fenestration, and doors, which are vertical or tilted at an angle of 60° from horizontal or greater. (See also ''roof'')

Wall heat capacity: The sum of the products of the mass of each individual material in the wall per unit area of wall surface times its individual specific heat, expressed in Btu/(ft^2•°F). (See'' thermal mass'')

Window to wall ratio (WWR): The ratio of the wall fenestration area to the gross exterior wall area.

Zone: A space or group of spaces within a building with any combination of heating, cooling, or lighting requirements sufficiently similar so that desired conditions can be maintained throughout by a single controlling device.

Subpart C—Design Conditions

§ 434.301 Design criteria.

301.1 The following design parameters shall be used for calculations required under subpart D of this part.

301.1.1 *Exterior Design Conditions.* Exterior Design Conditions shall be expressed in accordance with Table 301.1.

TABLE 301.1.—Exterior Design Conditions

Winter Design Dry-Bulb (99%)	.....	Degrees F.
Summer Design Dry-Bulb (2.5%)	.....	Degrees F.
Mean Coincident Wet-Bulb (2.5%)	.....	Degrees F.
Degree-Days, Heating (Base 65)	.....	HDD Base 65 °F.
Degree-Days, Cooling (Base 65)	.....	CDD Base 65 °F.
Annual Operating Hours, 8 a.m. to 4 p.m. when 55° f≤T≤69°F	.....	Hours.

[The exterior design conditions shall be added to Table 301.1 from the city-specific Shading Coefficient table from the Example Alternate Component Package Table. Copies of specific tables contained in Appendix A can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, Buildings Division, EE–432, Office of Codes and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–0517. Adjustments may be made to reflect local climates which differ from the tabulated temperatures or local weather experience as determined by the building official. Where local building site climatic data are not available, climate data from a nearby location included in RS–1, Appendix C, and RS–4 Chapter 24, Table 1, shall be used as determined by the building official.]

301.2 *Indoor Design Conditions.* Indoor design temperature and humidity conditions shall be in accordance with the comfort criteria in RS–2, except that humidification and dehumidification are not required.

Subpart D—Building Design Requirements—Electric Systems and Equipment

§ 434.401 Electrical power and lighting systems.

Electrical power and lighting systems, other than those systems or portions thereof required for emergency use only, shall meet these requirements.

401.1 Electrical Distribution Systems.

401.1.1 Check Metering. Single-tenant buildings with a service over 250 kVA and tenant spaces with a connected load over 100 kVA in multiple-tenant buildings shall have provisions for check metering of electrical consumption. The electrical power feeders for which provision for check metering is required shall be subdivided as follows:

401.1.1.1 Lighting and receptacle outlets

401.1.1.2 HVAC systems and equipment

401.1.1.3 Service water heating (SWH), elevators, and special occupant equipment or systems of more than 20 kW.

401.1.1.4 Exception to 401.1.1.1 through 401.1.1.3: 10 percent or less of the loads on a feeder may be from another usage or category.

401.1.2 Tenant-shared HVAC and service hot water systems in multiple tenant buildings shall have provision to be separately check metered.

401.1.3 Subdivided feeders shall contain provisions for portable or permanent check metering. The minimum acceptable arrangement for compliance shall provide a safe method for access by qualified persons to the enclosures through which feeder conductors pass and provide sufficient space to attach clamp-on or split core current transformers. These enclosures may be separate compartments or combined spaces with electrical cabinets serving another function. Dedicated enclosures so furnished shall be identified as to measuring function available.

401.1.4 Electrical Schematic. The person responsible for installing the electrical distribution system shall provide the Federal building manager a single-line diagram of the record drawing for the electrical distribution system, which includes the location of check metering access, schematic diagrams of non-HVAC electrical control systems, and electrical equipment manufacturer's operating and maintenance literature.

401.2 Electric Motors. All permanently wired polyphase motors of 1 hp or more shall meet these requirements:

401.2.1 Efficiency. National Electrical Manufacturers Association (NEMA) design A & B squirrel-cage, foot-mounted, T-frame induction motors having synchronous speeds of 3600, 1800, 1200, and 900 rpm, expected to operate more than 1000 hours per year shall have a nominal full-load efficiency no less than that shown in Table 401.2.1 or shall be classified as an ''energy efficient motor'' in accordance with RS–3. The following are not covered:

(a) Multispeed motors used in systems designed to use more than one speed.

(b) Motors used as a component of the equipment meeting the minimum equipment efficiency requirements of subsection 403, provided that the motor input is included when determining the equipment efficiency.

Table 401.2.1.—MINIMUM ACCEPTABLE NOMINAL FULL-LOAD EFFICIENCY FOR SINGLE-SPEED POLYPHASE SQUIRREL-CAGE INDUCTION MOTORS HAVING SYNCHRONOUS SPEEDS OF 3600, 1800, 1200 AND 900 RPM [1]

HP	2–Pole		4–Pole		6–Pole		8–Pole	
	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency
Full-Load Efficiencies—Open Motors								
1.0	.....	.....	82.5	81.5	80.0	78.5	74.0	72.0
1.5	82.5	81.5	84.0	82.5	84.0	82.5	75.5	74.0
2.0	84.0	82.5	84.0	82.5	85.5	84.0	85.5	84.0
3.0	84.0	82.5	86.5	85.5	86.5	85.5	86.5	85.5
5.0	85.5	84.0	87.5	86.5	87.5	86.5	87.5	86.0
7.5	87.5	86.5	88.5	87.5	88.5	87.5	88.5	87.5
10.0	88.5	87.5	89.5	88.5	90.2	89.5	89.5	88.5
15.0	89.5	88.5	91.0	90.2	90.2	89.5	89.5	88.5
20.0	90.2	89.5	91.0	90.2	91.0	90.2	90.2	89.5
25.0	91.0	90.2	91.7	91.0	91.7	91.0	90.2	89.5
30.0	91.0	90.2	92.4	91.7	92.4	91.7	91.7	90.2
40.0	91.7	91.0	93.0	92.4	93.0	92.4	91.0	90.2
50.0	92.4	91.7	93.0	92.4	93.0	92.4	91.7	91.0
60.0	93.0	92.4	93.6	93.0	93.6	93.0	92.4	91.7
75.0	93.0	92.4	94.1	93.6	93.6	93.0	93.6	93.0
100.0	93.0	92.4	94.1	93.6	94.1	93.6	93.6	93.0
125.0	93.6	93.0	94.5	94.1	94.1	93.6	93.6	93.0
150.0	93.6	93.0	95.0	94.5	94.5	94.1	93.6	93.0
200.0	94.5	94.1	95.0	94.5	94.5	94.1	93.6	93.0
Full-Load Efficiencies—Enclosed Motors								
1.0	75.5	74.5	82.5	81.5	80.0	78.5	74.0	72.0
1.5	82.5	81.5	84.0	82.5	85.5	84.0	77.0	75.5
2.0	84.0	82.5	84.5	82.5	86.5	85.5	82.5	81.5
3.0	85.5	84.0	87.5	86.5	87.5	86.5	84.0	82.5
5.0	87.5	86.5	87.5	86.5	87.5	86.5	85.5	84.0
7.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	84.0
10.0	89.5	88.5	89.5	88.5	89.5	88.5	88.5	87.5
15.0	90.2	89.5	91.0	90.2	90.2	89.5	88.5	87.5
20.0	90.2	89.5	91.0	90.2	90.2	89.5	89.5	88.5
25.0	91.0	90.2	92.4	91.7	91.7	91.0	89.5	88.5
30.0	91.0	90.2	92.4	91.7	91.7	91.0	91.0	90.2
40.0	91.7	91.0	93.0	92.4	93.0	92.4	91.0	90.2
50.0	92.4	91.7	93.0	92.4	93.0	92.4	91.7	91.0
60.0	93.0	92.4	93.6	93.0	93.6	93.0	91.7	91.0
75.0	93.0	92.4	94.1	93.6	93.6	93.0	93.0	92.4
100.0	93.6	93.0	94.5	94.1	94.1	93.6	93.0	92.4
125.0	94.5	94.1	94.5	94.1	94.1	93.6	93.6	93.0
150.0	94.5	94.1	95.0	94.5	94.5	94.1	94.1	93.0
200.0	95.0	94.5	95.0	94.5	95.0	94.5	94.1	93.6

[1] For many applications, efficiencies greater than those listed are likely to be cost-effective. Guidance for evaluating the cost effectiveness of energy efficient motor applications is given in RS–43 and RS–44.

401.3 Lighting Power Allowance. The lighting system shall meet the provisions of subsections 401.3.1 through 401.3.5. As an alternative to subsections 401.3.1 and 401.3.2, the Lighting Compliance Calculation Computer Program (LTGSTD21) found in ASHRAE/IES Standard 90.1–1989 for the building or facility may be used to determine the lighting power for the building or facility.

401.3.1 Building Exteriors. The total connected exterior lighting power for the building, or a facility containing multiple buildings, shall not exceed the total exterior lighting power allowance, which is the sum of the individual allowances determined from Table 401.3.1. The individual allowances are determined by multiplying the specific area or length of each area description times the allowance for that area. Exceptions are as follows: Lighting for outdoor manufacturing or processing facilities, commercial greenhouses, outdoor athletic facilities, public monuments, designated high-risk security areas, signs, retail storefronts, exterior enclosed display windows, and lighting specifically required by local ordinances and regulations.

TABLE 401.3.1—Exterior Lighting Power Allowance

Area Description	Allowance
Exit (with or without canopy)	25 W/lin ft of door opening.
Entrance (without canopy)	30 W/lin ft of door opening.
Entrance (with canopy):	
High Traffic (retail, hotel, airport, theater, etc.)	10 W/ft^2 of canopied area.
Light Traffic (hospital, office, school, etc.)	4 W/ft^2 of canopied area.
Loading area	0.40 W/ft^2.
Loading door	20 W/lin ft^2 of door opening.
Building exterior surfaces/facades	0.25 W/ft^2 of surface area to be illuminated.
Storage and non-manufacturing work areas	0.20 W/ft^2.
Other activity areas for casual use such as picnic grounds, gardens, parks, and other landscaped areas	0.10 W/ft^2.
Private driveways/walkways	0.10 W/ft^2.
Public driveways/walkways	0.15 W/ft^2
Private parking lots	0.12 W/ft^2.
Public parking lots	0.18 W/ft^2

401.3.1.1 Trade-offs of exterior lighting budgets among exterior areas shall be allowed provided the total connected lighting power of the exterior area does not exceed the exterior lighting power allowance. Trade-offs between interior lighting power allowances and exterior lighting power allowances shall not be allowed.

401.3.2 Building interiors. The total connected interior lighting power for a building, including adjustments in accordance with subsection 401.3.3, shall not exceed the total interior lighting power allowance explained in this paragraph. Using Table 401.3.2a, multiply the interior lighting power allowance value by the gross lighted area of the most appropriate building or space activity. For multi-use buildings, using Table 401.3.2a, select the interior power allowance value for each activity using the column for the gross lighted area of the whole building and multiply it by the associated gross area for that activity. The interior lighting power allowance is the sum of all the wattages for each area/activity. Using Table 401.3.2b, c, or d, multiply the interior lighting power allowance values of each individual area/activity by the area of the space and by the area factor from Figure 401.3.2e, based on the most appropriate area/activity provided. The interior lighting power allowance is the sum of the wattages for each individual space. Use the Lighting Compliance Calculation Computer Program (LTGSTD21) of RS–1. When over 20% of the building's tasks or interior areas are undefined, the most appropriate value for that building from Table 401.3.2a shall be used for the undefined spaces. Exceptions are as follows:

(a) Lighting power that is an essential technical element for the function performed in theatrical, stage, broadcasting, and similar uses.

(b) Specialized medical, dental, and research lighting.

(c) Display lighting for exhibits in galleries, museums, and monuments.

(d) Lighting solely for indoor plant growth (between the hours of 10:00pm and 6:00am).

(e) Emergency lighting that is automatically off during normal building operation.

(f) High-risk security areas.

(g) Spaces specifically designed for the primary use by the physically impaired or aged.

(h) Lighting in dwelling units.

401.3.2.1 Trade-offs of the interior lighting power budgets among interior spaces shall be allowed provided the total connected lighting power within the building does not exceed the interior lighting power allowance. Trade-offs between interior lighting power allowances and exterior lighting power allowances shall not be allowed.

401.3.2.2 Building/Space Activities. Definitions of buildings/space activity as they apply to Table 401.3.2a are as follows. These definitions are necessary to characterize the activities for which lighting is provided. They are applicable only to Table 401.3.2a. They are not intended to be used elsewhere in place of building use group definitions provided in the Building Code. They are not included in § 434.200, ''Definitions,'' to avoid confusion with ''Occupancy Type Categories.''

Food service, fast food, and cafeteria: This group includes cafeterias, hamburger and sandwich stores, bakeries, ice cream parlors, cookie stores, and all other kinds of retail food service establishments in which customers are generally served at a counter and their direct selections are paid for and taken to a table or carried out.

Garages: This category includes all types of parking garages, except for service or repair areas.

Leisure dining and bar: This group includes cafes, diners, bars, lounges, and similar establishments where orders are placed with a wait person.

Mall concourse, multi-store service: This group includes the interior of multifunctional public spaces, such as shopping center malls, airports, resort concourses and malls, entertainment facilities, and related types of buildings or spaces.

Offices: This group includes all kinds of offices, including corporate and professional offices, office/laboratories, governmental offices, libraries, and similar facilities, where paperwork occurs.

Retail: A retail store, including departments for the sale of accessories, clothing, dry goods, electronics, and toys, and other types of establishments that display objects for direct selection and purchase by consumers. Direct selection means literally removing an item from display and carrying it to the checkout or pick-up at a customer service facility.

Schools: This category, subdivided by pre-school/elementary, junior high/high school, and technical/vocational, includes public and private educational institutions, for children or adults, and may also include community centers, college and university buildings, and business educational centers.

Service establishment: A retail-like facility, such as watch repair, real estate offices, auto and tire service facilities, parts departments, travel agencies and similar facilities, in which the customer obtains services rather than the direct selection of goods.

Warehouse and storage: This includes all types of support facilities, such as warehouses, barns, storage buildings,

shipping/receiving buildings, boiler or mechanical buildings, electric power buildings, and similar buildings where the primary visual task is large items.

401.3.2.—TABLES AND FIGURES, TABLE 401.3.2a, INTERIOR LIGHTING POWER ALLOWANCE W/FT^2

Building Space Activity[1, 2]	Gross lighted area of total building					
	0 to 2,000 ft^2	2,001 to 10,000 ft^2	10,001 to 25,000 ft^2	25,001 to 50,000 ft^2	50,001 to 250,000 ft^2	>250,000 ft^2
Food Service:						
Fast Food/Cafeteria	1.50	1.38	1.34	1.32	1.31	1.30
Leisure Dining/Bar	2.20	1.91	1.71	1.56	1.46	1.40
Offices	1.90	1.81	1.72	1.65	1.57	1.50
Retail[3]	3.30	3.08	2.83	2.50	2.28	2.10
Mall Concourse Multi-store Service	1.60	1.58	1.52	1.46	1.43	1.40
Service Establishment	2.70	2.37	2.08	1.92	1.80	1.70
Garages	0.30	0.28	0.24	0.22	0.21	0.20
Schools:						
Preschool/Elementary	1.80	1.80	1.72	1.65	1.57	1.50
Jr. High/High School	1.90	1.90	1.88	1.83	1.76	1.70
Technical/Vocational	2.40	2.33	2.17	2.01	1.84	1.70
Warehouse/Storage	0.80	0.66	0.56	0.48	0.43	0.40

[1] If at least 10% of the building area is intended for multiple space activities, such as parking, retail, and storage in an office building, then calculate for each separate building type/space activity.

[2] The values in the categories are building wide allowances which include the listed activity and directly related facilities such as conference rooms, lobbies, corridors, restrooms, etc.

[3] Includes general, merchandising, and display lighting.

TABLE 401.3.2b.—Unit Interior Lighting Power Allowance

Common area/activity	UPD W/ft^2
Auditorium[2]	1.4
Corridor[3]	0.8
Classroom/Lecture Hall	2.0
Electrical/Mechanical Equipment Room:	
General[3]	0.7
Control Rooms[3]	1.5
Food Service:	
Fast Food/Cafeteria	1.3
Leisure Dining[4]	1.4
Bar/Lounge[4]	2.5
Kitchen	1.4
Recreation/Lounge	0.7
Stair:	
Active Traffic	0.6
Emergency Exit	0.4
Toilet and Washroom	0.8
Garage:	
Auto & Pedestrian Circulation Area	0.3
Parking Area	0.2
Laboratory	2.2
Library:	
Audio Visual	1.1
Stack Area	1.1
Card File & Cataloging	0.8
Reading Area	1.1
Lobby (General):	
Reception & Waiting	1.0
Elevator Lobbies	0.4
Atrium (Multi-Story):	
First 3 Floors	0.7
Each Additional Floor	0.2
Locker Room and Shower	0.8
Office Category 1	
Enclosed offices, all open plan offices w/o partitions or w/partitions[6] lower than 4.5 ft below the ceiling:[5]	
Reading, Typing and Filing	1.5
Drafting	1.9
Accounting	1.6
Office Category 2	
Open plan offices 900 ft^2 or larger w/partitions[6] 3.5 to 4.5 ft below the ceiling. Offices less than 900 ft^2 shall use category 1:[3]	
Reading, Typing and Filing	1.5
Drafting	2.0
Accounting	1.8

TABLE 401.3.2b.—Unit Interior Lighting Power Allowance—Continued

Common area/activity	UPD W/ft[2]
Office Category 3	
Open plan offices 900 ft[2] or larger w/partitions* higher than 3.5 ft below the ceiling. Offices less than 900 ft[2] shall use category 1:[3]	
Reading, Typing and Filing	1.7
Drafting	2.3
Accounting	1.9
Common Activity Areas:	
Conference/Meeting Room[2]	1.3
Computer/Office Equipment	1.1
Filing, Inactive	1.0
Mail Room	1.8
Shop (Non-Industrial):	
Machinery	2.5
Electrical/Electronic	2.5
Painting	1.6
Carpentry	2.3
Welding	1.2
Storage & Warehouse:	
Inactive Storage	0.2
Active Storage, Bulky	0.3
Active Storage, Fine	0.9
Material Handling	1.0
Unlisted Space	0.2

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power ≤33% of the adjusted lighting power for that space.
[3] Area factor of 1.0 shall be used for these spaced.
[4] UPD includes lighting power required for clean-up purposes.
[5] Area factor shall not exceed 1.55.

TABLE 401.3.2c.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

Specific building area/activity[1]	UPD W/ft[2]
Airport, Bus and Rail Station:	
Baggage Area	0.8
Concourse/Main Thruway	0.9
Ticket Counter	2.0
Waiting & Lounge Area	0.8
Bank:	
Customer Area	1.0
Banking Activity Area	2.2
Barber & Beauty Parlor	1.6
Church, Synagogue, Chapel:	
Worship/Congregational	1.7
Preaching & Sermon/Choir	1.8
Dormitory:	
Bedroom	1.0
Bedroom w/Study	1.3
Study Hall	1.2
Fire & Police Department:	
Fire Engine Room	0.7
Jail Cell	0.8
Hospital/Nursing Home:	
Corridor[5]	1.3
Dental Suite/Examination/Treatment	1.6
Emergency	2.0
Laboratory	1.7
Lounge/Waiting Room	0.9
Medical Supplies	2.4
Nursery	1.6
Nurse Station	1.8
Occupational Therapy/Physical Therapy	1.4
Patient Room	1.2
Pharmacy	1.5
Radiology	1.8
Surgical & OB Suites	1.8
General Area	6.0
Operating Room	2.0
Recovery	2.0
Hotel/Conference Center:	
Banquet Room/Multipurpose[2]	1.7

TABLE 401.3.2c.—UNIT INTERIOR LIGHTING POWER ALLOWANCE—Continued

Specific building area/activity [1]	UPD W/ft [2]
Bathroom/Powder Room	1.2
Guest Room	0.9
Public Area	1.0
Exhibition Hall	1.8
Conference/Meeting [3]	1.5
Lobby	1.5
Reception Desk	2.4
Laundry:	
Washing	0.9
Ironing & Sorting	1.3
Museum & Gallery:	
General Exhibition	1.9
Inspection/Restoration	3.0
Storage (Artifacts):	
Inactive	0.6
Active	0.7
Post Office:	
Lobby	1.1
Sorting and Mailing	2.1
Service Station/Auto Repair	0.8
Theater:	
Performance Arts	1.3
Motion Picture	1.0
Lobby	1.3
Retail Establishments—Merchandising and Circulation Area (Applicable to all lighting, including accent and display lighting, installed in merchandising and circulation areas)	
Type 1: Jewelry merchandising, where minute examination of displayed merchandise is critical	5.6
Type 2: Fine merchandising, such as fine apparel and accessories, china, crystal, and silver art galleries and where the detailed display and examination of merchandising is important	2.9
Type 3: Mass merchandising, such as general apparel, variety goods, stationary, books, sporting goods, hobby materials, cameras, gifts, and luggage, displayed in a warehouse type of building, where focused display and detailed examination of merchandise is important	2.7
Type 4: General merchandising, such as general apparel, variety goods, stationary, books, sporting goods, hobby materials, cameras, gifts, and luggage, displayed in a department store type of building, where general display and examination of merchandise is adequate	2.3
Type 5: Food and miscellaneous such as bakeries, hardware and housewares, grocery stores, appliance and furniture stores, where pleasant appearance is important	
Type 6: Service establishments, where functional performance is important	2.4
Mall Concourse	
Retail Support Areas	
Tailoring	2.6
Dressing/Fitting Rooms	1.4
	2.1
	1.1

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power 33% of the adjusted lighting power for that space.
[3] Area factor or 1.0 shall be used for these spaces.
[4] UPD includes lighting power required for clean-up purpose.
[5] Area factor shall not exceed 1.55.
[6] Not less than 90 percent of all work stations shall be individually enclosed with partitions of at least the height described.

TABLE 401.3.2d.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

Indoor athletic area/activity [3, 6]	UPD W/ft [2]
Seating Area, All Sports	0.4
Badminton:	
Club	0.5
Tournament	0.8
Basketball/Volleyball:	
Intramural	0.8
College	1.3
Professional	1.9
Bowling:	
Approach Area	0.5
Lanes	1.1
Boxing or Wrestling (platform):	
Amateur	2.4

TABLE 401.3.2d.—UNIT INTERIOR LIGHTING POWER ALLOWANCE—Continued

Indoor athletic area/activity [3, 6]	UPD W/ft [2]
Professional	4.8
Gymnasium:	
General Exercising and Recreation Only	1.0
Handball/Racquetball/Squash:	
Club	1.3
Tournament	2.6
Hockey, Ice:	
Amateur	1.3
College or Professional	2.6
Skating Rink:	
Recreational	0.6
Exhibition/Professional	2.6
Swimming:	
Recreational	0.9
Exhibition	1.5
Underwater	1.0
Tennis:	
Recreational (Class III)	1.3
Club/College (Class II)	1.9
Professional (Class I)	2.6
Tennis, Table:	
Club	1.0
Tournament	1.6

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power ≤33% of the adjusted lighting power for that space.
[3] Area factor of 1.0 shall be used for these spaces.
[4] UPD includes lighting power required for clean-up purpose.
[5] Area factor shall not exceed 1.55.
[6] Consider as 10 ft. beyond playing boundaries but less than or equal to the total floor area of the sports space minus spectator seating area.

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Figure 401.3.2e
Area Factor Formula

$$\text{where } n = \frac{10.21\ (CH - 2.5)}{\sqrt{A_r}} - 1$$

Area Factor Formula:

Area Factor (AF) = $0.2 + 0.8\ (1/0.9^n)$

where:

AF = area factor,
CH = ceiling height (ft),
A_r = space area (ft^2).

If AF <1.0 use 1.0; if AF >1.8 use 1.8

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401.3.3 Lighting Power Control Credits. The interior connected lighting power determined in accordance with § 434.401.3.2 can be decreased for luminaries that are automatically controlled for occupancy, daylight, lumen maintenance, or programmable timing. The adjusted interior connected lighting power shall be determined by subtracting the sum of all lighting power control credits from the interior connected lighting power. Using Table 401.3.3, the lighting power control credit equals the power adjustment factor times the connected lighting power of the controlled lighting. The lighting power adjustment shall be applied with the following limitations:

(a) It is limited to the specific area controlled by the automatic control device.

(b) Only one lighting power adjustment may be used for each building space or luminaire, and 50 percent or more of the controlled luminaire shall be within the applicable space.

(c) Controls shall be installed in series with the lights and in series with all manual switching devices.

(d) When sufficient daylight is available, daylight sensing controls shall be capable of reducing electrical power consumption for lighting (continuously or in steps) to 50 percent or less of maximum power consumption.

(e) Daylight sensing controls shall control all luminaires to which the adjustment is applied and that direct a minimum of 50 percent of their light output into the daylight zone.

(f) Programmable timing controls shall be able to program different schedules for occupied and unoccupied days, be readily accessible for temporary override with automatic return to the original schedule, and keep time during power outages for at least four hours.

TABLE 401.3.3.—LIGHTING POWER ADJUSTMENT FACTORS

Automatic control devices	PAF
(1) Daylight Sensing controls (DS), continuous dimming	0.30
(2) DS, multiple step dimming	0.20
(3) DS, ON/OFF	0.10
(4) DS continuous dimming and programmable timing	0.35
(5) DS multiple step dimming and programmable timing	0.25
(6) DS ON/OFF and programmable timing	0.15
(7) DS continuous dimming, programmable timing, and lumen maintenance	0.40
(8) DS multiple step dimming, programmable timing, and lumen maintenance	0.30
(9) DS ON/OFF, programmable timing, and lumen maintenance	0.20
(10) Lumen maintenance control	0.10
(11) Lumen maintenance and programmable timing control	0.15
(12) Programmable timing control	0.15

TABLE 401.3.3.—LIGHTING POWER ADJUSTMENT FACTORS—Continued

Automatic control devices	PAF
(13) Occupancy sensor (OS)	0.30
(14) OS and DS, continuous dimming	0.40
(15) OS and DS, multiple-step dimming	0.35
(16) OS and DS, ON/OFF	0.35
(17) OS, DS continuous dimming, and lumen maintenance	0.45
(18) OS, DS multiple-step dimming and lumen maintenance	0.40
(19) OS, DS ON/OFF, and lumen maintenance	0.35
(20) OS and lumen maintenance	0.35
(21) OS and programmable timing control	0.35

401.3.4 Lighting Controls

401.3.4.1 Type of Lighting Controls. All lighting systems shall have controls, with the exception of emergency use or exit lighting.

401.3.4.2 Number of Manual Controls. Spaces enclosed by walls or ceiling-high partitions shall have a minimum of one manual control (on/off switch) for lighting in that space. Additional manual controls shall be provided for each task location or for each group of task locations within an area of 450 ft² or less. For spaces with only one lighting fixture or with a single ballast, one manual control is required. Exceptions are as follows:

401.3.4.2.1 Continuous lighting for security;

401.3.4.2.2 Systems in which occupancy sensors, local programmable timers, or three-level (including OFF) step controls or preset dimming controls are substituted for manual controls at the rate of one for every two required manual controls, providing at least one control is installed for every 1500 watts of power.

401.3.4.2.3 Systems in which four-level (including OFF) step controls or preset dimming controls or automatic or continuous dimming controls are substituted for manual controls at a rate of one for every three required manual controls, providing at least one control is installed for every 1500 watts of power.

401.3.4.2.4 Spaces that must be used as a whole, such as public lobbies, retail stores, warehouses, and storerooms.

401.3.4.3 Multiple Location Controls. Manual controls that operate the same load from multiple locations must be counted as one manual control.

401.3.4.4 Control Accessibility. Lighting controls shall be readily accessible from within the space controlled. Exceptions are as follows: Controls for spaces that are be used as a whole, automatic controls, programmable controls, controls requiring trained operators, and controls for safety hazards and security.

401.3.4.5 Hotel and Motel Guest Room Control. Hotel and motel guest rooms and suites shall have at least one master switch at the main entry door that controls all permanently wired lighting fixtures and switched receptacles excluding bathrooms. The following exception applies: Where switches are provided at the entry to each room of a multiple-room suite.

401.3.4.6 Switching of Exterior Lighting. Exterior lighting not intended for 24-hour use shall be automatically switched by either timer or photocell or a combination of timer and photocell. When used, timers shall be capable of seven-day and seasonal daylight schedule adjustment and have power backup for at least four hours.

401.3.5 Ballasts.

401.3.5.1 Tandem Wiring. One-lamp or three-lamp fluorescent luminaries that are recess mounted within 10 ft center-to-center of each other, or pendant mounted, or surface mounted within 1 ft of each other, and within the same room, shall be tandem wired, unless three-lamp ballasts are used.

401.3.5.2 Power Factor. All ballasts shall have a power factor of at least 90%, with the exception of dimming ballasts, and ballasts for circline and compact fluorescent lamps and low wattage HID lamps not over 100 W.

§ 434.402 Building envelope assemblies and materials.

The building envelope and its associated assemblies and materials shall meet the provisions of this section.

402.1 Calculations and Supporting Information.

402.1.1 Material Properties. Information on thermal properties, building envelope system performance, and component heat transfer shall be obtained from RS–4. When the information is not available from RS–4, the data shall be obtained from manufacturer's information or laboratory or field test measurements using RS–5, RS–6, RS–7, or RS–8.

402.1.1.1 The shading coefficient (SC) for fenestration shall be obtained from RS–4 or from manufacturer's test data. The shading coefficient of the fenestration, including both internal and external shading devices, is SCx and excludes the effect of external shading projections, which are calculated separately. The shading coefficient used for louvered shade screens shall be determined using a profile angle of 30 degrees as found in Table 41, Chapter 27 of RS–4.

402.1.2 Thermal Performance Calculations. The overall thermal transmittance of the building envelope shall be calculated in accordance with Equation 402.1.2:

$$U_o = \Sigma U_i A_i / A_o = (U_1 A_1 + U_2 A_2 + \ldots + U_N A_N)/A_0 \qquad (402.1.2)$$

where:

U_o = the area-weighted average thermal transmittance of the gross area of the building envelope; i.e., the exterior wall assembly including fenestration and doors, the roof and ceiling assembly, and the floor assembly, Btu/(h•ft²•°F)

A_o = the gross area of the building envelope, ft²

U_i = the thermal transmittance of each individual path of the building envelope, i.e., the opaque portion or the fenestration, Btu/(h•ft²•°F)

$U_i = 1/R_i$ (where R_i is the total resistance to heat flow of an individual path through the building envelope)

A_i = the area of each individual element of the building envelope, ft²

The thermal transmittance of each component of the building envelope shall be determined with due consideration of all major series and parallel heat flow paths through the elements of the component and film coefficients and shall account for any compression of insulation. The thermal transmittance of opaque elements of assemblies shall be determined using a series path procedure with corrections for the presence of parallel paths within an element of the envelope assembly (such as wall cavities with parallel paths through insulation and studs). The thermal performance of adjacent

ground in below-grade applications shall be excluded from all thermal calculations.

402.1.2.1 Envelope Assemblies Containing Metal Framing. The thermal transmittance of the envelope assembly containing metal framing shall be determined from one of three methods:

(a) Laboratory or field test measurements based on RS–5, RS–6, RS–7, or RS–8.

(b) The zone method described in Chapter 22 of RS–4 and the formulas on page 22.10.

(c) For metal roof trusses or metal studs covered by Tables 402.1.2.1a and b, the total resistance of the series path shall be calculated in accordance with the following Equations:

Equation 402.1.2.1a

$U_i = 1/R_t$

$R_t = R_i + R_e$

where:

R_t = the total resistance of the envelope assembly

R_i = the resistance of the series elements (for i = 1 to n) excluding the parallel path element(s)

R_e = the equivalent resistance of the element containing the parallel path (R-value of insulation x F_c). Values for F_c and equivalent resistances shall be taken from Tables 402.1.2.1a or b.

TABLE 402.1.2.1a.—PARALLEL PATH CORRECTION FACTORS—METAL ROOF TRUSSES SPACED 4 FT. O.C. OR GREATER THAT PENETRATE THE INSULATION

Effective framing/ cavity R-values	Correction factor F_c	Equivalent resistance R_e[1]
R–0	1.00	R–0
R–5	0.96	R–4.8
R–10	0.92	R–9.2
R–15	0.88	R–13.2
R–20	0.85	R–17.0
R–25	0.81	R–20.3
R–30	0.79	R–23.7
R–35	0.76	R–26.6
R–40	0.73	R–29.2
R–45	0.71	R–32.0
R–50	0.69	R–34.5
R–55	0.67	R–36.0

[1] Based on 0.66-inch-diameter cross members every one foot.

TABLE 402.1.2.1b.—PARALLEL PATH CORRECTION FACTORS—METAL FRAMED WALLS WITH STUDS 16 GA. OR LIGHTER

Size of members	Spacing of framing, in.	Cavity insulation R-value	Correction factor F_c	Equivalent resistance R_e
2×4	16 O.C.	R-11	0.50	R-5.0
		R-13	0.46	R-6.0
		R-15	0.43	R-6.4
2×4	24 O.C.	R-11	0.60	R-6.6
		R-13	0.55	R-7.2
		R-15	0.52	R-7.8
2×6	16 O.C.	R-19	0.37	R-7.1
		R-21	0.43	R-9.0
2×6	24 O.C.	R-19	0.45	R-8.6
		R-21	0.35	R-7.4
2×8	16 O.C.	R-25	0.31	R-7.8
2×8	24 O.C.	R-25	0.38	R-9.6

402.1.2.2 Envelope Assemblies Containing Nonmetal Framing. The thermal transmittance of the envelope assembly shall be determined from laboratory or field test measurements based on RS–5, RS–6, RS–7, or RS–8 or from the series-parallel (isothermal planes) method provided in page 23.2 of Chapter 23 of RS–4.

402.1.2.3 Metal Buildings. For elements with internal metallic structures bonded on one or both sides to a metal skin or covering, the calculation procedure specified in RS–9 shall be used.

402.1.2.4 Fenestration Assemblies. Calculation of the overall thermal transmittance of fenestration assemblies shall consider the center-of-glass, edge-of-glass, and frame components.

(a) The following equation 402.1.2.4a shall be used.

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Equation 402.1.2.4a

Equation 402.1.2.4a

$$U_{of} = [\Sigma_{i=1}^{n} (U_{cg,i} \times A_{cg,i} + U_{eg,i} \times A_{eg,i} + U_{f,i} \times A_{f,i})]/ [\Sigma_{i=1}^{n} (A_{cg,i} + A_{eg,i} + A_{f,i})]$$
$$= (U_{cg,1} \times A_{cg,1} + U_{eg,1} \times A_{eg,1} + U_{f,1} \times A_{f,1} + U_{cg,2} \times A_{cg,2} + U_{eg,2} \times A_{eg,2} + U_{f,2} \times A_{f,2} + \ldots U_{cg,n} \times A_{cg,n} + U_{eg,n} \times A_{eg,n} + U_{f,n} \times A_{f,n})/(A_{cg,1} + A_{eg,1} + A_{f,1} + A_{cg,2} + A_{eg,2} + A_{f,2} + \ldots A_{cg,n} + A_{eg,n} + A_{f,n})$$

$$U_{of} = [\Sigma_{i=1}^{n} (U_{cg,i} \times A_{cg,i} + U_{eg,i} \times A_{eg,i} + U_{f,i} \times A_{f,i})]/ [\Sigma_{i=1}^{n} (A_{cg,i} + A_{eg,i} + A_{f,i})]$$
$$= (U_{cg,1} \times A_{cg,1} + U_{eg,1} \times A_{eg,1} + U_{f,1} \times A_{f,1} + U_{cg,2} \times A_{cg,2} + U_{eg,2} \times A_{eg,2} + U_{f,2} \times A_{f,2} + \ldots U_{cg,n} \times A_{cg,n} + U_{eg,n} \times A_{eg,n} + U_{f,n} \times A_{f,n})/(A_{cg,1} + A_{eg,1} + A_{f,1} + A_{cg,2} + A_{eg,2} + A_{f,2} + \ldots A_{cg,n} + A_{eg,n} + A_{f,n})$$

where:

U_{of} = the overall thermal transmittance of the fenestration assemblies, including the center-of-glass, edge-of-glass, and frame components, Btu/(h·ft^2·°F)

i = numerical subscript (1, 2, . . .n) refers to each of the various fenestration types present in the wall

n = the number of fenestration assemblies in the wall assembly

U_{cg} = the thermal transmittance of the center-of-glass area, Btu/(h·ft^2·°F)

A_{cg} = the center of glass area, that is the overall visible glass area minus the edge-of-glass area, ft^2

U_{eg} = the thermal transmittance of the edge of the visible glass area including the effects of spacers in multiple glazed units, Btu/(h·ft^2·°F)

A_{eg} = the edge of the visible glass area, that is the 2.5 in. perimeter band adjacent to the frame, ft^2

U_f = the thermal transmittance of the frame area, Btu/(h·ft^2·°F)

A_f = the frame area that is the overall area of the entire glazing product minus the center-of-glass area and minus the edge-of-glass area, ft^2

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(1) Results from laboratory test of center-of-glass, edge-of-glass, and frame assemblies tested as a unit at winter conditions. One of the procedures in Section 8.3.2 of RS–1 shall be used.

(2) Overall generic product C (commercial) in Table 13, Chapter 27, of the RS–4. The generic product C in Table 13, Chapter 27, is based on a product of 24 ft². Larger units will produce lower U-values and thus it is recommended to use the calculation procedure detailed in Equation 402.1.2.4a.

(3) Calculations based on the actual area for center-of-glass, edge-of-glass, and frame assemblies and on the thermal transmittance of components derived from 402.1.2.4a, 402.1.2.4b or a combination of the two.

402.1.3 Gross Areas of Envelope Components.

402.1.3.1 Roof Assembly. The gross area of a roof assembly shall consist of the total surface of the roof assembly exposed to outside air or unconditioned spaces and is measured from the exterior faces of exterior walls and centerline of walls separating buildings. The roof assembly includes all roof or ceiling components through which heat may flow between indoor and outdoor environments, including skylight surfaces but excluding service openings. For thermal transmittance purposes when return air ceiling plenums are employed, the roof or ceiling assembly shall not include the resistance of the ceiling or the plenum space as part of the total resistance of the assembly.

402.1.3.2 Floor Assembly. The gross area of a floor assembly over outside or unconditioned spaces shall consist of the total surface of the floor assembly exposed to outside air or unconditioned space and is measured from the exterior face of exterior walls and centerline of walls separating buildings. The floor assembly shall include all floor components through which heat may flow between indoor and outdoor or unconditioned space environments.

402.1.3.3 Wall Assembly. The gross area of exterior walls enclosing a heated or cooled space is measured on the exterior and consists of the opaque walls, including between-floor spandrels, peripheral edges of flooring, window areas (including sash), and door areas but excluding vents, grilles, and pipes.

402.2 Air Leakage and Moisture Mitigation. The requirements of this section shall apply only to those building components that separate interior building conditioned space from the outdoors or from unconditioned space or crawl spaces. Compliance with the criteria for air leakage through building components shall be determined by tests conducted in accordance with RS–10.

402.2.1 Air Barrier System. A barrier against leakage shall be installed to prevent the leakage of air through the building envelope according to the following requirements:

(a) The air barrier shall be continuous at all plumbing and heating penetrations of the building opaque wall.

(b) The air barrier shall be sealed at all penetrations of the opaque building wall for electrical and telecommunications equipment.

TABLE 402.2.1.—AIR LEAKAGE FOR FENESTRATION AND DOORS—MAXIMUM ALLOWABLE INFILTRATION RATE

Component	Reference standard	cfm/lin ft sash crack or cfm/ft² of area
Fenestration		
Aluminum:		
Operable	RS–11	0.37 cfm/lin ft
Jalousie	RS–11	1.50 cfm/ft²
Fixed	RS–11	0.15 cfm/ft²
PVC: Prime Windows	RS–12	0.06 cfm/ft²
Wood:		
Residential	RS–13	0.37 cfm/ft²
Light Commercial	RS–13	0.25 cfm/ft²
Heavy Commercial	RS–13	0.15 cfm/ft²
Sliding Glass Doors		
Aluminum	RS–11	0.37 cfm/ft²
PVC	RS–12	0.37 cfm/lin ft
Doors—Wood:		
Residential	RS–14	0.34 cfm/ft²
Light Commercial	RS–14	0.25 cfm/ft²
Heavy Commercial	RS–14	0.10 cfm/ft²
Commercial Entrance Doors	RS–10	1.25 cfm/ft²
Residential Swinging Doors	RS–10	0.50 cfm/ft²
Wall Sections Aluminum	RS–10	0.06 cfm/ft²

Note: [The ''Maximum Allowable Infiltration Rates'' are from current standards to allow the use of available products.]

402.2.2 Building Envelope. The following areas of the building envelope shall be sealed, caulked, gasketed, or weatherstripped to limit air leakage:

(a) Intersections of the fenestration and door frames with the opaque wall sections.

(b) Openings between walls and foundations, between walls and roof and wall panels.

(c) Openings at penetrations of utility service through, roofs, walls, and floors.

(d) Site built fenestration and doors.

(e) All other openings in the building envelope.

Exceptions are as follows: Outside air intakes, exhaust outlets, relief outlets, stair shaft, elevator shaft smoke relief openings, and other similar elements shall comply with subsection 403.

402.2.2.1 Fenestration and Doors Fenestration and doors shall meet the requirements of Table 402.2.1.

402.2.2.2 Building Assemblies Used as Ducts or Plenums. Building assemblies used as ducts or plenums shall be sealed, caulked, and gasketed to limit air leakage.

402.2.2.3 Vestibules. A door that separates conditioned space from the exterior shall be equipped with an

enclosed vestibule with all doors opening into and out of the vestibule equipped with self-closing devices. Vestibules shall be designed so that in passing through the vestibule, it is not necessary for the interior and exterior doors to open at the same time. Exceptions are as follows: Exterior doors need not be protected with a vestibule where:

(a) The door is a revolving door.

(b) The door is used primarily to facilitate vehicular movement or material handling.

(c) The door is not intended to be used as a general entrance door.

(d) The door opens directly from a dwelling unit.

(e) The door opens directly from a retail space less than 2,000 ft² in area, or from a space less than 1,500 ft² for other uses.

(f) In buildings less than three stories in building height in regions that have less than 6,300 heating degree days base 65°F.

402.2.2.4 Compliance Testing. All buildings shall be tested after completion using the methodology in RS–11, or an equivalent approved method to determine the envelope air leakage. A standard blower door test is an acceptable technique to pressurize the building if the building is 5,000 ft² or less in area. The building's air handling system can be used to pressurize the building if the building is larger than 5,000 ft². The following test conditions shall be:

(a) The measured envelope air leakage shall not exceed 1.57 pounds per square foot of wall area at a pressure difference of 0.3 inches water.

(b) At the time of testing, all windows and outside doors shall be installed and closed, all interior doors shall be open, and all air handlers and dampers shall be operable. The building shall be unoccupied.

(c) During the testing period, the average wind speed during the test shall be less than 6.6 feet per second, the average outside temperature greater than 59°F, and the average inside-outside temperature difference is less than 41°F.

402.2.2.5 Moisture Migration. The building envelope shall be designed to limit moisture migration that leads to deterioration in insulation or equipment performance as determined by the following construction practices:

(a) A vapor retarder shall be installed to retard, or slow down the rate of water vapor diffusion through the building envelope. The position of the vapor retarder shall be determined taking into account local climate and indoor humidity levels. The methodologies presented in Chapter 20 of RS–4 shall be used to determine temperature and water vapor profiles through the envelope systems to assess the potential for condensation within the envelope and to determine the position of the vapor retarder within the envelope system.

(b) The vapor retarder shall be installed over the entire building envelope.

(c) The perm rating requirements of the vapor retarder shall be determined using the methodologies contained in Chapter 20 of RS–4, and shall take into account local climate and indoor humidity level. The vapor retarder shall have a performance rating of 1 perm or less.

402.3 Thermal Performance Criteria.

402.3.1 Roofs; Floors and Walls Adjacent to Unconditioned Spaces. The area weighted average thermal transmittance of roofs and also of floors and walls adjacent to unconditioned spaces shall not exceed the criteria in Table 402.3.1a. Exceptions are as follows: Skylights for which daylight credit is taken may be excluded from the calculations of the roof assembly U_{or} if all of the following conditions are met:

(a) The opaque roof thermal transmittance is less than the criteria in Table 402.3.1b.

(b) Skylight areas, including framing, as a percentage of the roof area do not exceed the values specified in Table 402.3.1b. The maximum skylight area from Table 402.3.1b may be increased by 50% if a shading device is used that blocks over 50% of the solar gain during the peak cooling design condition. For shell buildings, the permitted skylight area shall be based on a light level of 30-foot candles and a lighting power density (LPD) of less than 1.0 w/ft². For speculative buildings, the permitted skylight area shall be based on the unit lighting power allowance from Table 401.3.2a and an illuminance level as follows: for LPD < 1.0, use 30 footcandles; for 1.0 < LPD < 2.5, use 50 footcandles; and for LPD ≥ 2.5, use 70 footcandles.

(c) All electric lighting fixtures within daylighted zones under skylights are controlled by automatic daylighting controls.

(d) The U_o of the skylight assembly including framing does not exceed _____ Btu/(h•ft²•°F). [Use 0.70 for ≥ 8000 HDD65 and 0.45 for >8000 HDD65 or both if the jurisdiction includes cities that are both below and above 8000 HDD65.]

(e) Skylight curb U-value does not exceed 0.21 Btu/(h•ft²•°F).

(f) The infiltration coefficient of the skylights does not exceed 0.05 cfm/ft².

402.3.2 Below-Grade Walls and Slabs-on-Grade. The thermal resistance (R-value) of insulation for slabs-on-grade, or the overall thermal resistances of walls in contact with the earth, shall be equal to or greater than the values in Table 403.3.2.

402.4 Exterior Walls. Exterior walls shall comply with either 402.4.1 or 402.4.2.

402.4.1 Prescriptive Criteria. (a) The exterior wall shall be designed in accordance with subsections 402.4.1.1 and 402.4.1.2. When the internal load density range is not known, the 0–1.50 W/ft² range shall be used for residential, hotel/motel guest rooms, or warehouse occupancies; the 3.01–3.50 W/ft² range shall be used for retail stores smaller than 2,000 ft² and technical and vocational schools smaller than 10,000 ft²; and the 1.51–3.00 W/ft² range shall be used for all other occupancies and building sizes. When the building envelope is designed or constructed prior to knowing the building occupancy type, an internal load density of _____ W/ft² shall be used. [Use 3.0 W/ft² for HDD65 <3000, 2.25 W/ft² for 3000 < HDD65 < 6000, and 1.5 W/ft² for HDD65 > 6000.]

(b) When more than one condition exists, area weighted averages shall be used. This requirement shall apply to all thermal transmittances, shading coefficients, projection factors, and internal load densities rounded to the same number of decimal places as shown in the respective table.

402.4.1.1 Opaque Walls. The weighted average thermal transmittance (U-value) of opaque wall elements shall be less than the values in Table 402.4.1.1. For mass walls (HC≥5), criteria are presented for low and high window/wall ratios and the criteria shall be determined by interpolating between these values for the window/wall ratio of the building.

402.4.1.2 Fenestration. The design of the fenestration shall meet the criteria of Table 402.4.1.2. When the fenestration columns labeled ''Perimeter Daylighting'' are used, automatic daylighting controls shall be installed in the perimeter daylighted zones of the building. These daylighting controls shall be capable of reducing electric lighting power to at least 50% of full power. Only those shading or lighting controls for perimeter daylighting that are shown on the plans shall be considered. The column labeled ''VLT > = SC'' shall be used only when the shading coefficient of the glass is less than its visible light transmittance.

Example Alternate Component Package Table

The example Alternate Component Package tables illustrate the requirements of subsections 301.1, 402.3.1, 402.3.2, 402.4.1.1 and 402.4.1.2. Copies of specific tables contained in this example can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, Buildings Division, EE–432, Office of Codes and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0517.

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TABLE 301.1 EXTERIOR DESIGN CONDITIONS	
WINTER Design Dry Bulb: minus 6°F;	HDD65: 6770
SUMMER Design Dry Bulb: 88°F; Mean Coincident Wet Bulb: 72°F;	CDD65: 619
Annual Operating Hours, 8AM - 4PM when 55°F<=T<=69°F: 605	

TABLE 402.3.1(A) MAX. THERMAL TRANSMITTANCE (U)	
Roof	0.053
Wall adjacent to unconditioned space	0.128
Floor over unconditioned space	0.046

TABLE 402.3.1(B) MAX. EXEMPT SKYLIGHT AREA AS % OF ROOF AREA					
Visible Light Transmittance (VLT)	Light level Ft. Candles	Range of Lighting Power Densities			
		<1.00	1.00 - 1.50	1.51 - 2.00	>2.00
0.75	30	2.3	3.4	4.5	5.6
	50	2.5	4.0	5.5	7.0
	70	2.8	4.6	6.4	8.2
0.50	30	3.6	5.1	6.6	8.1
	50	3.9	6.0	8.1	10.2
	70	4.2	6.9	9.6	12.3

TABLE 402.3.2 MINIMUM THERMAL RESISTANCE (R-VALUE)			
Slab on grade: Unheated / Heated:	24 inches	36 inches	48 inches
Horizontal	R-17/R-19	R-14/R-16	R-11/R-13
Vertical	R-8/R-10	R-6/R-8	R-4/R-6
Wall below grade:	R-10		

TABLE 402.4.1.1 MAX. WALL THERMAL TRANSMITTANCE (Uow)				
			Insulation Position	
ILD Range	WWR	HC Range	Interior/Integral	Exterior
All	0 to 100	0.0 - 4.9	0.080	0.080
0.00 to 1.50	23	5.0 - 9.9	0.084	0.103
		10.0 - 14.9	0.090	0.114
		15.0 +	0.095	0.118
	59	5.0 - 9.9	0.083	0.097
		10.0 - 14.9	0.087	0.105
		15.0 +	0.091	0.108
1.51 to 3.00	20	5.0 - 9.9	0.085	0.109
		10.0 - 14.9	0.093	0.125
		15.0 +	0.100	0.130
	62	5.0 - 9.9	0.083	0.099
		10.0 - 14.9	0.088	0.109
		15.0 +	0.092	0.112
3.01 to 3.50	18	5.0 - 9.9	0.085	0.111
		10.0 - 14.9	0.094	0.128
		15.0 +	0.102	0.134
	61	5.0 - 9.9	0.083	0.100
		10.0 - 14.9	0.088	0.110
		15.0 +	0.093	0.114

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TABLE 402.4.1.2 MAXIMUM WINDOW WALL RATIO (WWR)								
			Fenestration U-Factor (Uof)					
			Base Case			Perimeter Daylighting		
								VLT>=SC
Internal Load Density (ILD) Range	Projection Factor (PF) Range	Shading Coefficient (SCx) Range	0.59 to 0.53	0.52 to 0.40	0.39 to 0.00	0.59 to 0.53	0.52 to 0.40	0.39 to 0.00
0.00 - 1.50	0.00 - 0.25	1.00 - 0.72	23	25	27	24	26	29
		0.71 - 0.61	26	28	32	27	29	33
		0.60 - 0.51	29	31	36	29	32	37
		0.50 - 0.39	31	34	40	31	35	42
		0.38 - 0.26	34	38	47	34	38	48
		0.25 - 0.00	38	43	56	38	43	56
	0.26 - 0.50	1.00 - 0.72	30	32	37	31	33	39
		0.71 - 0.61	33	36	43	33	36	44
		0.60 - 0.51	35	38	47	35	39	49
		0.50 - 0.39	37	41	51	36	41	53
		0.38 - 0.00	39	44	57	38	44	58
	0.50 +	1.00 - 0.72	35	38	46	35	38	48
		0.71 - 0.61	37	41	51	37	41	53
		0.60 - 0.51	39	43	55	38	43	56
		0.50 - 0.00	40	45	59	39	44	59
1.51 - 3.00	0.00 - 0.25	1.00 - 0.72	20	21	23	25	26	29
		0.71 - 0.61	23	25	27	28	30	34
		0.60 - 0.51	26	28	31	30	33	38
		0.50 - 0.39	29	31	35	33	36	43
		0.38 - 0.26	33	36	42	36	40	50
		0.25 - 0.00	39	43	53	40	45	59
	0.26 - 0.50	1.00 - 0.72	27	28	31	31	33	40
		0.71 - 0.61	30	32	37	34	37	45
		0.60 - 0.51	33	35	41	36	40	50
		0.50 - 0.39	35	39	46	38	42	54
		0.38 - 0.00	39	43	53	41	46	60
	0.50 +	1.00 - 0.72	32	34	39	35	39	49
		0.71 - 0.61	35	38	45	38	42	54
		0.60 - 0.51	37	41	50	39	44	58
		0.50 - 0.00	39	44	54	41	46	62
3.01 - 3.50	0.00 - 0.25	1.00 - 0.72	18	19	20	24	25	28
		0.71 - 0.61	21	22	24	27	29	33
		0.60 - 0.51	24	25	28	30	32	38
		0.50 - 0.39	27	28	32	32	35	42
		0.38 - 0.26	31	33	39	36	39	50
		0.25 - 0.00	37	40	50	40	45	59
	0.26 - 0.50	1.00 - 0.72	24	25	28	30	33	39
		0.71 - 0.61	27	29	33	33	36	45
		0.60 - 0.51	30	32	37	35	39	49
		0.50 - 0.39	33	36	42	37	41	54
		0.38 - 0.00	37	40	49	40	45	60
	0.50 +	1.00 - 0.72	29	31	35	34	38	48
		0.71 - 0.61	32	35	41	37	41	53
		0.60 - 0.51	35	38	45	38	43	57
		0.50 - 0.00	37	41	50	40	45	61

402.4.2 System Performance Criteria. The cumulative annual energy flux attributable to thermal transmittance and solar gains shall be less than the criteria determined using the ENVSTD21 computer program in Standard 90.1–1989, or the equations in RS–1, Attachment 8–B. The cumulative annual energy flux shall be calculated using the ENVSTD21 computer program or the equations in RS–1, Attachment 8–B.

TABLE 402.4.2.—EQUIP DEFAULT VALUES FOR ENVSTD21

Occupancy	Default equipment power density [1]	Default occupant load adjustment [1]	Default adjusted equipment power density
Assembly	0.25	0.75	1.00
Health/Institutional	1.00	−0.26	0.74
Hotel/Motel	0.25	−0.33	0.00
Warehouse/Storage	0.10	−0.60	0.00
Multi-Family High Rise	0.75	N/A	0.00
Office	0.75	−0.35	0.40
Restaurant	0.10	0.07	0.17
Retail	0.25	−0.38	0.00
School	0.50	0.30	0.80

[1] Defaults as defined in Section 8.6.10.5, Table 8–4, and Sections 8.6.10.6 and 13.7.2.1, Table 13–2 from RS–1.

402.4.2.1 Equipment Power Density (EQUIP). The equipment power density used in the ENVSTD21 computer program shall use the actual equipment power density from the building plans and specifications or be taken from Table 402.4.2 using the column titled ''Default Adjusted Equipment Power Density'' or calculated for the building using the procedures of RS–1. The program limits consideration of the equipment power density to a maximum of 1 W/ft^2.

402.4.2.2 Lighting Power Density (LIGHTS). The lighting power density used in the ENVSTD21 computer program shall use the actual lighting power density from the building plans and specifications or the appropriate value from Tables 401.3.2a, b, c, or d.

402.4.2.3 Daylighting Control Credit Fraction (DLCF). When the daylighting control credit fraction is other than zero, automatic daylighting controls shall be installed in the appropriate perimeter zone(s) of the building to justify the credit.

§ 434.403 Building Mechanical Systems and Equipment.

Mechanical systems and equipment used to provide heating, ventilating, and air conditioning functions as well as additional functions not related to space conditioning, such as, but not limited to, freeze protection in fire projection systems and water heating, shall meet the requirements of this section.

403.1 Mechanical Equipment Efficiency. When equipment shown in Tables 403.1a through 403.1f is used, it shall have a minimum performance at the specified rating conditions when tested in accordance with the specified reference standard. Omission of minimum performance requirements for equipment not listed in Tables 403.1a through 403.1f does not preclude use of such equipment.

TABLE 403.1a—UNITARY AIR CONDITIONERS AND CONDENSING UNITS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum Efficiency [b]	Test Procedure [a]
Air Conditioners, Air Cooled	<65,000 Btu/h	Split System	10.0 SEER	ARI 210/240 (RS–15).
		Single Package	9.7 SEER.	
	≥65,000 Btu/h and <135,000 Btu/h.	Split System and Single Package.	8.9 EER[c] 8.3 IPLV[c]	ARI 210/240 (RS–15).
	≥135,000 Btu/h and <240,000 Btu/h.	Split System and Single Package.	8.5 EER[c] 7.5 IPLV[c]	
	≥240,000 Btu/h and <760,000 Btu/h.	Split System and Single Package.	8.5 EER[c] 7.5 IPLV[c]	ARI–360 (RS–16).
	≥760,000 Btu/h	Split System and Single Package.	8.2 EER[c] 7.5 IPLV[c]	ARI–360 (RS–16).
Air Conditioners, Water and Evaporatively Cooled.	<65,000 Btu/h	Split System and Single Package.	9.3 EER[c] 8.4 IPLV[c]	ARI 210/240 (RS–15).
	≥65,000 Btu/h and <135,000 Btu/h.	Split System and Single Package.	10.5 EER[c] 9.7 IPLV[c]	ARI 210/240 (RS–15).
	≥135,000 Btu/h and <240,000 Btu/h.	Split System and Single Package.	9.6 EER[c] 9.0 IPLV[c]	ARI–360 (RS–16).
	≥240,000 Btu/h	Split System and Single Package.	9.6 EER[c] 9.0 IPLV[c]	ARI–360 (RS–16).
Condensing Units, Air Cooled	≥135,000 Btu/h		9.9 EER 11.0 IPLV	ARI 365 (RS–29).
Condensing Units, Water or Evaporatively Cooled.	≥135,000 Btu/h		12.9 EER 12.9 IPLV	ARI 365 (RS–29).

[a] See § 434.500 for detailed references.
[b] Deduct 0.2 from the required EER's and IPLV's for units that have a heating section.
[c] IPLV's are only applicable to equipment with capacity modulation.

TABLE 403.1b.—UNITARY AND APPLIED HEAT PUMPS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [b]	Test procedure [a]
Air Cooled (Cooling Mode)	< 65,000 Btu/h	Split System	10.0 SEER	ARI 210/240 (RS–15).
		Single Package	9.7 SEER	
	≥ 65,000 Btu/h and < 135,000 Btu/h.	Split System and Single Package.	8.9 EER[c] 8.3 IPLV[c]	ARI 210/240 (RS–15).
	≥ 135,000 Btu/h and < 240,000 Btu/h.	Split System and Single Package.	8.5 EER[c] 7.5 IPLV[c]	ARI–340 (RS–17).
	≥ 240,000 Btu/h	Split System and Single Package.	8.5 EER[c] 7.5 IPLV[c]	ARI–340 (RS–17).
Water Source (Cooling Mode)	< 65,000 Btu/h	85 °F Entering Water	9.3 EER	ARI–320 (RS–27).
		75 °F Entering Water	10.2 EER	
	≥ 65,000 Btu/h and < 135,000 Btu/h.	85 °F Entering Water	10.5 EER	ARI–320 (RS–27).
		75 °F Entering Water	11.0 EER	
Groundwater-Source (Cooling Mode)	< 135,000 Btu/h	70 °F Entering Water	11.0 EER	ARI 325 (RS–28).
		50 °F Entering Water	11.5 EER	
Ground Source (Cooling Mode)	< 135,000 Btu/h	77 °F Entering Water	10.0 EER	ARI 325 (RS–28).
		70 °F Entering Water	10.4 EER	
Air Cooled (Heating Mode)	< 65,000 Btu/h (Cooling Capacity).	Split System	6.8 HSPF	ARI 210/240 (RS–15).
		Single Package	6.6 HSPF	
	≥ 65,000 Btu/h and < 135,000 Btu/h (Cooling Capacity).	47 °F db/43 °F wb Outdoor Air.	3.00 COP	ARI 210/240 (RS–15).
		17 °F db/15 °F wb Outdoor Air.	2.00 COP	
	≥ 135,000 Btu/h (Cooling Capacity).	47 °F db/43 °F wb Outdoor Air.	2.90 COP	ARI–340 (RS–17).
		17 °F db/15 °F wb Outdoor	2.00 COP	
Water-Source (Heating Mode)	< 135,000 Btu/h (Cooling Capacity).	70 °F Entering Water	3.80 COP	ARI–320 (RS–27).
		75 °F Entering Water	3.90 COP	
Groundwater-Source (Heating Mode)	< 135,000 Btu/h (Cooling Capacity).	70 °F Entering Water	3.40 COP	ARI 325 (RS–28).
		50 °F Entering Water	3.00 COP	
Ground Source (Heating Mode)	< 135,000 Btu/h (Cooling Capacity).	32 °F Entering Water	2.50 EER	ARI–330 (RS–45).
		41 °F Entering Water	2.70 EER	

[a] See § 434.500 for detailed references
[b] Deduct 0.2 from the required EER's and IPLV's for units that have a heating section.
[c] IPLV's are only applicable to equipment with capacity modulation.

TABLE 403.1c.—WATER CHILLING PACKAGES, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [b]	Test procedure [a]
Air-Cooled, With Condenser, Electrically Operated.	< 150 Tons		2.70 COP 2.80 IPLV	ARI 550 Centrifugal/Rotary Screw (RS–30) or ARI 590 Reciprocating (RS–31).
	≥ 150 Tons		2.50 COP 2.50 IPLV	
Air-Cooled, Without Condenser, Electrically Operated.	All Capacities		3.10 COP 3.20 IPLV	
Water Cooled, Electrically Operated, Positive Displacement (Reciprocating).	All Capacities		3.80 COP 3.90 IPLV	
Water Cooled, Electrically Operated, Positive Displacement (Rotary Screw and Scroll).	< 150 Tons		3.80 COP 3.90 IPLV	
	≥ 150 Tons and < 300 Tons.		4.20 COP 4.50 IPLV	
	≥ 300 Tons		5.20 COP 5.30 IPLV	

TABLE 403.1c.—WATER CHILLING PACKAGES, MINIMUM EFFICIENCY REQUIREMENTS—Continued

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [b]	Test procedure [a]
Water-Cooled, Electrically Operated Centrifugal.	<150 Tons		380 COP 3.90 IPLV	ARI 550 (RS–30).
	≥ 150 Tons and < 300 Tons.		4.20 COP 4.50 IPLV	
	≥ 300 Tons		5.20 COP 5.30 IPLV	
Absorption Single Effect	All Capacities		0.48 COP	ARI 560 (RS–46).
Absorption Double Effect, Indirect-Fired	All Capacities		0.95 COP 1.00 IPLV	
Absorption Double-Effect, Direct-Fired	All Capacities		0.95 COP 1.00 IPLV	

[a] See § 434.500 for detailed references.
[b] Equipment must comply with all efficiencies when multiple efficiencies are indicated.

TABLE 403.1d.—PACKAGED TERMINAL AIR CONDITIONERS, PACKAGED TERMINAL HEAT PUMPS, ROOM AIR CONDITIONERS, AND ROOM AIR-CONDITIONER HEAT PUMPS ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency	Test procedure [a]
PTAC (Cooling Mode)	All Capacities	95°F db Outdoor Air	10.0 – (0.16× Cap/1,000) [b] EER	ARI 310 (RS–18).
		82°F db Outdoor Air	12.2 – (0.20× Cap/1,000) [b] EER	ARI 380 (RS–19).
PTHP (Cooling Mode)	All Capacities	95°F db Outdoor Air	10.0 – (0.16× Cap/1,000) [b] EER	
		82°F db Outdoor Air	12.2 – (0.20× Cap/1,000) [b] EER	
PTHP (Heating Mode)	All Capacities		2.90 – (0.26× CAP/1,000) [b] COP	
Room Air Conditioners, With Louvered Sides.	<6,000 Btu/h		8.0 EER	ANSI/AHAM RAC–1 (RS–40).
	≥6,000 Btu/h and <8,000 Btu/h.		8.5 EER	
	≥8,000 Btu/h and <14,000 Btu/h.		9.0 EER	
	≥14,000 Btu/h and <20,000 Btu/h.		8.8 EER	
	≥20,000 Btu/h		8.2 EER	
Room Air Conditioners, Without Louvered Sides.	<6,000 Btu/h		8.0 EER	ANSI/AHAM RAC–1 (RS–40).
	≥6,000 Btu/h and <20,000 Btu/h.		8.5 EER	
	≥20,000 Btu/h		8.2 EER	
Room Air-Conditioner Heat Pumps With Louvered Sides.	All Capacities		8.5 EER	ANSI/AHAM RAC–1 (RS–40).
Room Air-Conditioner Heat Pumps Without Louvered Sides.	All Capacities		8.0 EER	ANSI/AHAM RAC–1 (RS–40).

[a] See § 434.500 for detailed references.
[b] Equipment must comply with all efficiencies when multiple efficiencies are indicated. (Note products covered by the 1992 Energy Policy Act have no efficiency requirement for operation at other than standard rating conditions for products manufactured after 1/1/94).
[c] Cap means the rated capacity of the product in Btu/h. If the unit's capacity is less than 7,000 Btu/h, use 7,000 Btu/h in the calculation. If the unit's capacity is greater than 15,000 Btu/h, use 15,000 Btu/h in the calculation.

TABLE 403.1e.—WARM AIR FURNACES AND COMBINATION WARM AIR FURNACES/AIR CONDITIONING UNITS, WARM AIR DUCT FURNACES AND UNIT HEATERS, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [d]	Test procedure [a]
Warm Air-Furnace, Gas-Fired	<225,000 Btu/h		78% AGUE or 80% E_t [c]	DOE 10 CFR 430 (RS–20).
	≥225,000 Btu/h	Maximum Capacity [c] Minimum Capacity [c].	80% E_t 78% E_t	ANSI Z21.47 (RS–21).
Warm Air-Furnace, Oil-Fired	<225,000 Btu/h		78% AGUE or 80% E_t [c]	DOE 10 CFR 430 (RS–20).

TABLE 403.1e.—WARM AIR FURNACES AND COMBINATION WARM AIR FURNACES/AIR CONDITIONING UNITS, WARM AIR DUCT FURNACES AND UNIT HEATERS, MINIMUM EFFICIENCY REQUIREMENTS—Continued

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [d]	Test procedure [a]
	≥225,000 But/h	Maximum Capacity [b]	81% E_t	U.L. 727
		Minimum Capacity [b].	81% E_t	(RS–22).
Warm Air Duct Furnaces, Gas-Fired	All Capacities	Maximum Capacity [b]	78% E_t	ANSI Z83.9
		Minimum Capacity [b].	74% E_t	(RS–23).
Warm Air Unit Heaters, Gas Fired	All Capacities	Maximum Capacity [b]	78% E_t	ANSI Z83.8
		Minimum Capacity [b].	74% E_t	(RS–24).
Oil-Fired	All Capacities	Maximum Capacity [b]	81% E_t	U.L. 731
		Minimum Capacity [b].	81% E_t	(RS–25).

[a] See § 434.500 for detailed references.
[b] Minimum and maximum ratings as provided for and allowed by the unit's controls.
[c] Combination units not covered by NAECA (Three-phase power or cooling capacity ≥65,000 Btu/h) may comply with either rating.
[d] E_t=thermal efficiency. See referenced document for detailed discussion.
[e] Ec=combustion efficiency. Units must also include an IID and either power venting or a flue damper. For those furnaces where combustion air is drawn from the conditioned space, a vent damper may be substituted for a flue damper.

TABLE 403.1f.—BOILERS, GAS- AND OIL-FIRED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [c]	Test procedure [a]
Boilers, Gas-Fired	<300,000 Btu/h	Hot Water	80% AGUE	DOE 10 CFR 430 (RS–20).
		Steam	75% AGUE	DOE 10 CFR 430 (RS–20).
	≥300,000 Btu/h	Maximum Capacity [b]	80% E_c	ANSI Z21.13 (RS–32).
		Minimum Capacity [b]	80% E_c	
Boilers, Oil-Fired	<300,000 Btu/h		80% AGUE	DOE 10 CFR 430 (RS–20).
		Maximum Capacity [b]	83% E_c	
	≥300,000 Btu/h	Minumum Capacity [b]	83% E_c	U.L. 726 (RS–33).
Oil-Fired (Residual)	≥300,000 Btu/h	Maximum Capacity [b]	83% E_c	
		Minimum Capacity [b]	83% E_c	

[a] See § 434.500 for detailed references.
[b] Minimum and maximum ratings as provided for and allowed by the unit's controls.
[c] E_c=combustion efficiency (100% less flue losses). See reference document for detailed information.

403.1.1 Where multiple rating conditions and/or performance requirements are provided, the equipment shall satisfy all stated requirements.

403.1.2 Equipment used to provide water heating functions as part of a combination integrated system shall satisfy all stated requirements for the appropriate space heating or cooling category.

403.1.3 The equipment efficiency shall be supported by data furnished by the manufacturer or shall be certified under a nationally recognized certification program or rating procedure.

403.1.4 Where components, such as indoor or outdoor coils, from different manufacturers are used, the system designer shall specify component efficiencies whose combined efficiency meets the standards herein.

403.2 HVAC Systems.

403.2.1 Load Calculations. Heating and cooling system design loads for the purpose of sizing systems and equipment shall be determined in accordance with the procedures described in RS–1 using the design parameters specified in subpart C of this part.

403.2.2 Equipment and System Sizing. Heating and cooling equipment and systems shall be sized to provide no more than the loads calculated in accordance with subsection 403.2.1. A single piece of equipment providing both heating and cooling must satisfy this provision for one function with the other function sized as small as possible to meet the load, within available equipment options. Exceptions are as follows:

(a) When the equipment selected is the smallest size needed to meet the load within available options of the desired equipment line.

(b) Standby equipment provided with controls and devices that allow such equipment to operate automatically only when the primary equipment is not operating.

(c) Multiple units of the same equipment type with combined capacities exceeding the design load and provided with controls that sequence or otherwise optimally control the operation of each unit based on load.

403.2.3 Separate Air Distribution System. Zones with special process temperature and/or humidity requirements shall be served by air distribution systems separate from those serving zones requiring only comfort conditions or shall include supplementary provisions so that the primary systems may be specifically controlled for comfort purposes only. Exceptions: Zones requiring only comfort heating or comfort cooling that are served by a system primarily used for process temperature and humidity control need not be served by a separate system if the total supply air to these comfort zones is no more than 25% of the total system supply air or the total conditioned floor area of the zones is less than 1000 ft^2.

403.2.4 Ventilation and Fan System Design. Ventilation systems shall be designed to be capable of reducing the supply of outdoor air to the minimum ventilation rates required by Section 6.1.3 of RS–41 through the use of return ducts, manually or automatically operated control dampers, fan volume controls, or other devices. Exceptions are as follows: Minimum outdoor air rates may be greater if:

(a) Required to make up air exhausted for source control of contaminants such as in a fume hood.

(b) Required by process systems.

(c) Required to maintain a slightly positive building pressure. For this purpose, minimum outside air intake may be increased up to no greater than 0.30 air changes per hour in excess of exhaust quantities.

403.2.4.1 Ventilation controls for variable or high occupancy areas. Systems with design outside air capacities greater than 3,000 cfm serving areas having an average design occupancy density exceeding 100 people per 1,000 ft^2 shall include means to automatically reduce outside air intake to the minimum values required by RS–41 during unoccupied or low-occupancy periods. Outside air shall not be reduced below 0.14 cfm/ft^2. Outside air intake shall be controlled by one or more of the following:

(a) A clearly labeled, readily accessible bypass timer that may be used by occupants or operating personnel to temporarily increase minimum outside air flow up to design levels.

(b) A carbon dioxide (CO_2) control system having sensors located in the spaces served, or in the return air from the spaces served, capable of maintaining space CO_2 concentrations below levels recommended by the manufacturer, but no fewer than one sensor per 25,000 ft^2 of occupied space shall be provided.

(c) An automatic timeclock that can be programmed to maintain minimum outside air intake levels commensurate with scheduled occupancy levels.

(d) Spaces equipped with occupancy sensors.

403.2.4.2 Ventilation Controls for enclosed parking garages: Garage ventilation fan systems with a total design capacity greater than 30,000 cfm shall have automatic controls that stage fans or modulate fan volume as required to maintain carbon monoxide (CO) below levels recommended in RS–41.

403.2.4.3 Ventilation and Fan Power. The fan system energy demand of each HVAC system at design conditions shall not exceed 0.8 W/cfm of supply air for constant air volume systems and 1.25 W/cfm of supply air for variable-air-volume (VAV) systems. Fan system energy demand shall not include the additional power required by air treatment or filtering systems with pressure drops over 1 in. w.c. Individual VAV fans with motors 75 hp and larger shall include controls and devices necessary for the fan motor to demand no more than 50 percent of design wattage at 50 percent of design air volume, based on manufacturer's test data. Exceptions are as follows:

(a) Systems with total fan system motor horsepower of 10 hp or less.

(b) Unitary equipment for which the energy used by the fan is considered in the efficiency ratings of subsection 403.1.

403.2.5 Pumping System Design. HVAC pumping systems used for comfort heating and/or comfort air conditioning that serve control valves designed to modulate or step open and closed as a function of load shall be designed for variable fluid flow and capable of reducing system flow to 50 percent of design flow or less. Exceptions are as follows:

(a) Systems where a minimum flow greater than 50% of the design flow is required for the proper operation of equipment served by the system, such as chillers.

(b) Systems that serve no more than one control valve.

(c) Systems with a total pump system horse power ≤10 hp.

(d) Systems that comply with subsection 403.2.6.8 without exception.

403.2.6 Temperature and Humidity Controls.

403.2.6.1 System Controls. Each heating and cooling system shall include at least one temperature control device.

403.2.6.2 Zone Controls. The supply of heating and cooling energy to each zone shall be controlled by individual thermostatic controls responding to temperature within the zone. For the purposes of this section, a dwelling unit is considered a zone. Exception: Independent perimeter systems that are designed to offset building envelope heat losses or gains or both may serve one or more zones also served by an interior system when the perimeter system includes at least one thermostatic control zone for each building exposure having exterior walls facing only one orientation for at least 50 contiguous ft and the perimeter system heating and cooling supply is controlled by thermostat(s) located within the zone(s) served by the system.

403.2.6.3 Zone Thermostatic Control Capabilities. Where used to control comfort heating, zone thermostatic controls shall be capable of being set locally or remotely by adjustment or selection of sensors down to 55 °F or lower. Where used to control comfort cooling, zone thermostatic controls shall be capable of being set locally or remotely by adjustment or selection of sensors up to 85 °F or higher. Where used to control both comfort heating and cooling, zone thermostatic controls shall be capable of providing a temperature range or deadband of at least 5 °F within which the supply of heating and cooling energy to the zone is shut off or reduced to a minimum. Exceptions are as follows:

(a) Special occupancy or special usage conditions approved by the building official or

(b) Thermostats that require manual changeover between heating and cooling modes.

403.2.6.4 Heat Pump Auxiliary Heat. Heat pumps having supplementary electric resistance heaters shall have controls that prevent heater operation when the heating load can be met by the heat pump. Supplemental heater operation is permitted during outdoor coil defrost cycles not exceeding 15 minutes.

403.2.6.5 Humidistats. Humidistats used for comfort purposes shall be capable of being set to prevent the use of fossil fuel or electricity to reduce relative humidity below 60% or increase relative humidity above 30%.

403.2.6.6 Simultaneous Heating and Cooling. Zone thermostatic and humidistatic controls shall be capable of operating in sequence the supply of heating and cooling energy to the zone. Such controls shall prevent: reheating; recooling; mixing or simultaneous supply of air that has been previously mechanically heated and air that has been previously cooled, either by mechanical refrigeration or by economizer systems; and other simultaneous operation of heating and cooling systems to the same zone. Exceptions are as follows:

(a) Variable-air-volume systems that, during periods of occupancy, are designed to reduce the air supply to each zone to a minimum before heating, recooling, or mixing takes place. This minimum volume shall be no greater than the larger of 30% of the peak supply volume, the minimum required to meet minimum ventilation requirements of the Federal agency. (0.4 cfm/ft2 of zone conditioned floor area, and 300 cfm).

(b) Zones where special pressurization relationships or cross-contamination requirements are such that variable-air-volume systems are impractical, such as isolation rooms,

operating areas of hospitals and clean rooms.

(c) At least 75% of the energy for reheating or for providing warm air in mixing systems is provided from a site-recovered or site-solar energy source.

(d) Zones where specified humidity levels are required to satisfy process needs, such as computer rooms and museums.

(e) Zones with a peak supply air quantity of 300 cfm or less.

403.2.6.7 Temperature Reset for Air Systems. Air systems supplying heated or cooled air to multiple zones shall include controls that automatically reset supply air temperatures by representative building loads or by outside air temperature. Temperature shall be reset by at least 25% of the design supply air to room air temperature difference. Zones that are expected to experience relatively constant loads, such as interior zones, shall be designed for the fully reset supply temperature. Exception are as follows: Systems that comply with subsection 403.2.6.6 without using exceptions (a) or (b).

403.2.6.8 Temperature Reset for Hydronic Systems. Hydronic systems of at least 600,000 Btu/hr design capacity supplying heated and/or chilled water to comfort conditioning systems shall include controls that automatically reset supply water temperatures by representative building loads (including return water temperature) or by outside air temperature. Temperature shall be reset by at least 25% of the design supply-to-return water temperature difference. Exceptions are as follows:

(a) Systems that comply with subsection 403.2.5 without exception or

(b) where the design engineer certifies to the building official that supply temperature reset controls cannot be implemented without causing improper operation of heating, cooling, humidification, or dehumidification systems.

403.2.7 Off Hour Controls.

403.2.7.1 Automatic Setback or Shutdown Controls. HVAC systems shall be equipped with automatic controls capable of accomplishing a reduction of energy use through control setback or equipment shutdown. Exceptions are as follows:

(a) Systems serving areas expected to operate continuously or

(b) equipment with full load demands not exceeding 2 kW controlled by readily accessible, manual off-hour controls.

403.2.7.2 Shutoff Dampers. Outdoor air supply and exhaust systems shall be provided with motorized or gravity dampers or other means of automatic volume shutoff or reduction. Exceptions are as follows:

(a) Systems serving areas expected to operate continuously.

(b) Individual systems which have a design airflow rate or 3000 cfm or less.

(c) Gravity and other non-electrical ventilation systems controlled by readily accessible, manual damper controls.

(d) Where restricted by health and life safety codes.

403.2.7.3 Zone Isolation systems that serve zones that can be expected to operate nonsimultaneously for more than 750 hours per year shall include isolation devices and controls to shut off or set back the supply of heating and cooling to each zone independently. Isolation is not required for zones expected to operate continuously or expected to be inoperative only when all other zones are inoperative. For buildings where occupancy patterns are not known at the time of system design, such as speculative buildings, the designer may predesignate isolation areas. The grouping of zones on one floor into a single isolation area shall be permitted when the total conditioned floor area does not exceed 25,000 ft^2 per group.

403.2.8 Economizer Controls.

403.2.8.1 Each fan system shall be designed and capable of being controlled to take advantage of favorable weather conditions to reduce mechanical cooling requirements. The system shall include either: a temperature or enthalpy air economizer system that is capable of automatically modulating outside air and return air dampers to provide up to 85% of the design supply air quantity as outside air, or a water economizer system that is capable of cooling supply air by direct and/or indirect evaporation and is capable of providing 100% of the expected system cooling load at outside air temperatures of 50°F dry-bulb/45°F wet-bulb and below. Exceptions are as follows:

(a) Individual fan-cooling units with a supply capacity of less than 3000 cfm or a total cooling capacity less than 90,000 Btu/h.

(b) Systems with air-cooled or evaporatively cooled condensers that include extensive filtering equipment provided in order to meet the requirements of RS–41.

(c) Systems with air-cooled or evaporatively cooled condensers where the design engineer certifies to the building official that use of outdoor air cooling affects the operation of other systems, such as humidification, dehumidification, and supermarket refrigeration systems, so as to increase overall energy usage.

(d) Systems that serve envelope-dominated spaces whose sensible cooling load at design conditions, excluding transmission and infiltration loads, is less than or equal to transmission and infiltration losses at an outdoor temperature of 60°F.

(e) Systems serving residential spaces and hotel or motel rooms.

(f) Systems for which at least 75% of the annual energy used for mechanical cooling is provided from a site-recovered or site-solar energy source.

(g) The zone(s) served by the system each have operable openings (windows, doors, etc.) with an openable area greater than 5% of the conditioned floor area. This applies only to spaces open to and within 20 ft of the operable openings. Automatic controls shall be provided that lock out system mechanical cooling to these zones when outdoor air temperatures are less than 60°F.

403.2.8.2 Economizer systems shall be capable of providing partial cooling even when additional mechanical cooling is required to meet the remainder of the cooling load. Exceptions are as follows:

(a) Direct-expansion systems may include controls to reduce the quantity of outdoor air as required to prevent coil frosting at the lowest step of compressor unloading. Individual direct-expansion units that have a cooling capacity of 180,000 Btu/h or less may use economizer controls that preclude economizer operation whenever mechanical cooling is required simultaneously.

(b) Systems in climates with less than 750 average operating hours per year between 8 a.m. and 4 p.m. when the ambient dry-bulb temperatures are between 55 °F and 69 °F inclusive.

403.2.8.3 System design and economizer controls shall be such that economizer operation does not increase the building heating energy use during normal operation.

403.2.9 Distribution System Construction and Insulation.

403.2.9.1 Piping Insulation. All HVAC system piping shall be thermally insulated in accordance with Table 403.2.9.1. Exceptions are as follows:

(a) Factory-installed piping within HVAC equipment tested and rated in accordance with subsection 403.1.

(b) Piping that conveys fluids that have a design operating temperature range between 55°F and 105°F.

(c) Piping that conveys fluids that have not been heated or cooled through the use of fossil fuels or electricity.

TABLE 403.2.9.1.—MINIMUM PIPE INSULATION (IN.) 5a

Fluid Design Operating Temp. Range (°F)	Insulation conductivity [a]		Nominal Pipe Diameter (in.)			
	Conductivity Range Btu.in./(h·ft 2·°F)	Mean Rating Temp. °F	<1.0	1.0 to 1.25	1.5 to 3.0	4.0 to 6.0
Heating Systems (Steam, Steam Condensate, and Hot Water) [b, c]						
>350	0.32–0.34	250	1.0	1.5	1.5	2.5
251–350	0.29–0.32	200	1.0	1.0	1.5	2.0
201–250	0.27–0.30	150	1.0	1.0	1.0	1.5
141–200	0.25–0.29	125	1.0	1.0	1.0	1.5
105–140	0.22–0.28	100	0.5	0.5	0.75	1.0
Domestic and Service Hot Water Systems						
105 and Greater	0.22–0.28	100	0.5	0.5	0.75	1.0
Cooling Systems (Chilled Water, Brine, and Refrigerant) [d]						
40–55	0.22–0.28	100	0.5	0.5	0.5	0.5
Below 40	0.22–0.28	100	0.5	0.5	0.5	0.5

[a] For insulation outside the stated conductivity range, the minimum thickness (T) shall be determined as follows:

$T = r\{1 + t/r)^{K/k} - 1\}$

Where T = minimum insulation thickness (in), r = actual outside radius of pipe (in), t = insulation thickness listed in this table for applicable fluid temperature and pipe size, K = conductivity of alternate material at mean rating temperature indicated for the applicable fluid temperature (Btu.in/h·ft 2·°F); and k = the upper value of the conductivity range listed in this table for the applicable fluid temperature.

[b] These thicknesses are based on energy efficiency considerations only. Safety issues, such as insulation surface temperatures, have not been considered.

[c] Piping insulation is not required between the control valve and coil on run-outs when the control valve is located within four feet of the coil and the pipe diameter is 1 inch or less.

[d] Note that the required minimum thickness does not take water vapor transmission and possible surface condensation into account.

TABLE 403.2.9.2.—Minimum Duct Insulation R-value [a]

Duct location	Cooling supply ducts				Heating supply ducts				Return ducts
	CDD65 ≤500	500< CDD65 ≤1,000	1,000< CDD65 ≤2,000	CDD65 ≥2,000	HDD65 ≤1,500	1,500< HDD65 ≤4,500	4,500< HDD65 ≤7,500	HDD65 ≥7,500	
Exterior of Building	R–3.3	R–5.0	R–6.5	R–8.0	R–3.3	R–5.0	R–6.5	R–8.0	R–5.0
Ventilated Attic	R–3.3	R–3.3	R–3.3	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–3.3
Unvented Attic	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–3.3
Other Conditioned Spaces [b].	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3
Indirectly Conditioned Spaces [c].	none	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	none
Buried	none	none	none	none	R–5.0	R–5.0	R–5.0	R–5.0	R–3.3

[a] Insulation R-values, measured in (h•ft 2•°F)/Btu, are for the insulation as installed and do not include film resistance. The required minimum thickness do not consider water vapor transmission and possible surface condensation. The required minimum thicknesses do not consider water vapor transmission and condensation. For ducts that are designed to convey both heated and cooled air, duct insulation shall be as required by the most restrictive condition. Where exterior walls are used as plenum walls, wall insulation shall be as required by the most restrictive condition of this section or subsection 402. Insulation resistance measured on a horizontal plane in accordance with RS–6 at a mean temperature of 75 °F.

[b] Includes crawl spaces, both ventilated and non-ventilated.

[c] Includes return air plenums, with and without exposed roofs above.

403.2.9.2 Duct and Plenum Insulation. All supply and return air ducts and plenums installed as part of an HVAC air distribution system shall be thermally insulated in accordance with Table 403.2.9.1. Exceptions are as follows:

(a) Factory-installed plenums, casings, or ductwork furnished as a part of the HVAC equipment tested and rated in accordance with subsection 403.1

(b) Ducts within the conditioned space that they serve.

403.2.9.3 Duct and Plenum Construction. All air-handling ductwork and plenums shall be constructed and erected in accordance with RS–34, RS–35, and RS–36. Where supply ductwork and plenums designed to operate at static pressures from 0.25 in. wc to 2 in. wc, inclusive, are located outside of the conditioned space or in return plenums, joints shall be sealed in accordance with Seal Class C as defined in RS–34. Pressure sensitive tape shall not be used as the primary sealant where such ducts are designed to operate at static pressures of 1 in. wc, or greater.

403.2.9.3.1 Ductwork designed to operate at static pressures in excess of 3 in. wc shall be leak-tested in accordance with Section 5 of RS–35, or equivalent. Test reports shall be provided in accordance with Section 6 of RS–35, or equivalent. The tested duct leakage class at a test pressure equal to the design duct pressure class rating shall be equal to or less than leakage Class 6 as defined in Section 4.1 of RS–

35. Representative sections totaling at least 25% of the total installed duct area for the designated pressure class shall be tested.

403.2.10 Completion.

403.2.10.1 Manuals. Construction documents shall require an operating and maintenance manual provided to the Federal Agency. The manual shall include, at a minimum, the following:

(a) Submittal data stating equipment size and selected options for each piece of equipment requiring maintenance, including assumptions used in outdoor design calculations.

(b) Operating and maintenance manuals for each piece of equipment requiring maintenance. Required maintenance activity shall be specified.

(c) Names and addresses of at least one qualified service agency to perform the required periodic maintenance shall be provided.

(d) HVAC controls systems maintenance and calibration information, including wiring diagrams, schematics, and control sequence descriptions. Desired or field determined setpoints shall be permanently recorded on control drawings, at control devices, or, for digital control systems, in programming comments.

(e) A complete narrative, prepared by the designer, of how each system is intended to operate shall be included with the construction documents.

403.2.10.2 Drawings. Construction documents shall require that within 30 days after the date of system acceptance, record drawings of the actual installation be provided to the Federal agency. The drawings shall include details of the air barrier installation in every envelope component, demonstrating continuity of the air barrier at all joints and penetrations.

403.2.10.3 Air System Balancing. Construction documents shall require that all HVAC systems be balanced in accordance with the industry accepted procedures (such as National Environmental Balancing Bureau (NEBB) Procedural Standards, Associated Air Balance Council (AABC) National Standards, or ANSI/ASHRAE Standard 111). Air and water flow rates shall be measured and adjusted to deliver final flow rates within 10% of design rates, except variable flow distribution systems need not be balanced upstream of the controlling device (VAV box or control valve).

403.2.10.3.1 Construction documents shall require a written balance report be provided to the Federal agency for HVAC systems serving zones with a total conditioned area exceeding 5,000 ft².

403.2.10.3.2 Air systems shall be balanced in a manner to first minimize throttling losses, then fan speed shall be adjusted to meet design flow conditions or equivalent procedures. Exception: Damper throttling may be used for air system balancing;

(a) With fan motors of 1 hp (0.746 kW) or less, or

(b) Of throttling results in no greater than ⅓ hp (0.248 kW) fan horsepower draw above that required if the fan speed were adjusted.

403.2.10.4 Hydronic System Balancing. Hydronic systems shall be balanced in a manner to first minimize throttling losses; then the pump impeller shall be trimmed or pump speed shall be adjusted to meet design flow conditions. Exceptions are as follows:

(a) Pumps with pump motors of 10 hp (7.46 kW) or less.

(b) If throttling results in no greater than 3 hp (2.23 kW) pump horsepower draw above that required if the impeller were trimmed.

(c) To reserve additional pump pressure capability in open circuit piping systems subject to fouling. Valve throttling pressure drop shall not exceed that expected for future fouling.

403.2.10.5 Control System Testing. HVAC control systems shall be tested to assure that control elements are calibrated, adjusted, and in proper working condition. For projects larger than 50,000 ft² conditioned area, detailed instructions for commissioning HVAC systems shall be provided by the designer in plans and specifications.

§ 434.404 Building service systems and equipment.

404.1 Service Water Heating Equipment Efficiency. Equipment must satisfy the minimum performance efficiency specified in Table 404.1when tested in accordance with RS–37, RS–38, or RS–39. Omission of equipment from Table 404.1 shall not preclude the use of such equipment. Service water heating equipment used to provide additional function of space heating as part of a combination (integrated) system shall satisfy all stated requirements for the service water heating equipment. All gas-fired storage water heaters that are not equipped with a flue damper and use indoor air for combustion or draft hood dilution and that are installed in a conditioned space, shall be equipped with a vent damper listed in accordance with RS–42. Unless the water heater has an available electrical supply, the installation of such a vent damper shall not require an electrical connection.

TABLE 404.1.—MINIMUM PERFORMANCE OF WATER HEATING EQUIPMENT

Category	Type	Fuel	Input Rating	V_T	Input to V_T ratio Btuh/gal	Test method [a]	Energy factor	Thermal efficiency E_t%	Standby loss %/HR
NAECA covered water heating equipment [b]	All	Electric	≤12 kW	All [c]		DOE Test Procedure 10 CFR, Part 430 (RS–37)	≥0.93–0.00132V		
	Storage	Gas	≤75,000 Btuh	All [c]			≥0.62–0.0019V		
	Instantaneous	Gas	≤200,000 Btuh [c]	All			≥0.62–0.0019V		
	Storage	Oil	≤105,000 Btuh	All			≥0.59–0.0019V		
	Instantaneous	Oil	≤210,000 Btuh	All			≥0.59–0.0019V		
	Pool heater	Gas/oil	All	All		ANSI Z21.56 (RS–38)		≥78	
Other water heating Equipment [d]	Storage	Electric	All	All		ANSI Z21.10.3 (RS–39)			≤0.30+27/V_T
	Storage/instantaneous	Gas/oil	≤155,000 Btuh	All	<4,000			≥78	≤1.3+114/V_T
			>155,000 Btuh	All	<4,000			≥78	≤1.3+95V_T
				<10	≥4,000			≥80	
				≥10	≥4,000			≥77	≤2.3+67/V_T
Unfired storage tanks					All				≤6.5 Btuh/ft²

[a] For detailed references see § 434.500.

[b] Consistent with National Appliance Energy Conservation Act (NAECA) of 1987.

[c] DOE Test Procedures apply to electric and gas storage water heaters with rated volumes ≥20 gallons and gas instantaneous water heaters with input ratings of 50,000 to 200,000 Btuh.

[d] All except those water heaters covered by NAECA.

404.1.1 Testing Electric and Oil Storage Water Heaters for Standby Loss.

(a) When testing an electric storage water heater, the procedures of Z21.10.3–1990 (RS–39), Section 2.9, shall be used. The electrical supply voltage shall be maintained with ±1% of the center of the voltage range specified on the water heater nameplate. Also, when needed for calculations, the thermal efficiency (E_t) shall be 98%. When testing an oil-fired water heater, the procedures of Z21.10.3–1990 (RS–39), Sections 2.8 and 2.9, shall be used.

(b) The following modifications shall be made: A vertical length of flue pipe shall be connected to the flue gas outlet of sufficient height to establish the minimum draft specified in the manufacturer's installation instructions. All measurements of oil consumption shall be taken by instruments with an accuracy of ±1% or better. The burner rate shall be adjusted to achieve an hourly Btu input rate within ±2% of the manufacturer's specified input rate with the CO_2 reading as specified by the manufacturer with smoke no greater than 1 and the fuel pump pressure within ±1% of the manufacturer's specification.

404.1.2 Unfired Storage Tanks. The heat loss of the tank surface area Btu/(h•ft^2) shall be based on an 80°F water-air temperature difference.

404.1.3 Storage Volume Symbols in Table 404.1. The symbol ''V'' is the rated storage volume in gallons as specified by the manufacturer. The symbol ''V_T'' is the storage volume in gallons as measured during the test to determine the standby loss. V_T may differ from V, but it is within tolerances allowed by the applicable Z21 and Underwriters Laboratories standards. Accordingly, for the purpose of estimating the standby loss requirement using the rated volume shown on the rating plate, V_T should be considered as no less than 0.95V for gas and oil water heaters and no less than 0.90V for electric water heaters.

404.2 Service Hot Water Piping Insulation. Circulating system piping and noncirculating systems without heat traps, the first eight feet of outlet piping from a constant-temperature noncirculating storage system, and the inlet pipe between the storage tank and a heat trap in a noncirculating storage system shall meet the provisions of subsection 403.2.9.

404.2.1 Vertical risers serving storage water heaters not having an integral heat trap and serving a noncirculating system shall have heat traps on both the inlet and outlet piping as close as practical to the water heater.

404.3 Service Water Heating System Controls. Temperature controls that allow for storage temperature adjustment from 110°F to a temperature compatible with the intended use shall be provided in systems serving residential dwelling units and from 90°F for other systems. When designed to maintain usage temperatures in hot water pipes, such as circulating hot water systems or heat trace, the system shall be equipped with automatic time switches or other controls that can be set to turn off the system.

404.3.1 The outlet temperature of lavatories in public facility restrooms shall be limited to 110°F.

404.4 Water Conservation. Shower heads and lavatories labeled as meeting the requirements of the Energy Policy Act (Pub. L 102–486) shall be used.

404.4.1 Lavatories in public facility restrooms shall be equipped with a foot switch, occupancy sensor, or similar device or, in other than lavatories for physically handicapped persons, limit hot water delivery to 0.25 gal/cycle for circulating systems and 0.50 gal/cycle for noncirculating systems.

404.5 Swimming Pools. All pool heaters shall be equipped with a readily accessible on-off switch.

404.5.1 Time switches shall be installed on electric heaters and pumps. Exceptions are as follows:

(a) Pumps required to operate solar or heat recovery pool heating systems.

(b) Where public health requirements require 24-hour pump operation.

404.5.2 Heated swimming pools shall be equipped with pool covers. Exception: When over 70% of the annual energy for heating is obtained from a site-recovered or site-solar energy source.

404.6 Combined Service Water Heating and Space Heating Equipment. A single piece of equipment shall not be used to provide both space heating and service water heating. Exceptions are as follows:

(a) The energy input or storage volume of the combined boiler or water heater is less than twice the energy input or storage volume of the smaller of the separate boilers or water heaters otherwise required or

(b) the input to the combined boiler is less than 150,000 Btuh.

Subpart E—Building Energy Cost Compliance Alternative

§ 434.501 General.

501.1 This subpart E permits the use of the Building Energy Cost Compliance Alternative as an alternative to many elements of Subpart D of this part. When this subpart is used, it must be used with Subpart C and Subpart D of this part, 401.1, 401.2, 401.3.4 and in conjunction with the minimum requirements found in subsections 402.1, 402.2, and 402.3., 403.1, 403.2.1–7, 403.9 and 404.

501.2 Compliance. Compliance under this method requires detailed energy analyses of the entire Proposed Design, referred to as the Design Energy Consumption; an estimate of annual energy cost for the proposed design, referred to as the Design Energy Cost; and comparison against an Energy Cost Budget. Compliance is achieved when the estimated Design Energy Cost is less than or equal to the Energy Cost Budget. This subpart provides instructions for determining the Energy Cost Budget and for calculating the Design Energy Consumption and Design Energy Cost. The Energy Cost Budget shall be determined through the calculation of monthly energy consumption and energy cost of a Prototype or Reference Building design configured to meet the requirements of subsections 401 through 404.

501.3 Designers are encouraged to employ the Building Energy Cost Budget compliance method set forth in this section for evaluating proposed design alternatives to using the elements prescribed in subpart D of this part. The Building Energy Cost Budget establishes the relative effectiveness of each design alternative in energy cost savings, providing an energy cost basis upon which the building owner and designer may select one design over another. This Energy Cost Budget is the highest allowable calculated energy cost for a specific building design. Other alternative designs are likely to have lower annual energy costs and life cycle costs than those used to minimally meet the Energy Cost Budget.

501.4 The Energy Cost Budget is a numerical reference for annual energy cost. Its purpose is to assure neutrality with respect to choices such as HVAC system type, architectural design and fuel choice by providing a fixed, repeatable budget that is independent of any of these choices wherever possible (i.e., for the prototype buildings). The Energy Cost Budget for a given building size and type will vary only with climate, the number of stories, and the choice of simulation tool. The specifications of the prototypes are necessary to assure repeatability, but have no other significance. They are not necessarily recommended energy conserving practice, or even physically reasonable practice for some climates or buildings, but represent a reasonable worst case of energy cost resulting from

compliance with the provisions of subsections 401 through 404.

§ 434.502 Determination of the annual energy cost budget.

502.1 The annual Energy Cost Budgets shall be determined in accordance with the Prototype Building Procedure in § 434.503 and § 434.504 or the Reference Building Procedure in § 434.505. Both methods calculate an annual Energy Cost by summing the 12 monthly Energy Cost Budgets. Each monthly Energy Cost Budget is the product of the monthly Building Energy Consumption of each type of energy used multiplied by the monthly Energy Cost per unit of energy for each type of energy used.

502.2 The Energy Cost Budget shall be determined in accordance with Equation 502.2.a as follows:

$ECB=ECB_{jan}+ . . . ECB_{m}+ . . . +ECB_{dec}$ (Equation 502.2.a)

Based on:

$ECB_{m}=BECON_{m1}1xECOS_{m1}+ . . . +BECON_{mi}xECOS_{mi}$ (Equation 502.2.b)

Where:

ECB=The annual Energy Cost Budget

ECB_{m}=The monthly Energy Cost Budget

$BECON_{mi}$=The monthly Budget Energy Consumption of the ith type of energy

$ECOS_{mi}$=The monthly Energy Cost, per unit of the ith type of energy

502.3 The monthly Energy Cost Budget shall be determined using current rate schedules or contract prices available at the building site for all types of energy purchased. These costs shall include demand charges, rate blocks, time of use rates, interruptible service rates, delivery charges, taxes, and all other applicable rates for the type, location, operation, and size of the proposed design. The monthly Budget Energy Consumption shall be calculated from the first day through the last day of each month, inclusive.

§ 434.503 Prototype building procedure.

503.1 The Prototype Building procedure shall be used for all building types listed below. For mixed-use buildings the Energy Cost Budget is derived by allocating the floor space of each building type within the floor space of the prototype building. For buildings not listed below, the Reference Building procedure of § 434.505 shall be used. Prototype buildings include:

(a) Assembly;
(b) Office (Business);
(c) Retail (Mercantile);
(d) Warehouse (Storage);
(e) School (Educational);
(f) Hotel/Motel;
(g) Restaurant;
(h) Health/Institutional; and
(i) Multi-Family.

§ 434.504 Use of the prototype building to determine the energy cost budget.

504.1 Determine the building type of the Proposed Design using the categories in subsection 503.1. Using the appropriate Prototype Building characteristics from all of the tables contained in this subpart E, the building shall be simulated using the same gross floor area and number of floors for the Prototype Building as in the Proposed Design.

504.2 The form, orientation, occupancy and use profiles for the Prototype Building shall be fixed as described in subsection 511. Envelope, lighting, other internal loads and HVAC systems and equipment shall meet the requirements of subsections 301, 401, 402, 403, and 404 and are standardized inputs.

§ 434.505 Reference building method.

505.1 The Reference Building procedure shall be used only when the Proposed Design cannot be represented by one or a combination of the Prototype Building listed in subsection 503.1 or the assumptions for the Prototype Building in Subsection 510, such as occupancy and use-profiles, do not reasonably represent the Proposed Design.

§ 434.506 Use of the reference building to determine the energy cost budget.

506.1 Each floor shall be oriented in the same manner for the Reference Building as in the Proposed Design. The form, gross and conditioned floor areas of each floor and the number of floors shall be the same as in the Proposed Design. All other characteristics, such as lighting, envelope and HVAC systems and equipment, shall meet the requirements of subsections 301, 401, 402, 403 and 404.

§ 434.507 Calculation procedure and simulation tool.

507.1 The Prototype or Reference Buildings shall be modeled using the criteria of subsections 510 and 521. The modeling shall use a climate data set appropriate for both the site and the complexity of the energy conserving features of the design. ASHRAE Weather Year for Energy Calculations (WYEC) data or bin weather data shall be used in the absence of other appropriate data.

§ 434.508 Determination of the design energy consumption and design energy cost.

508.1 The Design Energy Consumption shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Cost Budget, except as explicitly stated in subsections 509 through 534. The Design Energy Cost shall be calculated per Equation 508.1.

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Equation 508.1

Equation 508.1

$DECOS=DECOS_{jan+}\ldots\ DECOS_{m}\ldots.\ +DECOS_{mdec}$

Equation 508.1

Based on:

$DECOS2_{m}=DECON_{m}1xECOS_{1m}+\ldots+DECON_{mi}xECOS_{mi}$

Equation 508.1.2

Where:

DECOS=The annual Design Energy Cost

$DECOS_{m}$=The monthly Design Energy Cost

$ICON_{mi}$=The monthly Design Energy Consumption of the i_{th} type of energy

$ECOS_{mi}$=The monthly Energy Cost per unit of the i_{th} type of energy

The $DECON_{mi}$ shall be calculated from the first day through the last day
of the month, inclusive.

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§ 434.509 Compliance.

509.1 If the Design Energy Cost is less than or equal to the Energy Cost Budget, and all of the minimum requirements of subsection 501.2 are met, the Proposed Design complies with the standards.

§ 434.510 Standard calculation procedure.

510.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Cost Budget for the Prototype or Reference Building and the Design Energy Consumption and Design Energy Cost of the Proposed Design. In order to maintain consistency between the Energy Cost Budget and the Design Energy Cost, the input assumptions to be used are stated below. These inputs shall be used to determine the Energy Cost Budget and the Design Energy Consumption.

510.2 Prescribed assumptions shall be used without variation. Default assumptions shall be used unless the designer can demonstrate that a different assumption better characterizes the building's energy use over its expected life. The default assumptions shall be used in modeling both the Prototype or Reference Building and the Proposed Design, unless the designer demonstrates clear cause to modify these assumptions. Special procedures for speculative buildings are discussed in subsection 503. Shell buildings may not use Subpart E.

§ 434.511 Orientation and shape.

511.1 The Prototype Building shall consist of the same number of stories, and gross and conditioned floor area as the Proposed Design, with equal area per story. The building shape shall be rectangular, with a 2.5:1 aspect ratio. The long dimensions of the building shall face East and West. The fenestration shall be uniformly distributed in proportion to exterior wall area. Floor-to-floor height for the Prototype Building shall be 13 ft. except for dwelling units in hotels/motels and multi-family high-rise residential buildings where floor-to-floor height shall be 9.5 ft.

511.2 The Reference Building shall consist of the same number of stories, and gross floor area for each story as the Proposed Design. Each floor shall be oriented in the same manner as the Proposed Design. The geometric form shall be the same as the Proposed Design.

§ 434.512 Internal loads.

512.1 The systems and types of energy specified in this section are provided only for purposes of calculating the Energy Cost Budget. They are not requirements for either systems or the type of energy to be used in the Proposed Design or for calculation of Design Energy Cost.

512.2 Internal loads for multi-family high-rise residential buildings are prescribed in Tables 512.2.a and b, Multi-Family High Rise Residential Building Schedules. Internal loads for other building types shall be modeled as noted in this subsection.

TABLE 512.2.a.—MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS SCHEDULES—ONE-ZONE DWELLING UNIT

[Internal Loads Per Dwelling Unit Btu/h]

Hour	Occupants		Lights	Equipment	
	Sensible	Latent	Sensible	Sensible	Latent
1	300	260	0	750	110
2	300	260	0	750	110
3	300	260	0	750	110
4	300	260	0	750	110
5	300	260	0	750	110
6	300	260	0	750	110
7	300	260	0	750	110
8	210	260	980	1250	190
9	100	80	840	2600	420
10	100	80	0	1170	180
11	100	80	0	1270	190
12	100	80	0	2210	330
13	100	80	0	2210	330
14	100	80	0	1270	190
15	100	80	0	1270	190
16	100	80	0	1270	190
17	100	80	0	1270	190
18	300	260	0	3040	450
19	300	260	0	3360	500
20	300	260	960	1490	220
21	300	260	960	1490	220
22	300	260	960	1490	220
23	300	260	960	1060	160
24	300	260	960	1060	160

TABLE 512.2.b.—MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDING SCHEDULES—TWO-ZONE DWELLING UNIT

[Internal Loads Per Dwelling Unit Btu/h]

Hour	Bedrooms and bathrooms					Other rooms				
	Occupants		Lights	Equipment		Occupants		Lights	Equipment	
	Sensible	Latent	Sensible	Sensible	Latent	Sensible	Latent	Sensible	Sensible	Latent
1	300	260	0	100	20	0	0	0	650	90
2	300	260	0	100	20	0	0	0	650	90
3	300	260	0	100	20	0	0	0	650	90
4	300	260	0	100	20	0	0	0	650	90
5	300	260	0	100	20	0	0	0	650	90
6	300	260	0	100	20	0	0	0	650	90
7	200	180	680	200	40	100	80	300	1050	150
8	110	120	240	200	40	100	80	600	2400	380
9	0	0	0	100	20	100	80	0	1070	160
0	0	0	0	100	20	100	80	0	1170	170
0	0	0	0	100	20	100	80	0	1170	170
0	0	0	0	100	20	100	80	0	2110	310
0	0	0	0	100	20	100	80	0	2110	310
14	0	0	0	100	20	100	80	0	1170	170
15	0	0	0	100	20	100	80	0	1170	170
16	0	0	0	100	20	100	80	0	1170	170
17	0	0	0	100	20	100	80	0	1170	170
18	0	0	0	100	20	300	260	0	2940	430
19	0	0	0	100	20	300	260	0	3260	480
20	100	80	320	300	60	200	180	640	1190	160
21	100	80	320	300	60	200	180	640	1190	160
22	150	130	480	700	90	150	130	480	790	130
23	300	260	640	410	70	0	0	320	650	90
24	300	260	640	410	70	0	0	320	650	90

§ 434.513 Occupancy.

513.1 Occupancy schedules are default assumptions. The same assumptions shall be made in computing Design Energy Consumption as were used in calculating the Energy Cost Budget.

513.2 Table 513.2.a, Occupancy Density, establishes the density, in ft^2/person of conditioned floor area, to be used for each building type. Table 513.2.b, Building Schedule Percentage Multipliers, establishes the percentage of total occupants in the building by hour of the day for each building type.

TABLE 513.2.a.—OCCUPANCY DENSITY

Building type	Conditioned floor area Ft^2/person
Assembly	50
Office	275
Retail	300
Warehouse	15000
School	75

TABLE 513.2.a.—OCCUPANCY DENSITY—Continued

Building type	Conditioned floor area Ft^2/person
Hotel/Motel	250
Restaurant, Health/Institutional	100
Multi-family High-rise Residential	200
	2 per unit [1]

[1] Heat generation: Btu/h per person: 230 Btu/h per person sensible, and 190 Btu/h per person latent. See Table 513.2.

TABLE 513.2.b.—BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
1. ASSEMBLY																									
	WEEKDAY	0	0	0	0	0	0	0	0	20	20	20	20	80	80	80	80	80	80	20	20	20	20	0	0
OCCUPANCY	SATURDAY	0	0	0	0	0	0	0	0	20	20	20	20	60	60	60	60	60	60	60	60	60	60	0	0
	SUNDAY	0	0	0	0	0	0	0	0	10	10	10	10	10	70	70	70	70	70	70	70	70	70	0	0
ASSEMBLY	WEEKDAY	0	0	0	0	0	0	40	40	40	75	75	75	75	75	75	75	75	75	75	75	75	75	0	0
LTNG & RECEP	SATURDAY	0	0	0	0	0	0	0	30	30	50	50	50	50	50	50	50	50	50	50	50	50	50	0	0
	SUNDAY	0	0	0	0	0	0	0	30	30	30	30	30	65	65	65	65	65	65	65	65	65	65	0	0
ASSEMBLY	WEEKDAY	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off
HVAC	SATURDAY	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off
	SUNDAY	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off
ASSEMBLY	WEEKDAY	0	0	0	0	0	0	0	0	0	5	5	35	5	5	5	5	5	0	0	0	0	0	0	0
SWH	SATURDAY	0	0	0	0	0	0	0	0	0	5	5	20	0	0	0	0	0	0	0	65	30	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	5	5	10	0	0	0	0	0	0	0	65	30	0	0	0
2. OFFICE																									
	WEEKDAY	0	0	0	0	0	0	0	10	20	95	95	45	45	95	95	95	95	95	30	10	10	10	0	0
OCCUPANCY	SATURDAY	0	0	0	0	0	0	0	10	10	30	30	30	30	10	10	10	10	10	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE	WEEKDAY	0	0	0	0	0	0	10	30	90	90	90	80	90	90	90	90	90	90	30	30	20	20	0	0
LTNG & RECEP	SATURDAY	0	0	0	0	0	0	10	30	30	30	30	15	15	15	15	15	15	15	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE	WEEKDAY	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off
HVAC	SATURDAY	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off
	SUNDAY	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off
OFFICE	WEEKDAY	0	0	0	0	0	0	0	15	30	35	35	45	55	50	30	30	40	20	20	10	15	5	0	0

TABLE 513.2.b.—BUILDING SCHEDULE PERCENTAGE MULTIPLIERS—Continued

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
SWH	SATURDAY	0	0	0	0	0	0	0	10	10	20	15	20	15	15	10	10	10	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3. RETAIL																									
	WEEKDAY	0	0	0	0	0	0	0	0	20	20	20	20	80	80	80	80	80	80	20	20	20	20	0	0
OCCUPANCY	SATURDAY	0	0	0	0	0	0	0	0	20	20	20	20	60	60	60	60	60	60	60	60	60	60	0	0
	SUNDAY	0	0	0	0	0	0	0	0	10	10	10	10	10	70	70	70	70	70	70	70	70	70	0	0
RETAIL	WEEKDAY	0	0	0	0	0	0	40	40	40	75	75	75	75	75	75	75	75	75	75	75	75	75	0	0
LTNG & RECEP	SATURDAY	0	0	0	0	0	0	0	30	30	50	50	50	50	50	50	50	50	50	50	50	50	50	0	0
	SUNDAY	0	0	0	0	0	0	0	30	30	30	30	30	65	65	65	65	65	65	65	65	65	65	0	0
RETAIL	WEEKDAY	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off	Off	Off
HVAC	SATURDAY	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off	Off
	SUNDAY	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off
RETAIL	WEEKDAY	0	0	0	0	0	0	0	10	20	30	40	55	60	60	45	40	45	45	40	30	30	0	0	0
SWH	SATURDAY	0	0	0	0	0	0	0	15	20	25	40	50	55	55	45	45	45	45	40	35	25	20	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	10	25	30	35	35	30	30	35	30	20	0	0	0	0	0
	WEEKDAY	0	0	0	0	0	0	0	15	70	90	90	90	50	85	85	85	20	0	0	0	0	0	0	0
4. WAREHOUSE																									
OCCUPANCY	SATURDAY	0	0	0	0	0	0	0	0	20	20	20	20	10	10	10	10	0	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WAREHOUSE	WEEKDAY	0	0	0	0	0	0	0	40	70	90	90	90	90	90	90	90	90	0	0	0	0	0	0	0
LTNG & RECEP	SATURDAY	0	0	0	0	0	0	0	0	10	25	25	25	10	10	10	10	0	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WAREHOUSE	WEEKDAY	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off	Off
HVAC	SATURDAY	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off	Off	Off
	SUNDAY	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off
WAREHOUSE	WEEKDAY	0	0	0	0	0	0	0	5	25	35	35	45	55	50	35	50	15	0	0	0	0	0	0	0
SWH	SATURDAY	0	0	0	0	0	0	0	0	0	10	10	15	0	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5. SCHOOL																									
	WEEKDAY	.....	.....	.....	0	0	0	0	5	75	90	90	80	80	80	80	45	15	5	15	20	20	10	0	0
OCCUPANCY	SATURDAY	0	0	0	0	0	0	0	0	10	10	10	10	10	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCHOOL	WEEKDAY	0	0	0	0	0	0	0	30	85	95	95	95	80	80	80	70	50	50	35	35	35	30	0	0
LTNG&RECEP	SATURDAY	0	0	0	0	0	0	0	0	15	15	15	15	15	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCHOOL	WEEKDAY	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HVAC	SATURDAY	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On
SCHOOL	WEEKDAY	0	0	0	0	0	0	0	5	30	55	60	70	75	80	60	60	5	5	15	20	20	20	20	0
SWH	SATURDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	WEEKDAY	90	90	90	90	90	90	70	40	40	20	20	20	20	20	20	30	50	50	50	70	70	80	90	90
6. HOTEL/MOTEL																									
OCCUPANCY	SATURDAY	90	90	90	90	90	90	70	50	50	30	30	30	30	30	30	30	30	50	60	60	60	70	70	70
	SUNDAY	70	70	70	70	70	70	70	70	50	50	50	30	20	20	20	20	30	40	40	60	60	80	80	80
HOTEL/MOTEL	WEEKDAY	20	15	10	10	10	20	40	50	40	40	25	25	25	25	25	25	25	25	60	80	90	80	60	30
LTNG&RECEP	SATURDAY	20	20	10	10	10	10	30	30	40	40	30	25	25	25	25	25	25	25	60	70	70	70	60	30
	SUNDAY	30	30	20	20	20	20	30	40	40	30	30	30	30	20	20	20	20	20	50	70	80	60	50	30
HOTEL/MOTEL	WEEKDAY	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HVAC	SATURDAY	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HOTEL/MOTEL	WEEKDAY	20	15	15	15	20	25	50	60	55	45	40	45	40	35	30	30	30	40	55	60	50	55	45	25
SWH	SATURDAY	20	15	15	15	20	25	40	50	50	50	45	50	50	45	40	40	34	40	55	55	50	55	40	25
	SUNDAY	25	20	20	20	20	30	50	50	50	55	50	50	40	40	40	30	30	40	50	50	40	50	40	30
7. RESTAURANT																									
	WEEKDAY	15	15	5	0	0	0	0	5	5	5	20	50	80	70	40	20	25	50	80	80	80	50	35	20
OCCUPANCY	SATURDAY	30	25	5	0	0	0	0	0	5	5	20	45	50	50	35	30	30	30	70	90	70	65	55	35
	SUNDAY	20	20	5	0	0	0	0	0	0	0	0	20	25	25	15	20	25	35	55	65	70	35	20	20
RESTAURANT	WEEKDAY	15	15	15	15	15	20	40	40	60	60	90	90	90	90	90	90	90	90	90	90	90	90	50	30
LTNG & RECEP	SATURDAY	20	15	15	15	15	15	30	30	60	60	80	80	80	80	80	80	80	90	90	90	90	90	50	30
	SUNDAY	20	15	15	15	15	15	30	30	50	70	70	70	70	70	70	70	60	60	60	60	60	60	50	30
RESTAURANT	WEEKDAY	On	On	On	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HVAC	SATURDAY	On	On	On	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY	On	On	On	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On
RESTAURANT	WEEKDAY	20	15	15	0	0	0	0	60	55	45	40	45	40	35	30	30	30	40	55	60	50	55	45	25
SWH	SATURDAY	20	15	15	0	0	0	0	0	0	50	45	50	50	45	40	40	35	40	55	55	50	55	40	30
	SUNDAY	25	20	20	0	0	0	0	0	0	0	50	50	40	40	30	30	30	40	50	50	40	50	40	20
	WEEKDAY	0	0	0	0	0	0	0	10	50	80	80	80	80	80	80	80	80	50	30	30	20	20	0	0
8. HEALTH																									
OCCUPANCY	SATURDAY	0	0	0	0	0	0	0	10	30	40	40	40	40	40	40	40	40	10	10	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	5	5	5	5	5	5	5	5	5	0	0	0	0	0	0	0
HEALTH	WEEKDAY	0	0	0	0	0	0	0	50	90	90	90	90	90	90	90	90	90	30	30	30	30	30	0	0
LTNG & RECEP	SATURDAY	0	0	0	0	0	0	0	20	40	40	40	40	40	40	40	40	40	40	10	0	0	0	0	0
	SUNDAY	0	0	0	0	0	0	0	0	10	10	10	10	10	10	10	10	0	0	0	0	0	0	0	0
	WEEKDAY	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SATURDAY	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HEALTH	WEEKDAY	0	0	0	5	5	5	80	70	50	40	20	20	25	25	50	50	70	70	35	20	15	15	5	0
SWH	SATURDAY	0	0	0	0	0	0	20	45	50	50	35	30	30	30	70	90	70	65	55	35	30	25	5	0
	SUNDAY	0	0	0	0	0	0	0	20	25	25	15	20	25	35	55	65	70	35	20	20	20	20	5	0

NOTES FOR TABLE 513.2.2

(1) Reference: Recommendations for Energy Conservation Standards and Guidelines for New Commercial Buildings, Vol. III, App. A Pacific Northwest Laboratory, PNL–4870–8, 1983."

(2) Table 513.2.1 contains multipliers for converting the nominal values for building occupancy (Table 514.2.1), receptacle power density (Table 516.2) service hot water (Table), and lighting energy (§ 434.515) into time series data for estimating building loads under the Standard Calculation Procedure.''

(3) ''For each standard building profile there are three series—one each for weekdays, Saturday and Sunday. There are 24 elements per series. These represent the multiplier that should be used to estimate building loads from 12 a.m. to 1 a.m. (series element #1) through 11 p.m. to 12 a.m. (series element #24). The estimated load for any hour is simply the multiplier from the appropriate standard profile multiplied by the appropriate value from the tables cited above.''

(4) The Building HVAC System Schedule listed in Table 514.2.2 lists the hours when the HVAC system shall be considered ''on'' or ''off'' in accordance with § 434.514.''

§ 434.514 Lighting.

514.1 Interior Lighting Power Allowance (ILPA), for calculating the Energy Cost Budget shall be determined from subsection 401.3.2. The lighting power used to calculate the Design Energy Consumption shall be the actual adjusted power for lighting in the Proposed Design. If the lighting controls in the Proposed Design are more effective at saving energy than those required by subsection 401.3.1 and 401.3.2, the actual installed lighting power shall be used along with the schedules reflecting the action of the controls to calculate the Design Energy Consumption. This actual installed lighting power shall not be adjusted by the Power Adjustment Factors listed in Table 514.1.

TABLE 514.1.—POWER ADJUSTMENT FACTOR (PAF)

Automatic control device(s)	Standard PAF
(1) Occupancy Sensor	0.30
(2) Daylight Sensing Continuous Dimming	0.30
(3) Daylight Sensing Multiple Step Dimming	0.20
(4) Daylight Sensing On/Off	0.10
(5) Lumen Maintenance	0.10

514.2 Table 513.2.2 establishes default assumptions for the percentage of the lighting load switched-on in each Prototype or Reference Building by hour of the day. These default assumptions can be changed when calculating the Energy Cost Budget to provide, for example, a 12-hour rather than an 8-hour workday.

§ 434.515 Receptacles.

515.1 Receptacle loads and profiles are default assumptions. The same assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

515.2 Receptacle loads include all general service loads that are typical in a building. These loads exclude any process electrical usage and HVAC primary or auxiliary electrical usage. Table 515.2, Receptacle Power Densities, establishes the density, in W/ft^2, to be used for each building type. The receptacle energy profiles shall be the same as the lighting energy profiles in Table 513.2. This profile establishes the percentage of the receptacle load that is switched on by hour of the day and by building type.

TABLE 515.2.—RECEPTABLE POWER DENSITIES

Building type	W/ft^2 of conditioned floor area
Assembly	0.25
Office	0.75
Retail	0.25
Warehouse	0.1
School	0.5
Hotel/Motel	0.25
Restaurant	0.1
Health	1.0
Multi-family High Rise Residential	([1])

[1] Included in Lights and Equipment portions of Table 513.2.

§ 434.516 Building exterior envelope.

516.1 Insulation and Glazing. The insulation and glazing characteristics of the Prototype and Reference Building envelope shall be determined by using the first column under ''Base Case'', with no assumed overhangs, for the appropriate Alternate Component Tables (ACP) in Table 402.4.1.2, as defined by climate range. The insulation and glazing characteristics from this ACP are prescribed assumptions for Prototype and Reference Buildings for calculating the Energy Cost Budget. In calculating the Design Energy Consumption of the Proposed Design, the envelope characteristics of the Proposed Design shall be used.

516.2 Infiltration. For Prototype and Reference Buildings, the infiltration assumptions in subsection 516.2.1 shall be prescribed assumptions for calculating the Energy Cost Budget and default assumptions for the Design Energy Consumption. Infiltration shall impact perimeter zones only.

516.2.1 When the HVAC system is switched ''on,'' no infiltration shall be assumed. When the HVAC system is switched ''off,'' the infiltration rate for buildings with or without operable windows shall be assumed to be 0.038 cfm/ft^2 of gross exterior wall. Hotels/motels and multi-family high-rise residential buildings shall have infiltration rates of 0.038 cfm/ft^2 of gross exterior wall area at all times.

516.3 Envelope and Ground Absorptivities. For Prototype and Reference Buildings, absorptivity assumptions shall be prescribed assumptions for computing the Energy Cost Budget and default assumptions for computing the Design Energy Consumption. The solar absorptivity of opaque elements of the building envelope is assumed to be 70%. The solar absorptivity of ground surfaces is assumed to be 80% (20% reflectivity).

516.4 Window Management. For the Prototype and Reference Building, window management drapery assumptions shall be prescribed assumptions for setting the Energy Cost Budget. No draperies shall be the default assumption for computing the Design Energy Consumption. Glazing is assumed to be internally shaded by medium-weight draperies, closed one-half time. The draperies shall be modeled by assuming that one-half the area in each zone is draped and one-half is not. If manually-operated draperies, shades, or blinds are to be used in the Proposed Design, the Design Energy Consumption shall be calculated by assuming they are effective over one-half the glazing area in each zone.

516.5 Shading. For Prototype and Reference buildings and the Proposed Design, shading by permanent structures, terrain, and vegetation shall be taken into account for computing energy consumption, whether or not these features are located on the building site. A permanent fixture is one that is likely to remain for the life of the Proposed Design.

§ 434.517 HVAC systems and equipment

517.1 The specifications and requirements for the HVAC systems of the Prototype and Reference Buildings shall be those in Table 517.1.1, HVAC Systems for Prototype and Reference Buildings. For the calculation of the Design Energy Consumption, the HVAC systems and equipment of the Proposed Design shall be used.

517.2 The systems and types of energy presented in Table 517.1.1 are assumptions for calculating the Energy Cost Budget. They are not requirements for either systems or the type of energy to be used in the Proposed Building or for the calculation of the Design Energy Cost.

TABLE 517.1.1.—HVAC SYSTEMS OF PROTOTYPE AND REFERENCE BUILDINGS [1,2]

Building/space occupancy	System No. (Table 517.4.1)	Remarks (Table 517.4.1)
Assembly	1	
a. Churches (any size)	1 or 3	Note 1.
b. ≤50,000 ft² or ≤3 floors	3	
c. >50,000 ft² or >3 floors.		
Office:		
a. ≤20,000 ft²	1	
b. ≤50,000 ft² and either ≤3 floors or ≤75,000 ft²	4	
c. <75,000 ft² or >3 floors	5	
Retail:		
a. ≤50,000 ft²	1 or 3	Note 1.
b. >50,000 ft²	4 or 5	Note 1.
Warehouse	1	Note 1.
School:		
a. ≤75,000 ft² or ≤3 floors	1	
b. >75,000 ft² or >3 floors	3	
Hotel/Motel:		
a. ≤3 stories	2 or 7	Note 5, 7.
b. >3 stories	6	Note 6.
Restaurant	1 or 3	Note 1.
Health:		
a. Nursing Home (any size)	2 or 7	Note 7.
b. ≤15,000 ft²	1	
c. >15,000 ft² or ≤50,000 ft²	4	Note 2.
d. >50,000 ft²	5	Note 2, 3.
Multi-family High Rise Residential >3 stories	7	

[1] Space and Service Water Heating budget calculations shall be made using both electricity and natural gas. The Energy Cost Budget shall be the lower of these two calculations. If natural gas is not available at the rate, electricity and #2 fuel oil shall be used for the budget calculations.

[2] The system and energy types presented in this Table are not intended as requirements or recommendations for the proposed design. Floor areas below are the total conditioned floor areas for the listed occupance type in the building. The number of floors indicated below is the total number of occupied floors for the listed occupancy type.

517.3 HVAC Zones. HVAC zones for calculating the Energy Cost Budget of the Prototype or Reference Building shall consist of at least four perimeter and one interior zones per floor. Prototype Buildings shall have one perimeter zone facing each cardinal direction. The perimeter zones of Prototype and Reference Buildings shall be 15 ft in width, or one-third the narrow dimension of the building, when this dimension is between 30 ft and 45 ft inclusive, or one-half the narrow dimension of the building when this dimension is less than 30 ft. Zoning requirements shall be a default assumption for calculating the Energy Cost Budget. For multi-family high-rise residential buildings, the prototype building shall have one zone per dwelling unit. The proposed design shall have one zone per unit unless zonal thermostatic controls are provided within units; in this case, two zones per unit shall be modeled. Building types such as assembly or warehouse may be modeled as a single zone if there is only one space.

517.4 For calculating the Design Energy Consumption, no fewer zones shall be used than were in the Prototype and Reference Buildings. The zones in the simulation shall correspond to the zones provided by the controls in the Proposed Design. Thermally similar zones, such as those facing one orientation on different floors, may be grouped together for the purposes of either the Design Energy Consumption or Energy Cost Budget simulation.

TABLE 517.4.1. HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS[12]

HVAC COMPONENT	SYSTEM #1	SYSTEM #2	SYSTEM #3	SYSTEM #4	SYSTEM #5	SYSTEM #6	SYSTEM #7
System Description	Packaged rooftop single room, one unit per zone.	Packaged terminal air conditioner with space heater or heat pump, one heating/cooling unit per zone.	Air handler per zone with central plant.	Packaged rooftop VAV w/perimeter reheat.	Built-up central VAV with perimeter reheat.	Fourpipe fan coil per zone with central plant.	Water source pump.
Fan system Design supply circulation.	Note 9	Note 10	Note 9	Note 9	Note 9	Note 9	Note 10.
Supply fan total static pressure.	1.3 in W.C.	N/A	2.0 in W.C.	3.0 in W.C.	4.0 in W.C.	0.5 in W.C.	0.5 in W.C.
Combined supply fan, motor, and drive efficiency.	40%	N/A	50%	45%	55%	25A	25%.

TABLE 517.4.1. HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS[12]—Continued

HVAC COMPONENT	SYSTEM #1	SYSTEM #2	SYSTEM #3	SYSTEM #4	SYSTEM #5	SYSTEM #6	SYSTEM #7
Supply fan control	Constant volume.	Fan Cycles with call for heating or cooling.	Constant volume	VAV w/forward curved contrifugal fan and variable inlet vanes.	VAVV w/air-foil centrifugal fan and AC frequency variable speed drive.	Fan Cycles with call for heating or cooling.	Fan cycles w/ call for heating or cooling.
Return fan total static pressure.	N/A	N/A	0.6 in W.C.	0.6 in W.C.	1.0 in W.C.	N/A	N/A.
Combined return fan, motor, and drive efficiency.	N/A	N/A	25%	25%	30%	N/A	N/A.
Return fan control	N/A	N/A	Constant volume	VAV w/forward curved centrifutal fan and discharge dampers.	VAV with air-foil centrifugal fan and AC frequency variable speed drive.	N/A	N/A.
Cooling System	Direct expansion air cooled.	Direct expansion air cooled.	Chilled water (Note 1).	Direct expansion air cooled.	Chilled water (Note 11).	Chilled water (Note 11).	Closed circuit, centrifugal blower type cooling tower sized per Note 11. Circulating pump size for 2.7 GPM per ton.
Heating System	Furnace, heat pump, or electric resistence (Note 8).	Heat pump w/ electric resistance auxiliary or air conditioner w/ space heater (Note 8).	Hot water (Note 8, 12).	Hot water (Note 12) or electric resistance (Note B).	Hot water (Note 12) or electric resistance (Note 8).	Hot water (Note 12) or electric resistance (Note 8).	Electric or natural draft fossil fuel boiler (Note 8).
Remarks	Dry bulb economizer per Section 7.4.3 (barometric relief).	No economizer.	Dry bulb economizer per Section 434.514.	Dry bulb ecomomizer per Section 434.514 Minimum VAV setting per 434.514 exception 1. Supply air reset by zone of greatest cooling demand.	Dry bulb economizer per Section 7.4.3 Minimum VAV setting per Section 7.4.4.3. Supply air reset by zone of greatest cooling demand.	No economizer.	Tower fans and boiler cycled to maintain circulating water temperature between 60 and design tower leaving water temperature.

Notes:
1. The systems and energy types presented in this Table are not intended as requirements or recommendations for the proposed design.
2. For numbered notes see end of Table 517.4.1.

Numbered Notes For Table 517.4.1 HVAC System Descriptions for Prototype and Reference Buildings

NOTES:

1. For occupancies such as restaurants, assembly and retail which are part of a mixed use building which, according to Table 517.4.1, includes a central chilled water plant (systems 3, 5, or 6), chilled water system type 3 or 5, as indicated in the Table, shall be used.

2. Constant volume may be used in zones where pressurization relationships must be maintained by code. VAV shall be used in all other areas, in accordance with § 517.4.

3. Provide run-around heat recovery systems for all fan systems with minimum outside air intake greater than 75%. Recovery effectiveness shall be 0.60.

4. If a warehouse is not intended to be mechanically cooled, both the Energy Cost Budgets and Design Energy Costs, may be calculated assuming no mechanical cooling.

5. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by system 4. Other areas such as offices and retail shall be served by the systems listed in Table 517.4.1 for those occupancy types.

6. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by System 5. Other areas such as offices and retail shall be served by the systems listed in Table 517.4.1.1 for those occupancy types.

7. System 2 shall be used for Energy Cost Budget calculation except in areas with design heating outside air temperatures less than 10°F.

8. Prototype energy budget cost calculations shall be made using both electricity and natural gas. If natural gas is not available at the site, electricity and #2 fuel oil shall be used. The Energy Cost Budget shall be the lower of these results. Alternatively, the Energy Cost Budget may be based on the fuel source that minimizes total

operating, maintenance, equipment, and installation costs for the prototype over the building lifetime. Equipment and installation cost estimates shall be prepared using professionally recognized cost estimating tools, guides, and techniques. The methods of analysis shall conform to those of Subpart A of 10 CFR 436. Energy costs shall be based on actual costs to the building as defined in this Section.

9. Design supply air circulation rate shall be based on a supply air to room air temperature differences of 20°F. A higher supply air temperature may be used if required to maintain a minimum circulation rate of 4.5 air changes per hour or 15 cfm per person at design conditions to each zone served by the system. If return fans are specified, they shall be sized from the supply fan capacity less the required minimum ventilation with outside air, or 75% or the supply air capacity, whichever is larger. Except where noted, supply and return fans shall be operated continually during occupied hours.

10. Fan System Energy when included in the efficiency rating of the unit as defined in § 403.2.4.3 need not be modeled explicitly for this system. The fan shall cycle with calls for heating or cooling.

11. Chilled water systems shall be modeled using a reciprocating chiller for systems with total cooling capacities less than 175 tons, and centrifugal chillers for systems with cooling capacities of 175 tons or greater. For systems with cooling or 600 tons or more, the Energy Cost Budget shall be calculated using two centrifugal chillers lead/lag controlled. Chilled water pumps shall be sized using a 12°F temperature rise, from 44°F to 56°F operating at 65 feed of head and 65% combined impeller and motor efficiency. Condenser water pumps shall be sized using a 10°F temperature rise, operating at 60 feet of head and 60% combined impeller and motor efficiency. The cooling tower shall be an open circuit, centrifugal blower type sized for the larger of 85°F leaving water temperature or 10°F approach to design wet bulb temperature. The tower shall be controlled to provide a 65°F leaving water temperature whenever weather conditions permit, floating up to design leaving water temperature at design conditions. Chilled water supply temperature shall be reset in accordance with § 434.518.

12. Hot water system shall include a natural draft fossil fuel or electric boiler per Note 8. The hot water pump shall be sized based on a 30°F temperature drop, for 18°F to 150°F, operating at 60 feet of head and a combined impeller and motor efficiency of 60%. Hot water supply temperature shall be reset in accordance with § 434.518.

517.5 Equipment Sizing and Redundant Equipment. For calculating the Energy Cost Budget of Prototype or Reference Buildings, HVAC equipment shall be sized to meet the requirements of subsection 403.2.2, without using any of the exceptions. The size of equipment shall be that required for the building without process loads considered. Redundant or emergency equipment need not be simulated if it is controlled so that it will not be operated during normal operations of the building. The designer shall document the installation of process equipment and the size of process loads.

517.6 For calculating the Design Energy Consumption, actual air flow rates and installed equipment size shall be used in the simulation, except that excess capacity provided to meet process loads need not be modeled unless the process load was not modeled in setting Energy Cost Budget. Equipment sizing in the simulation of the Proposed Design shall correspond to the equipment actually selected for the design and the designer shall not use equipment sized automatically by the simulation tool.

517.6.1 Redundant or emergency equipment need not be simulated if it is controlled to not be operated during normal operations of the building.

§ 434.518 Service water heating.

518.1 The service water loads for Prototype and Reference Buildings are defined in terms of Btu/h per person in Table 518.1.1, Service Hot Water Quantities. The service water heating loads from Table 518.1.1 are prescribed assumptions for multi-family high-rise residential buildings and default assumptions for all other buildings. The same service water heating load assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

TABLE 518.1.1.—Service Hot Water Quantities

Building type	Btu/Person-hour [1]
Assembly	215
Office	175
Retail	135
Warehouse	225
School	215
Hotel/Motel	1110
Restaurant	390
Health	135
Multi-family High Rise Residential	[2] 1700

[1] This value is the number to be multiplied by the percentage multipliers of the Building Profile Schedules in Table 513.2.2. See Table 513.2.2 for occupancy levels.

[2] Total hot water use per dwelling unit for each hour shall be 3,400 Btu/h times the multi-family high rise residential building SWH system multiplier from Table 514.2.2.

518.2 The service water heating system, including piping losses for the Prototype Building, shall be modeled using the methods of the RS–47 using a system that meets all requirements of subsection 404. The service water heating equipment for the Prototype or Reference Building shall be either an electric heat pump or natural gas, or if natural gas is not available at the site, either an electric heat pump or #2 fuel oil. Exception: If electric resistance service water heating is preferable to an electric heat pump when analyzed according to the criteria of § 434.404 or when service water temperatures exceeding 145°F are required for a particular application, electric resistance water heating may be used.

§ 434.519 Controls

519.1 All occupied conditioned spaces in the Prototype, Reference and Proposed Design Buildings in all climates shall be simulated as being both heated and cooled. The assumptions in this subsection are prescribed assumptions. If the Proposed Design does not include equipment for cooling or heating, the Design Energy Consumption shall be determined by the specifications for calculating the Energy Cost Budget as described in Table 517.4.1 HVAC System Description for Prototype and Reference Buildings. Exceptions to 519.1 are as follows:

519.1.1 If a building is to be provided with only heating or cooling, both the Prototype or Reference Building and the Proposed Design shall be simulated, using the same assumptions. Such an assumption cannot be made unless the building interior temperature meets the comfort criteria of RS–2 at least 98% of the occupied hours during the year.

519.1.2 If warehouses are not intended to be mechanically cooled, both the Energy Cost Budget and Design Energy Consumption shall be modeled assuming no mechanical cooling; and

519.1.3 In climates where winter design temperature (97.5% occurrence) is greater than 59°F, space heating need not be modeled.

519.2 Space temperature controls for the Prototype or Reference Building, except multi-family high-rise residential buildings, shall be set at 70°F for space heating and 75°F for space cooling with a deadband per subsection

403.2.6.3. The system shut off during off-hours shall be according to the schedule in Table 515.2, except that the heating system shall cycle on if any space should drop below the night setback setting of 55°F. There shall be no similar setpoint during the cooling season. Lesser deadband ranges may be used in calculating the Design Energy Consumption.

Exceptions to 519.2 are as follows:

(a) Setback shall not be modeled in determining either the Energy Cost Budget or Design Energy Cost if setback is not realistic for the Proposed Design,

such as 24-hour/day operations. Health facilities need not have night setback during the heating season; and

(b) Hotel/motels and multi-family high-rise residential buildings shall have a night setback temperature of 60 °F from 11:00 p.m. to 6:00 a.m. during the heating season; and

(c) If deadband controls are not to be installed, the Design Energy Cost shall be calculated with both heating and cooling thermostat setpoints set to the same value between 70°F and 75°F inclusive, assumed to be constant for the year.

519.2.1 For multi-family buildings, the thermostat schedule for the dwelling units shall be as in Table 519.1.2, Thermostat Settings for Multi-Family High-rise Buildings. The Prototype Building shall use the single zone schedule. The Proposed Design shall use the two-zone schedule only if zonal thermostatic controls are provided. For Proposed Designs that use heat pumps employing supplementary heat, the controls used to switch on the auxiliary heat source during morning warm-up periods shall be simulated accurately. The thermostat assumptions for multi-family high-rise buildings are prescribed assumptions.

519.3 When providing for outdoor air ventilation in calculating the Energy Cost Budget, controls shall be assumed to close the outside air intake to reduce the flow of outside air to 0 cfm during setback and unoccupied periods. Ventilation using inside air may still be required to maintain scheduled setback temperature. Outside air ventilation, during occupied periods, shall be as required by RS–41, or the Proposed Design, whichever is greater.

519.4 If humidification is to be used in the Proposed Design, the same level of humidification and system type shall be used in the Prototype or Reference Building. If dehumidification requires subcooling of supply air, then reheat for the Prototype or Reference Building shall be from recovered waste heat such as condenser waste heat.

TABLE 519.1.2.—THERMOSTAT SETTINGS FOR MULTI-FAMILY HIGH-RISE BUILDINGS

Time of day	Single zone dwelling unit		Two zone dwelling unit			
			Bedrooms/Bathrooms		Other Rooms	
	Heat	Cool	Heat	Cool	Heat	Cool
Midnight—6 a.m	60	78	60	78	60	85
6 a.m.—9 a.m	70	78	70	78	70	78
9 a.m.—5 p.m	70	78	60	85	70	78
5 p.m.—11 p.m	70	78	70	78	70	78
11 p.m.—Midnight	60	78	60	78	60	78

§ 434.520 Speculative buildings.

520.1 Lighting. The interior lighting power allowance (ILPA) for calculating the Energy Cost Budget shall be determined from Table 401.3.2a. The Design Energy Consumption may be based on an assumed adjusted lighting power for future lighting improvements.

520.2 The assumption about future lighting power used to calculate the Design Energy Consumption must be documented so that the future installed lighting systems may be in compliance with these standards. Documentation must be provided to enable future lighting systems to use either the Prescriptive method or the Systems Performance method of subsection 401.3

520.3 Documentation for future lighting systems that use subsection 401.3 shall be stated as a maximum adjusted lighting power for the tenant spaces. The adjusted lighting power allowance for tenant spaces shall account for the lighting power provided for the common areas of the building.

520.4 Documentation for future lighting systems that use subsection 401.3 shall be stated as a required lighting adjustment. The required lighting adjustment is the whole building lighting power assumed in order to calculate the Design Energy Consumption minus the ILPA value from Table 401.3.2c that was used to calculate the Energy Cost Budget. When the required lighting adjustment is less than zero, a complete lighting design must be developed for one or more representative tenant spaces, demonstrating acceptable lighting within the limits of the assumed lighting power allowance.

520.5. HVAC Systems and Equipment. If the HVAC system is not completely specified in the plans, the Design Energy Consumption shall be based on reasonable assumptions about the construction of future HVAC systems and equipment. These assumptions shall be documented so that future HVAC systems and equipment may be in compliance with these standards.

§ 434.521 The Simulation Tool.

521.1 Annual energy consumption shall be simulated with a multi-zone, 8760 hours per year building energy model. The model shall account for:

521.1.1 The dynamic heat transfer of the building envelope such as solar and internal gains;

521.1.2 Equipment efficiencies as a function of load and climate;

521.1.3 Lighting and HVAC system controls and distribution systems by simulating the whole building;

521.1.4 The operating schedule of the building including night setback during various times of the year; and

521.1.5 Energy consumption information at a level necessary to determine the Energy Cost Budget and Design Energy Cost through the appropriate utility rate schedules.

521.1.6 While the simulation tool should simulate an entire year on an hour by hour basis (8760 hours), programs that approximate this dynamic analysis procedure and provide equivalent results are acceptable.

521.1.7 Simulation tools shall be selected for their ability to simulate accurately the relevant features of the building in question, as shown in the tool's documentation. For example, a single-zone model shall not be used to simulate a large, multi-zone building, and a steady-state model such as the degree-day method shall not be used to simulate buildings when equipment efficiency or performance is significantly affected by the dynamic patterns of weather, solar radiation, and occupancy. Relevant energy-related features shall be addressed by a model such as daylighting, atriums or sunspaces, night ventilation or thermal storage, chilled water storage or heat recovery, active or passive solar systems, zoning and controls of heating and cooling systems, and ground-coupled buildings. In addition, models shall be capable of translating the Design Energy Consumption into energy

cost using actual utility rate schedules with the coincidental electrical demand of a building. Examples of public domain models capable of handling such complex building systems and energy cost translations available in the United States are DOE—2.1C and BLAST 3.0 and in Canada, Energy Systems Analysis Series.

521.1.8 All simulation tools shall use scientifically justifiable documented techniques and procedures for modeling building loads, systems, and equipment. The algorithms used in the program shall have been verified by comparison with experimental measurements, loads, systems, and equipment.

Subpart F—Building Energy Compliance Alternative

§ 434.601 General.

601.1 This subpart provides an alternative path for compliance with the standards that allow for greater flexibility in the design of energy efficient buildings using an annual energy use method. This path provides an opportunity for the use of innovative designs, materials, and equipment such as daylighting, passive solar heating, and heat recovery, that may not be adequately evaluated by methods found in subpart D of this part.

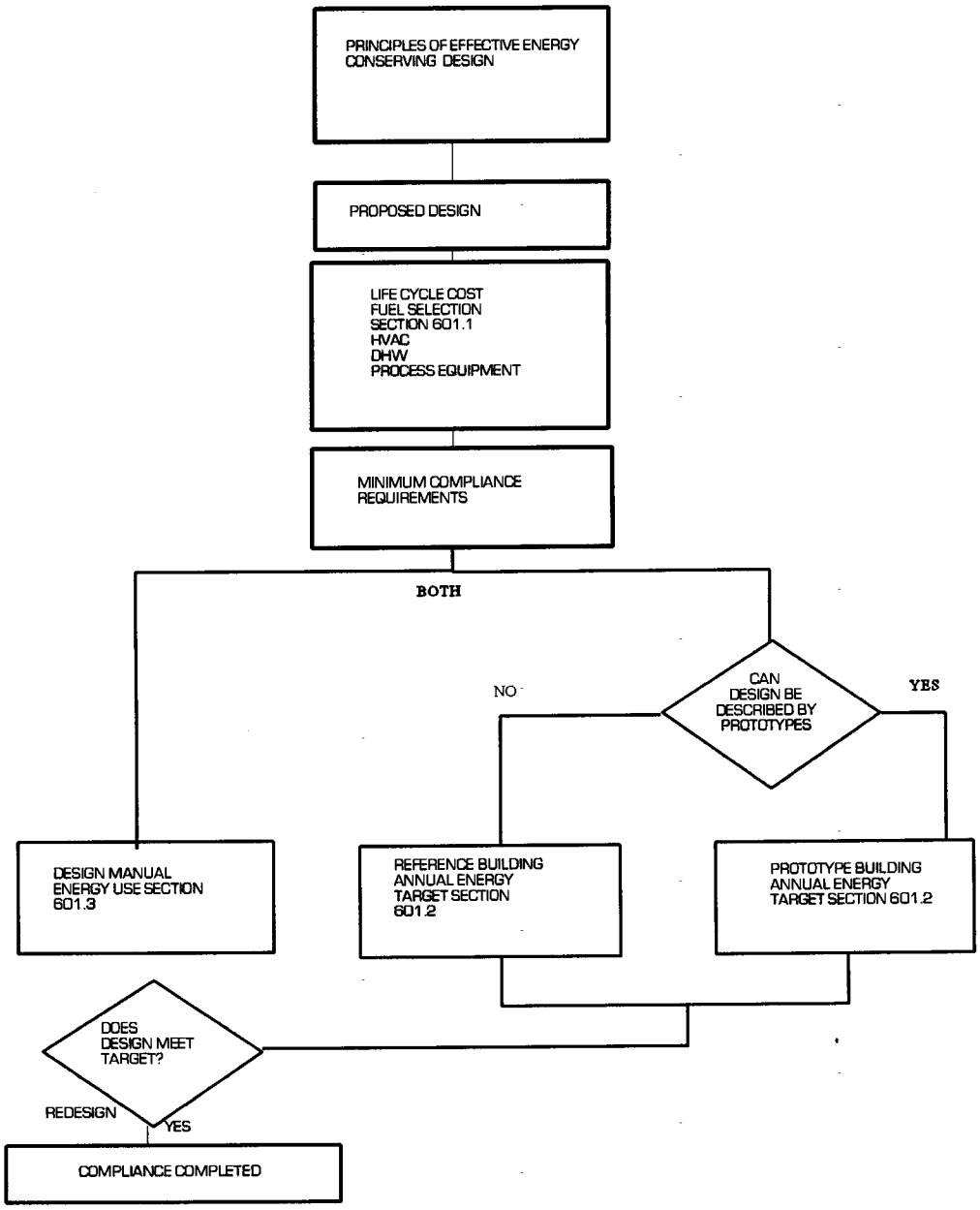
601.2 The Building Energy Compliance Alternative shall be used with Subpart C and Subpart D, 401.1, 401.2, 401.3.4 and in conjunction with the minimum requirements found in subsections 402.1, 402.2, and 402.3., 403.1, 403.2.1–7, 403.9 and 404.

601.3 Compliance under this section is demonstrated by showing that the calculated annual energy usage for the Proposed Design is less than or equal to a calculated Energy Use Budget. (See Figure 601.3, Building Energy Compliance Alternative). The analytical procedures in this subpart are only for determining design compliance, and are not to be used either to predict, document or verify annual energy consumption.

BILLING CODE 6450–01–P

Figure 601.3

Building Energy Compliance Alternative



BILLING CODE 6450–01–C

601.4 Compliance under the Building Energy Use Budget method requires a detailed energy analysis, using a conventional simulation tool, of the Proposed Design. A life cycle cost analysis shall be used to select the fuel source for the HVAC systems, service hot water, and process loads from available alternatives. The Annual Energy Consumption of the Proposed Design with the life cycle cost-effective fuel selection is calculated to determine the modeled energy consumption, called the Design Energy Use.

601.5 The Design Energy Use is defined as the energy that is consumed within the five foot line of a proposed building per ft^2 over a 24-hour day, 365-day year period and specified operating hours. The calculated Design Energy Use is then compared to a calculated Energy Use Budget.

601.6 Compliance. The Energy Use Budget is determined by calculating the annual energy usage for a Reference or Prototype Building that is configured to comply with the provisions of Subpart E for such buildings, except that the fuel source(s) of the Prototype or Reference Building shall be the same life cycle cost-effective source(s) selected for the Proposed Design. If the Design Energy Use is less than or equal to the Energy Use Budget then the proposed design complies with these standards.

601.7 This section provides instructions for determining the Design Energy Use and for calculating the Energy Use Budget. The Energy Use Budget is the highest allowable calculated annual energy consumption for a specified building design. Designers are encouraged to design buildings whose Design Energy Use is lower than the Energy Use Budget.

§ 434.602 Determination of the annual energy budget.

602.1 The Energy Use Budget shall be calculated for the appropriate Prototype or Reference Building in accordance with the procedures prescribed in subsection 502 with the following exceptions: The Energy Use Budget shall be stated in units of Btu/ft^2/yr and the simulation tool shall segregate the calculated energy consumption by fuel type producing an Energy Use Budget for each fuel (the fuel selections having been made by a life cycle cost analysis in determining the proposed design).

601.2 The Energy Use Budget (EUB) is calculated similarly for the Reference or Prototype Building using the following equation:

Equation 601.2

$$EUB=EUB_1xf_1+EUB_2xf_2+EUB_ixf_i$$

Where EUB_1, EUB_2, EUB_i are the calculated annual energy targets for each fuel used in the Reference or Prototype building and f_1, f_2, * * * f_i are the energy conversion factors given in Table 602.2, Fuel Conversion Factors for Computing Design Annual Energy Uses. In lieu of case by case calculation of the Energy Use Budget, the designer may construct Energy Use Budget tables for the combinations of energy source(s) that may be considered in a set of project designs, such as electric heating, electric service water, and gas cooling or oil heating, gas service water and electric cooling. The values in such optional Energy Use Budget tables shall be equal to or less than the corresponding Energy Use Budgets calculated on a case by case basis according to this section. Energy Use Budget tables shall be constructed to correspond to the climatic regions and building types in accordance with provisions for Prototype or Reference Building models in Subpart E of these standards.

TABLE 602.2.—FUEL CONVERSION FACTORS FOR COMPUTING DESIGN ANNUAL ENERGY USES

FUELS	CONVERSION FACTOR
Electricity	3412 Btu/kilowatt hour.
Fuel Oil	138,700 Btu/gallon.
Natural Gas	1,031,000 Btu/1000 ft^2.
Liquified Petroleum (including Propane and Butane)	95,500 Btu/gallon.
Anthracite Coal	28,300,000 Btu/short ton.
Bituminous Coal	24,580,000 Btu/short ton.
Purchased Steam and Steam from Central Plants	1,000 Btu/Pound.
High Temperature or Medium Temperature Water from Central Plants	Use the heat value based on the water actually delivered at the building five foot line

NOTE:
At specific locations where the energy source Btu content varies significantly from the value presented above then the local fuel value may be used provided there is supporting documentation from the fuel source supplier stating this actual fuel energy value and verifying that this value will remain consistent for the foreseeable future. The fuel content for fuels not given above shall be determined from the best available source.

§ 434.603 Determination of the design energy use

603.1 The Design Energy Use shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Use Budget, but with the design features that will be used in the final building design. The simulation tool used shall segregate the calculated energy consumption by fuel type giving an annual Design Energy Use for each fuel. The sum of the Design Energy Uses multiplied by the fuel conversion factors in Table 602.2 yields the Design Energy Use for the proposed design:

Equation 603.1

$$DEU=DEU_1xf_1+DEU_2xf_2+....+DEU_i\ xf_i$$

Where f_1, f_2, . . . f_i are the fuel conversion factors in Table 602.2.

603.2 Required Life Cycle Cost Analysis for Fuel Selection

603.2.1 Fuel sources selected for the Proposed Design and Prototype or Reference buildings shall be determined by considering the energy cost and other costs and cost savings that occur during the expected economic life of the alternative.

603.2.2 The designer shall use the procedures set forth in Subpart A of 10 CFR Part 436 to make this determination. The fuel selection life cycle cost analysis shall include the following steps:

603.2.2.1 Determine the feasible alternatives for energy sources of the Proposed Design's HVAC systems, service hot water, and process loads.

603.2.2.2 Model the Proposed Design including the alternative HVAC and service water systems and conduct an annual energy analysis for each fuel source alternative using the simulation tool specified in this section. The annual energy analysis shall be computed on a monthly basis in conformance with Subpart E with the exception that all process loads shall be

included in the calculation. Separate the output of the analysis by fuel type.

603.2.2.3 Determine the unit price of each fuel using information from the utility or other reliable local source. During rapid changes in fuel prices it is recommended that an average fuel price for the previous twelve months be used in lieu of the current price. Calculate the annual energy cost of each energy source alternative in accordance with procedures in subpart E of this part for the Design Energy Cost. Estimate the initial cost of the HVAC and service water systems and other initial costs such as energy distribution lines and service connection fees associated with each fuel source alternative. Estimate other costs and benefits for each alternative including, but not necessarily limited to, annual maintenance and repair, periodic and one time major repairs and replacements and salvage of the energy and service water systems. Cost estimates shall be prepared using professionally recognized cost estimating tools, guides and techniques.

603.2.2.4 Perform a life cycle cost analysis using the procedure specified in subsection 603.2.

603.2.2.5 Compare the total life cycle cost of each energy source alternative. The alternative with the lowest total life cycle cost shall be chosen as the energy source for the proposed design.

§ 434.604 Compliance.

604.1 Compliance with this section is demonstrated if the Design Energy Use is equal to or less than the Energy Use Budget.

DEU < EUB

Equation 604

604.2 The energy consumption shall be measured at the building five foot line for all fuels. Energy consumed from non-depletable energy sources and heat recovery systems shall not be included in the Design Energy Use calculations. The thermal efficiency of fixtures, equipment, systems or plants in the proposed design shall be simulated by the selected calculation tool.

§ 434.605 Standard calculation procedure.

605.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Use Budgets for Prototype and Reference Buildings and the Design Energy Use for the Proposed Design. In order to maintain consistency between the Energy Use Budgets and the Design Energy Use, the input assumptions stated in subsection 510.2 are to be used.

605.2 The terms Energy Cost Budget and Design Energy Cost or Design Energy Consumption used in Subpart E of this part correlate to Energy Use Budget and Design Energy Use, respectively, in this Subpart F.

§ 434.606 The simulation tool.

606.1 The criteria established in subsection 521 for the selection of a simulation tool shall be followed when using the compliance path prescribed in this subpart F.

§ 434.607 Life cycle cost analysis.

607.1 The following life cycle cost criteria applies to the fuel selection requirements of this subpart and to option life cycle cost analyses performed to evaluate energy conservation design alternatives. The fuel source(s) selection shall be made in accordance with the requirements of subpart A of 10 CFR part 436. When performing optional life cycle cost analyses of energy conservation opportunities the designer may use the life cycle cost procedures of subpart A of 10 CFR part 436 or OMB Circular 1–94 or an equivalent procedure that meets the assumptions listed below:

607.1.1 The economic life of the Prototype Building and Proposed Design shall be 25 years. Anticipated replacements or renovations of energy related features and systems in the Prototype or Reference Building and Proposed Design during this period shall be included in their respective life cycle cost calculations.

607.1.2 The designer shall follow established professional cost estimating practices when determining the costs and benefits associated with the energy related features of the Prototype or Reference Building and Proposed Design.

607.1.3 All costs shall be expressed in current dollars. General inflation shall be disregarded. Differential escalation of prices (prices estimated to rise faster or slower than general inflation) for energy used in the life cycle cost calculations shall be those in effect at the time of the latest ''Annual Energy Outlook'' (DOE/EIA–0383) as published by the Department of Energy's Energy Information Administration.

607.1.4 The economic effects of taxes, depreciation and other factors not consistent with the practices of subpart A of 10 CFR part 436 shall not be included in the life cycle cost calculation.

Subpart G - Reference Standards

§ 434.701 Reference standards.

701.1 General. The standards, technical handbooks, papers, regulations, and portions thereof, that are referred to in the sections and subsections in the following list are hereby incorporated by reference into this part 434. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. A notice of any change in these materials will be published in the Federal Register. The standards incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., suite 700, Washington, DC. The following standards are incorporated by reference in this part:

Ref. No.	Standard Designation	Section
RS–1	ASHRAE/IES 90.1–89, Energy Efficient Design of New Buildings Except New Low-Rise Residential Buildings, and Addenda 90.1b, 90.1c, 90.1d, 90.1e, 90.1g, and 90.1i, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Atlanta, GA 30329.	301.1
RS–2*	ANSI/ASHRAE 55–92, Thermal Environmental Conditions for Human Occupancy, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Atlanta, GA 30329	
RS–3*	NEMA MG1–1993, ''Motors and Generators,'' Revision No. 1, December 7, 1993, National Electrical Manufacturers Association, Washington, DC 20037.	401.1
RS–4	ASHRAE, Handbook, 1989 Fundamentals Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA 30329.	301.1 402.1.1 402.1.2.4
RS–5	ASTM C177–85, Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus, ASTM, Philadelphia, PA 19103.	402.1.1 402.1.2.1 402.1.2.2

Ref. No.	Standard Designation	Section
RS–6	ASTM C518–85, Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, ASTM, Philadelphia, PA 19103.	402.1.1 402.1.2.1 Table 402.1.2.2 Table 403.2.9.2
RS–7	ASTM C236–80, Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box, ASTM, Philadelphia, PA 19103.	402.1.1 402.1.2.1 402.1.2.2
RS–8	ASTM C976–82, Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box, ASTM, Philadelphia, PA 19103.	402.1.1 402.1.2.1 402.1.2.2
RS–9	Johannesson, Gudni, ''Thermal Bridges in Sheet Metal Construction,'' Studies in Building Physics, Division of Building Technology, Lund Institute of Technology, Lund, Sweden, Report TVAHB–3007, 1981 (see also FEDERAL REGISTER, Volume 54, No. 18, January 30, 1989, 10 CFR Part 434).	402.1.2.3
RS–10*	ASTM E283–89, Test Method for Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors, ASTM, Philadelphia, PA 19103.	402.2 402.2.1
RS–11*	ANSI/AAMA 101–88, Aluminum Prime Windows and Sliding Glass Doors, American Architectural Manufacturers Association, Des Plaines, IL 60018.	402.2.1
RS–12*	ASTM D4099–89, Specifications for Poly (Vinyl Chloride) (PVC) Prime Windows, ASTM, Philadelphia, PA 19103.	402.2.1
RS–13*	ANSI/NWWDA I.S.2–93, Wood Window Units, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), Des Plaines, IL 60018.	402.2.1
RS–14*	ANSI/NWWDA I.S.3–87, Wood Sliding Patio Doors, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), Des Plaines, IL 60018, 1987.	402.2.2.1
RS–15*	ARI Standard 210/240–89, Unitary Air-Conditioning and Air-Source Heat Pump Equipment, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1989. (Addendum 90.1i).	403.1
RS–16	ARI Standard 360–86, Commercial and Industrial Unitary Air-Conditioning Equipment, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1986.	403.1
RS–17	ARI Standard 340–86, Commercial and Industrial Unitary Heat Pump Equipment, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1986.	403.1
RS–18*	ARI 310–90, Packaged Terminal Air-Conditioners, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1990 (Addendum 90.1i)..	403.1.
RS–19*	ARI Standard, 380–90, Packaged Terminal Heat Pumps, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1990. (Addendum 90.1i).	403.1
RS–20	Code of Federal Regulations, 10 CFR, Part 430, Appendix N, Uniform Test Method for Measuring the Energy Consumption of Furnaces (49 FR 12159, March 28, 1984, as amended at 54 FR 6076, February 7, 1989; 64 FR 11320, March 17, 1989), January 1, 1991, U.S. Department of Energy, U.S. Government Printing Office, Washington, DC 20402. (Addendum 90.1b).	403.1
RS–21	ANSI Z21.47–90, Gas-Fired Central Furnaces (Except Direct Vent and Separated Combustion System Furnaces); Addenda Z21.47 A–1985, Addenda Z21.47B–1986, American Gas Association, Cleveland, OH 44131, 1990. (Addendum 90.1b).	403.1
RS–22*	U.L. 727–90, Oil-Fired Central Furnaces, Underwriters Laboratories, Northbrook, IL 60062, 1990. (Addendum 90.1b).	403.1
RS–23	ANSI Z83.9–90, Gas-Fired Duct Furnaces, American Gas Association, Cleveland, OH 44131, 1990. (Addendum 90.1b).	403.1
RS–24	ANSI Z83.8–90, Gas Unit Heaters; Addenda Z83.8A–1986, American Gas Association, Cleveland, OH 44131, 1990. (Addendum 90.1b).	403.1
RS–25	U.L. 731–88, Oil-Fired Unit Heaters (R–1985), Underwriters Laboratories, Northbrook, IL 60062, 1988. (Addendum 90.1b).	403.1
RS–26	CTI Standard—201(86), Certification Standard for Commercial Water Cooling Towers, Cooling Tower Institute, P.O. Box 73383, Houston, TX 77273, 1986.	403.1
RS–27	ARI Standard 320–86, Water-Source Heat Pumps, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1986.	403.1
RS–28	ARI Standard 325–85, Ground Water-Source Heat Pumps, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1985.	403.1
RS–29	ARI Standard 365–87, Commercial and Industrial Unitary Air-Conditioning Condensing Units, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1987.	403.1
RS–30*	ARI Standard 550–90, Centrifugal or Rotary Water-Chilling Packages, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1990.	403.1
RS–31	ARI Standard 590–86, Reciprocating Water-Chilling Packages, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209, 1986.	403.1
RS–32	ANSI Z21.13–87, Gas-Fired Low-Pressure Steam and Hot Water Boilers, Addenda Z21.13A–1983, American Gas Association, Cleveland, OH 44131, 1987. (Addendum 90.1b).	403.1
RS–33	ANSI/U.L., 726–90, Oil-Fired Boiler Assemblies (R–1986), Underwriters Laboratories, Northbrook, IL 60062, 1990. (Addendum 90.1b).	403.1
RS–34	HVAC Duct Construction Standards—Metal and Flexible, 1st Ed., Sheet Metal and Air-Conditioning Contractors Assoc., Vienna, VA 22180, 1985.	403.2.9.3
RS–35	HVAC Duct Leakage Test Manual, 1st Ed., Sheet Metal and Air-Conditioning Contractors Assoc., Vienna, VA 22180, 1985.	403.2.9.3 403.1
RS–36	Fibrous Glass Duct Construction Standard, 5th Ed., Sheet Metal and Air-Conditioning Contractors Assoc., Vienna, VA 22180, 1979.	403.2.9.3
RS–37	Code of Federal Regulations 10 CFR, Part 430, Subpart B, Appendix E, Uniform Test Method for Measuring the Energy Consumption of Water Heaters (55 FR 42619, October 17, 1990), U.S. Government Printing Office, Washington, D.C. 20402.	Table 404.1
RS–38	ANSI Z21.56–89, Gas Fired Pool Heaters, American Gas Association, Cleveland, OH 44131, 1989	Table 404.1

Ref. No.	Standard Designation	Section
RS–39	ANSI Z21.10.3–1990, Gas Water Heaters, Volume III, Storage with Input Ratings above 75,000 Btu's per Hour, Circulating and Instantaneous Water Heaters, American Gas Association, Cleveland, OH 44131, 1990.	404.1 404.1.1
RS–40	ANSI/AHAM RAC–1–1982, Room Air Conditioners, Association of Home Appliance Manufacturers, Chicago, IL 60606, 1982.	403.1
RS–41	ASHRAE Standard 62–1989, Ventilation for Acceptable Indoor Air Quality, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Atlanta, GA 30329, 1989.	403.2.4
RS–42	ANSI Z21.66–1988, Automatic Vent Damper Devices for Use with Gas-Fired Appliances, 1988	404.1
RS–43	NEMA MG 10–1983 (R 1988), Energy Management Guide for Selection and Use of Polyphase Motors, National Electric Manufacturers Association, Washington, DC, 20037.	
RS–44	NEMA MG 11–1977 (R 1982, 1987), Energy Management Guide for Selection and Use of Single-Phase Motors, National Electrical Manufacturers Association, Washington, DC 20037.	
RS–45	ARI Standard 330–93, Ground-Source Closed Loop Heat Pumps, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209.	403.1
RS–46	ARI Standard 560–92, Absorption Water Chilling and Water Heating Packages, Air-Conditioning and Refrigeration Institute, Arlington, VA 22209.	403.1
RS–47	ASHRAE, Handbook, 1991 Applications Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA 30329..	
RS–48	ASHRAE, Handbook, 1993 Fundamentals Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Atlanta, GA 30329.	
RS–49	Codified Version of ASHRAE Standard 90.1–1989, Energy Code for Commercial and High Rise Residential Buildings, including addenda b, c, d, e, g, and i	

Example Alternate Component Package Tables

The example Alternate Component Package tables illustrate the requirements of subsections 301.1, 402.3.1., 402.3.2, 402.4.1.1 and 402.4.1.2. Copies of specific tables contained in this example can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, Buildings Division, EE–432, Office of Codes and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–0517.

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Part III

Environmental Protection Agency

40 CFR Parts 51 and 85

I/M Program Requirement—On-Board Diagnostic Checks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 85

[FRL–5543–7]

RIN 2060–AE19

I/M Program Requirement—On-Board Diagnostic Checks

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the motor vehicle Inspection/Maintenance (I/M) Program Requirements. This rule establishes the minimum requirements for inspecting vehicles equipped with on-board diagnostic systems as part of the inspections required in basic and enhanced Inspection/Maintenance programs. Inspection/Maintenance programs are an important part of EPA's overall program to decrease the emissions of harmful pollutants from motor vehicles and bring all areas in the United States into attainment with the goals of the Clean Air Act.

EFFECTIVE DATE: This regulation is effective October 7, 1996. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of October 7, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket No. A–94–21. The docket is located at the Air Docket, (LE–131) Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW, Washington, DC, 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. Electronic copies of the preamble and the regulatory text of this rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS) and the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW/.

FOR FURTHER INFORMATION CONTACT: Leila Cook, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 741–7820.

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I. Regulated Entities

Entities potentially regulated by this action are those that are required to implement Inspection/Maintenance programs. Regulated categories and entities include:

Category	Examples of regulated entities
State and Local Government.	State and local governments required to implement I/M programs by the Clean Air Act.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your state or local government is regulated by this action, you should examine the applicability criteria in § 51.350 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Summary of Rule

Motor vehicle inspection and maintenance (I/M) programs are an integral part of the effort to reduce mobile source air pollution. The Clean Air Act as amended in 1990, 42 U.S.C. 7401, *et seq.* (hereinafter ''the Act''), was prescriptive with respect to certain aspects of the I/M program design. In particular, section 202(m)(3) of the Act directs EPA to require on-board diagnostic (OBD) system checks as a component of I/M programs. In addition, section 182(a)(2)(B)(ii) of the Act requires that states revise their I/M programs within two years after promulgation of regulations under section 202(m)(3) to meet the requirements of those regulations.

With this action, EPA is establishing requirements for the inspection of on-board diagnostic systems as part of I/M programs. This action amends those sections of the Inspection/Maintenance Program Requirements in subpart S, 40 CFR part 51 (November 5, 1992) that were reserved for OBD requirements, and elsewhere as needed. This action adds to sections of subpart S pertaining to data collection and analysis as well as implementation deadlines. This action also adds to appendix B of subpart S pertaining to test procedures. Finally, this action adds to subpart W of 40 CFR part 85 pertaining to test procedures, test equipment, and standards for failure for purposes of the emission control system performance warranty.

Today's action establishes the test procedures and requirements for the on-board diagnostic (OBD) computer test portion of the I/M test. OBD testing of all 1996 and newer model year vehicles will be required in all I/M programs (basic and enhanced) beginning January 1, 1998 except that areas in the Northeast Ozone Transport Region (OTR) eligible to implement an OTR low enhanced I/M program must begin OBD testing by January 1, 1999. Failure of the OBD test will not result in mandatory repair until January 1, 2000. During this two year test-only period, EPA in cooperation with states and motor vehicle manufacturers hopes to gather data on the effectiveness of OBD.

III. Authority

Authority for these actions is granted to EPA by sections 182(a)(2)(B)(ii), 182(c)(3), 202(m)(3), 207(b), and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7511a(a)(2)(B)(ii), 7511a(c)(3), 7521(m)(3), 7541(b), and 7601(a).

IV. Public Participation

A. Two-Year Data Collection Period

1. Summary of Proposal

The proposal required that all vehicles subject to an I/M test requirement undergo an OBD test beginning January 1, 1998. The proposal also stated that any vehicle which failed the OBD portion of the I/M test would fail the I/M test as of January 1, 1998. One of the possible reasons for failing the OBD test would be if all the vehicle's readiness codes were not cleared when it arrived at the test station. The readiness code status provides an indication of whether or not

a specific monitor has been exercised. A code is set when the monitor has not yet had a sufficient chance to make an accurate evaluation of the component's operation. The readiness code is cleared when an accurate determination has been made, thus indicating I/M readiness.

2. Summary of Comments

On September 26, 1995, several vehicle manufacturers met with EPA to discuss the OBD rule. At this meeting and again in written comments, manufacturers expressed the concern that vehicles would be rejected from testing because all the OBD readiness codes for the vehicle would not be cleared when the vehicle arrived at the test station. In particular, the manufacturers were concerned that extreme cold weather or high altitude might prevent certain readiness codes from clearing. Since that time, three manufacturers have notified EPA that there were problems with the design of the OBD readiness codes in a portion of the 1996 model year fleet and that it was likely that all of the codes would not be cleared when these vehicles arrived at the test station even though the vehicle was functioning normally. Some commenters also noted that OBD system checks should be incorporated in a manner that encourages public support and acceptance of OBD systems, especially during the early stages of implementation when technology for OBD systems is still relatively new. To deal with these issues, stakeholders suggested that a data collection period on the OBD system would be prudent. This would give EPA, the states, and the manufacturers time to assess the effectiveness of the OBD tests, identify any problems, and implement refinements.

3. Response to Comments

EPA agrees with commenters that because the OBD technology is new, a period of study is warranted. Therefore, although this action makes OBD testing mandatory for most I/M programs as of January 1, 1998, for the first two years of the program, until December 31, 1999, vehicles that fail the OBD test will not automatically fail the I/M test or be required to obtain repairs. From January 1, 1998 to December 31, 1999, vehicles that fail the OBD test can still pass the I/M test provided they undergo and pass the tail-pipe emission test, and, where applicable, the evaporative system tests. This will give EPA, the states, and vehicle manufacturers two years to collect data on OBD test results and the interaction between OBD test failures and exhaust and evaporative test results. This test period should allow for the resolution of any vehicle software problems to ensure that vehicle owners will not be turned away from the test center solely because of the way in which their vehicle's readiness codes were programmed. In addition, this two-year period will allow time to correct any other unforeseen problems that may arise with readiness and diagnostic trouble codes or any other element of OBD testing. By providing this test-only period, EPA hopes to identify and solve potential problems so that consumers will face the least amount of inconvenience possible.

EPA does not believe there will be any lost emission reductions as a result of this two-year data collection period because most vehicles will still have to undergo tailpipe emission and, where applicable, evaporative tests. Furthermore, since OBD testing is only required on 1996 and newer vehicles, these vehicles will still be new and ''clean'' in 1998 and 1999. Because of this, EPA expects that very few of these vehicles will fail the I/M test.

EPA considered providing more detailed guidance on what the vehicle operator should be told (beginning in 2000) in the event their vehicle is rejected from testing because all of its readiness codes are not cleared. The proposed language of § 85.2223(a)(3) stated that the operator should be told to return after driving the vehicle ''long enough'' to allow the readiness codes to clear. Because time is not the only condition which will affect readiness code status, EPA changed this language (now in § 85.2222(c)) to provide that the operator be told to return after driving the vehicle under the conditions necessary for it to provide an accurate readiness determination.

At this time, EPA does not feel it is appropriate to specify in the regulation what the vehicle operator should be told and instead believes it is best left to the states to devise a solution that meets local program needs. As a result of the general language in this portion of the regulation, it is imperative that I/M inspectors obtain education about OBD so they can assess each individual operator's situation and provide advice on what should be done to ensure that the vehicle is ready when it returns to the test station. By way of example, EPA is including the following scenarios. First, evaporative system leak detection monitors generally require ambient temperatures above 40 degrees Fahrenheit, and an overnight soak or extended period of non-operation, prior to exercising the monitor. In a situation where the evaporative system readiness code is not cleared, an operator should be told to return after starting their vehicle in warmer ambient temperature conditions with a near full tank of gasoline. Second, continued low-speed operation could provide little opportunity for exercising the exhaust gas recirculation (EGR) monitor. In a situation where the EGR readiness code has not cleared, an operator should be told to return after driving at higher speeds on the highway so that EGR would occur and the EGR monitor could be exercised.

B. Verifying Codes at Test Station

1. Summary of Proposal

Under the proposal any vehicle whose malfunction indicator light (MIL) is commanded to be illuminated and who has certain diagnostic trouble codes (DTCs) present fails the OBD test.

2. Summary of Comments

One commenter urged EPA to establish a procedure to determine at the test center if a DTC could be false.

3. Response to Comments

Currently, the technology is not available to determine if a DTC is false at the test center. EPA believes that the two-year test period discussed above in section V.A will allow for development and refinement of OBD systems so that false failures will be less likely.

C. Consumer Acceptance

1. Summary of Proposal

The proposal required that all vehicles that are subject to I/M testing undergo the OBD test and the exhaust and evaporative test if applicable. If a vehicle fails any one of the three tests, it fails the I/M test and must have whatever repairs are necessary (up to the monetary waiver limit) to pass a retest.

2. Summary of Comments

One commenter noted that the general public might resist having emission repairs that are necessary to pass the OBD test if the tailpipe emission test determines that the vehicle is ''clean.''

3. Response to Comments

Section 202(m)(3) of the Clean Air Act requires OBD testing as a component of all I/M programs. This commenter's concern illustrates the need for consumer education and awareness of the importance of OBD systems and OBD testing. The possibility exists that a vehicle will pass the tailpipe emission test (i.e., testing ''clean'') and still fail the OBD check. This result is not inconsistent with the proper operation of the OBD system. A failure of the OBD

check, coupled with a passing of the tailpipe emissions test, may be an indication of an emission related problem not apparent during the tailpipe emission test. For example, an engine misfire condition that exists only at high speeds may cause a significant emission increase during high speed operation, not to mention posing a serious threat to the catalyst. But, if such high speed operation is not part of the emission test cycle, the vehicle would appear ''clean.'' EPA believes that the two year test-only period discussed in section V.A will allow consumers to become familiar with and hopefully understand the importance of OBD technology. This data gathering period will also allow EPA and the states time to gather information on what percentages of vehicles will fail the OBD test but pass the tailpipe emission test.

D. State Requirement for Exhaust and Evaporative Tests

1. Summary of Proposal

In the proposal, EPA stated that all 1996 and later model year vehicles in I/M programs (basic and enhanced) would have to undergo the OBD test as well as the applicable exhaust and evaporative test.

2. Summary of Comments

Two commenters suggested that EPA allow states to not require the exhaust and evaporative tests for vehicles that pass the OBD test. The commenters felt that these exceptions were warranted because of the perceived accuracy of OBD systems and because it would make I/M tests more convenient for consumers by decreasing the overall test time for those vehicles that pass the OBD test.

3. Response to Comments

At this time, EPA does not believe that there is sufficient data on the efficacy of OBD systems to warrant the omission of the exhaust and emission tests for all vehicles that pass the OBD test. However, EPA does believe that for vehicles two years old and newer, it is not necessary to perform exhaust and evaporative tests since failure rates are almost zero for these vehicles. Thus, if a two-year-old or newer vehicle is subject to a state's I/M program and passes the OBD test, EPA recommends that the state not require the exhaust and evaporative test for this vehicle. This will have no impact on emission reduction credits for the program. EPA agrees with commenters that not conducting the exhaust and evaporative tests on two year-old and newer vehicles that pass the OBD test will increase consumer awareness and confidence in OBD systems, while decreasing test times and wait times overall. This advice is consistent with EPA's past advice that states not test vehicles until they are two or three years old (see 57 FR 52950, 52957). EPA believes this is advisable because virtually all of these vehicles pass the emission and evaporative tests.

EPA is reluctant to recommend not giving evaporative and tailpipe emission tests to vehicles that pass the OBD test to vehicles beyond two years old without additional information about OBD effectiveness at malfunction identification. EPA has consistently stated the hope that OBD checks will eventually become a substitute for more traditional I/M tests in the future. The two-year OBD data collection period discussed in section V.A will give states and EPA time to collect data on the effectiveness of OBD at identifying some emission problems. Because OBD is only required in 1996 and later model year vehicles, EPA believes that this timeframe, while adequate to solve any problems with the OBD test, will not be sufficient to assess the effectiveness of the OBD system in identifying the wide range of failures that occur as vehicles age. As sufficient aging of the fleet occurs, EPA will reevaluate the adequacy of OBD as a substitute for more traditional I/M test procedures.

In addition, due to the new flexibility allowed states in the types of I/M programs they implement, there will be a variety of different testing programs emerging. EPA needs time to evaluate the different exhaust and evaporative tests states will use to determine if each type of test is more or less effective than an OBD test. Thus, in the future, whether or not passage of the OBD test should influence whether a state chooses to conduct an exhaust and evaporative test may depend on the type of exhaust and evaporative tests that are conducted.

For these reasons, EPA is not comfortable recommending that states omit the traditional exhaust and evaporative test requirements for vehicles over two-years-old that pass the OBD test.

E. Test Report

1. Summary of Proposal

In the notice of proposed rulemaking, EPA proposed that any fault codes that were retrieved during the OBD test be printed on the I/M test report.

2. Summary of Comments

Commenters suggested that EPA adopt the SAE J2012 nomenclature as the standardized test report language that states would be required to use. Commenters also recommended that fault code information only appear on the test report if the vehicle fails the exhaust or evaporative portions of the I/M test. These were the same commenters that recommended that vehicles should only fail I/M if they fail the exhaust or evaporative test. Lastly, commenters suggested that a disclaimer be included on the test report which warned owners of failed vehicles that multiple or unrelated fault codes could be caused by temporary emission problems which on subsequent evaluations could prove to be fine.

3. Response to Comments

EPA agrees with commenters that standardized test report language would make it easier for the repair industry to diagnose the reason for the fault. For this reason, today's action adopts the SAE J2012 nomenclature as the standard test report language. Moreover, to decrease consumer confusion, today's action only requires printing fault codes on the test report when the vehicle fails the OBD test. For the test-only period of 1998 and 1999, OBD test information will appear on the test report whenever the vehicle ''fails'' the OBD test, even though failure of the OBD test will not cause failure of the I/M.test. EPA is requiring this because it is important that consumers be aware that their vehicle may be experiencing a problem despite the tailpipe emission test results. While EPA did not adopt the exact disclaimer language suggested by commenters, it is requiring similar language be printed on the test report in the event of failure of the OBD test (see 40 CFR 85.2223(c)). EPA believes this language provides the type of information suggested by the commenters. EPA also believes that this standardized language will help educate consumers on the operation of OBD and the fact that professional diagnosis is necessary to determine the source of the failure.

F. Unconfirmed Codes

1. Summary of Proposal

The proposal did not specify which modes should be examined during the OBD test.

2. Summary of Comments

Commenters suggested specific language which they felt should be added to the final rule to clarify that fault codes stored in modes #5, #6, and

#7 (which store recent test results for various monitors), in accordance with SAE J1979, are not confirmed and therefore should not be considered for OBD test purposes.

3. Response to comments

EPA did not intend fault codes stored in pending or unconfirmed modes (i.e., the codes stored on modes #5, #6, and #7) to be a basis for an OBD test failure. EPA also did not intend to retrieve information from modes #2 and #4 which do not store information which is relevant to I/M testing. To clarify this point, this action explicitly requires that after retrieving the number of stored codes from mode #1, only fault codes in mode #3 (which contains the actual stored trouble codes) be considered for OBD test purposes. Limiting code retrieval to mode #3 ensures retrieval of those trouble codes verified as accurate by the OBD system. Because of this change, EPA believes that the exact language proposed by the commenters is no longer necessary and did not include it in this action.

G. Bi-Directional Communication

1. Summary of Proposal

The proposal required that OBD test equipment be capable of bi-directional communication to allow for non-intrusive purge and pressure tests.

2. Summary of Comments

EPA received comments that the bi-directional communication requirement be limited to Mode #8 for activation of the canister vent solenoid. This would allow the I/M lane personnel to close the evaporative purge solenoid in order to allow pressurization of the evaporative system via the evaporative service port or other means. The commenter noted that other bi-direction communication with the OBD system is for service, and not I/M inspection, purposes.

3. Response to Comments

Because EPA is not sure whether all OBD scan tools will include built-in safeguards, EPA is limiting bi-directional communication to Mode #8 for the evaporative system solenoid in order to prevent I/M inspectors from sending unintentional commands to the vehicle. Providing for this one area of bi-directional communication will permit the inspector to close the evaporative system prior to the I/M pressure test being conducted. By limiting bi-directional communication, today's action precludes the possibility that the inspector will accidentally activate an engine control actuator and cause a problem during the test.

H. Monitoring Engine Speed

1. Summary of Issue

Although monitoring engine speed (RPM) was not directly addressed by the OBD proposal, commenters felt that this action would be an appropriate place to require the use of OBD connectors on 1996 and newer model years to access the RPM signal during I/M testing. Currently, I/M testing stations use a variety of external measurement techniques to determine RPM. Commenters noted that whenever possible an OBD connector should be used for RPM monitoring because the OBD connector is far more consistent and accurate than external RPM monitoring devices.

2. EPA Response

EPA agrees with commenters that because the OBD connector is the most accurate method of measuring RPM it should be used to measure RPM in all possible instances. Therefore, this action revises the test procedures in part 51, subpart S, appendix B and part 85, subpart W to require the use of the standardized OBD connector to access the RPM signal whenever RPM monitoring is required on 1996 and newer model year vehicles. While OBD is the preferred method of measuring RPM (for vehicles with OBD systems), alternative measures can be used in the event the OBD system fails to provide the RPM information. EPA does not believe further notice and comment is necessary on this issue because this revision rose out of the issues addressed in the proposal, it was supported in the comments, and because EPA is allowing alternative measures of RPM in the event an OBD reading is unavailable.

After the close of the comment period a stakeholder contacted EPA to inquire whether the OBD system's failure to provide an RPM signal would result in the failure of the OBD test. The regulations contained in today's action do not list RPM failure as a basis for OBD test failure because RPM information is used for traditional tailpipe emission purposes and is not a necessary part of the OBD test.

I. Test Order

1. Summary of Proposal

EPA requested comments in the proposal regarding whether an OBD check could be conducted during the I/M exhaust test.

2. Summary of Comments

Commenters noted that they did not foresee any adverse effects from conducting the OBD and exhaust tests simultaneously but that only field experience would tell for certain.

3. Response to Comments

As there are no foreseen adverse consequences of conducting the exhaust and OBD test simultaneously, this action leaves it up to the state to determine whether they want to conduct the tests separately or simultaneously.

J. Key On-Engine Running vs. Key On-Engine Off

1. Summary of Proposal

The proposed action would have allowed the OBD test to be performed with the vehicle in either the key on-engine running (KOER) or the key on-engine off (KOEO) position.

2. Summary of Comments

Commenters felt that the OBD test should only be conducted in the KOER mode to avoid possible problems from the initial OBD self-check on engine start.

3. Response to Comments

EPA agrees with commenters that in an effort to avoid issues regarding the OBD self-check on engine start, the OBD test should only perform when the key is in the KOER position. Therefore, this action requires that the vehicle be in the KOER position during the OBD test.

K. Warranty Coverage for OBD System

1. Summary of Issue

One commenter noted that the proposal failed to specify how the OBD systems are to be classified for warranty purposes.

2. EPA Response

The OBD test is a Clean Air Act Section 207(b) warranty short test. The short test performance warranty covers vehicles only up to the 2 year, 24,000 mile emission performance warranty period described in 40 CFR 85.2103, except that nonconformities that result from the failure of the OBD computer or from the failure of certain emission components that are monitored by the OBD system, i.e., the catalyst or the ECU, are covered during the period of the 8 year, 80,000 mile defect warranty.

L. Fuel Economy Monitor

1. Summary of Issue

One commenter believed that EPA should require automobile manufacturers to install a fuel economy monitor in addition to the malfunction indicator light (MIL) on the dashboard of all vehicles. This monitor would tell the driver how many miles to the gallon

the vehicle is currently obtaining. The commenter felt that this fuel efficiency monitor would provide motorists with an immediate incentive to repair emission related malfunctions (when the MIL light illuminated) because they could see how it was affecting their fuel economy.

2. EPA Response

While EPA appreciated the ingenuity of this proposal, this is not something that can be addressed in this action. In addition, it is not clear that EPA has the authority to require such an indicator.

M. OBD Emission Credits

1. Summary of Proposal

In the proposal, EPA explained that states would not receive additional emission reduction credits relative to the I/M performance standard for implementing OBD inspections because the OBD test was already included as an element of the performance standard and a specifically required component of the program in the original I/M rule (57 FR 52950, November 5, 1992). Nonetheless, the proposal noted that while OBD inspections do not generate additional emission reduction credits, they may actually generate benefits. EPA estimated the magnitude of these benefits in the original OBD rule (58 FR 9482–9483). Benefits were not expected in the early years of OBD programs because fewer vehicles would have OBD systems and such vehicles would be newer ''clean'' vehicles. In the proposal, EPA noted that it would be assessing the contribution of OBD inspections once OBD testing begins and will take such assessment into account in later modeling.

2. Summary of Comments

One comment addressed this issue. This commenter felt that EPA should give additional emission reduction credits for OBD inspections beginning in 1998. The commenter urged EPA to conduct research on the effectiveness of OBD at identifying ''dirty'' cars that emission tests do not identify so that EPA can develop credits in the future.

3. Response to Comments

At this time, EPA does not believe that additional credits are warranted for OBD inspections for the reasons given in the proposal. However, EPA does plan to evaluate the data it receives from states to quantify any additional emission reduction benefits from OBD.

V. Economic Costs and Benefits

Code inspections will not add significantly to the time or cost for an inspection due to the rapid connection and data transfer capabilities which have been developed by industry and are required by EPA's OBD rule. Each I/M lane will need to purchase the equipment necessary for OBD interrogation. However, this equipment is relatively inexpensive and these costs may be distributed over thousands of tests. For enhanced I/M programs, the capital and maintenance costs associated with conducting OBD tests have been calculated to be $0.05 per test. The OBD cost for basic centralized I/M programs is only $0.025 per test due to the higher volume of cars that can be inspected in these lanes. The total cost of incorporating OBD inspections into enhanced and basic centralized programs nationwide has been calculated to be about $1.7 million.

Assuming that 1200 tests will be conducted with every scan tool, the incorporation of OBD inspections into test-and-repair programs has been calculated to be about $2 million. Thus, the total cost of incorporating OBD inspections into all I/M programs is $3.7 million.

In addition to improving the identification of high emitting vehicles in an I/M program, OBD systems will also be of great utility in the repair of vehicles which fail the inspection, including the exhaust emission test. OBD will speed identification of the responsible component, and help avoid trial and error replacement of components.

VI. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866, 58 FR 51,735 (October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Any impacts associated with these requirements do not exceed the impacts that were dealt with in the I/M requirements published in the Federal Register on November 5, 1992 (57 FR 52950). This regulation is not expected to be controversial. This regulation does not raise any of the issues associated with ''significant regulatory actions.'' It does not create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. The total cost of incorporating OBD inspections into all I/M programs nationwide has been calculated to be less than $4 million. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues. Accordingly, it is appropriate to consider this a ''non-significant'' or ''minor'' rule action and it should be exempt from OMB review.

B. Reporting and Recordkeeping Requirement

This rule only marginally increases the existing burden through the addition of requirements to electronically capture and store one additional data element (existing diagnostic trouble codes) and to provide EPA with 13 additional summary statistics based on this information. The existing collection expired on February 28, 1996 (OMB No. 2060–0252). This additional burden will not be imposed until after the Information Collection Request has been renewed. When the current Information Collection Request is renewed, any modifications necessary to incorporate OBD inspection data collection will be made. These few additional elements will not add a measurable amount to the existing estimated burden of 85 hours.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Flexibility. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special

districts, with a population of less than 50,000.'' This certification is based on the fact that the I/M areas impacted by this rulemaking do not meet the definition of a small government jurisdiction, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''

D. Unfunded Mandates Act

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 where the estimated costs to state, local or tribal governments, or to the private sector, will be $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective 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 impacted by the rule.

To the extent that the rules being promulgated by this action would impose any mandate as defined in section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

E. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures 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 the 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

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 85

Confidential business information, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: July 22, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 51 and 85 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.351 is amended by adding text to paragraph (c) to read as follows:

§ 51.351 Enhanced I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* The performance standard shall include inspection of all 1996 and newer light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems pursuant to 40 CFR 86.094–17, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

* * * * *

3. Section 51.352 is amended by revising paragraph (c) to read as follows:

§ 51.352 Basic I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* The performance standard shall include inspection of all 1996 and newer light-duty vehicles and light-duty trucks equipped with certified OBD systems pursuant to 40 CFR 86.094–17, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

* * * * *

4. Section 51.357 is amended by adding text to paragraphs (a)(12) and (b)(4) to read as follows:

§ 51.357 Test procedures and standards.

* * * * *

(a) * * *

(12) *On-board diagnostic checks.* Inspection of the on-board diagnostic system shall be according to the procedure described in 40 CFR 85.2222, at a minimum.

* * * * *

(b) * * *

(4) *On-board diagnostics test standards.* Vehicles shall fail the on-board diagnostic test if they fail to meet the requirements of 40 CFR 85.2207, at a minimum. Failure of the on-board diagnostic test need not result in failure of the vehicle inspection/maintenance test until January 1, 2000.

* * * * *

5. Section 51.358 is amended by adding text to paragraph (b)(4) to read as follows:

§ 51.358 Test equipment.

* * * * *

(b) * * *

(4) *On-board diagnostic test equipment requirements.* The test equipment used to perform on-board diagnostic inspections shall function as specified in 40 CFR 85.2231.

* * * * *

6. Section 51.365 is amended by adding paragraph (a)(25); by removing the word ''and'' at the end of paragraph (a)(23); and by removing the period at the end of paragraph (a)(24) and adding in its place ''; and'' to read as follows:

§ 51.365 Data collection.

* * * * *

(a) * * *

(25) Results of the on-board diagnostic check expressed as a pass or fail along with the diagnostic trouble codes revealed.

* * * * *

7. Section 51.366 is amended by adding paragraph (a)(2)(xi) through (a)(2)(xxiii); by removing the word ''and'' at the end of paragraph (a)(2)(ix) to read as follows:

§ 51.366 Data analysis and reporting.

* * * * *

(a) * * *

(2) * * *

(xi) Passing the on-board diagnostic check and failing the I/M emission test;

(xii) Failing the on-board diagnostic check and passing the I/M emission test;

(xiii) Passing both the on-board diagnostic check and I/M emission test;

(xiv) Failing both the on-board diagnostic check and I/M emission test;

(xv) Passing the on-board diagnostic check and failing the I/M evaporative test;

(xvi) Failing the on-board diagnostic check and passing the I/M evaporative test;

(xvii) Passing both the on-board diagnostic check and I/M evaporative test;

(xviii) Failing both the on-board diagnostic check and I/M evaporative test;

(xix) MIL is commanded on and no codes are stored;

(xx) MIL is not commanded on and codes are stored;

(xxi) MIL is commanded on and codes are stored;

(xxii) MIL is not commanded on and codes are not stored;

(xxiii) Readiness status indicates that the evaluation is not complete for any module supported by on-board diagnostic systems;

* * * * *

8. Section 51.372 is amended by revising paragraph (b)(3) to read as follows:

§ 51. 372 State implementation plan submissions.

* * * * *

(b) * * *

(3) States shall revise SIPS as EPA develops further regulations. Revisions to incorporate on-board diagnostic checks in the I/M program shall be submitted by August 6, 1996.

* * * * *

9. Section 51.373 is amended by adding paragraph (g) to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(g) Areas qualifying for the Ozone Transport Region (OTR) low-enhanced performance standard shall implement on-board diagnostic checks by January 1, 1999. In all other areas, on-board diagnostic checks shall be implemented as part of the I/M program by January 1, 1998.

10. Appendix B to subpart S of part 51 is amended by revising paragraphs (I)(b)(2)(ii), (II)(b)(2)(ii), (III)(b)(2)(iv), (IV)(b)(2)(ii), (V)(b)(2)(iv) and (VI)(b)(2)(ii) to read as follows:

APPENDIX B TO SUBPART S—TEST PROCEDURES

(I) * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

(II) * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

(III) * * *

(b) * * *

(2) * * *

(iv) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

(IV) * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

(V) * * *

(b) * * *

(2) * * *

(iv) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

(VI) * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor rpm. In the event that an OBD data link connector is not available or that an rpm signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

11. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—[Amended]

12. A new § 85.2207 is added to read as follows:

§ 85.2207 On-board diagnostics test standards.

(a) Beginning January 1, 2000, failure of the on-board diagnostic test shall be a basis for failure of the I/M test. Prior to January 1, 2000 failure of the on-board diagnostic test may be a basis for failure of the I/M test.

(b) A vehicle shall fail the on-board diagnostics test if it is a 1996 or newer vehicle and the vehicle connector is missing, has been tampered with, or is otherwise inoperable.

(c) A vehicle shall fail the on-board diagnostics test if the malfunction indicator light is commanded to be illuminated and it is not visually illuminated according to visual inspection.

(d) A vehicle shall fail the on-board diagnostics test if the malfunction indicator light is commanded to be illuminated and any of the following OBD codes, as defined by SAE J2012 are present (where X refers to any digit). The procedure shall be done in accordance with SAE J2012 Diagnostic Trouble Code Definitions, (MAR92). This incorporation of reference was approved by the Director of the Federal Register in accordance with 5 U.S.C.552(a) and 1 CFR part 51. Copies of SAE J2012 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at the EPA Docket No. A–94–21 at EPA's Air Docket, (LE–131) Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Any PX1XX Fuel and Air Metering codes.

(2) Any PX2XX Fuel and Air Metering codes.

(3) Any PX3XX Ignition System or Misfire codes.

(4) Any PX4XX Auxiliary Emission Controls codes.

(5) P0500 Vehicle Speed Sensor Malfunction.

(6) P0501 Vehicle Speed Sensor Range/Malfunction.

(7) P0502 Vehicle Speed Sensor Circuit Low Input.

(8) P0503 Vehicle Speed Sensor Intermittent/Erratic/High.
(9) P0505 Idle Control System Malfunction.
(10) P0506 Idle Control System RPM Lower Than Expected.
(11) P0507 Idle Control System RPM Higher Than Expected.
(12) P0510 Closed Throttle Position Switch Malfunction.
(13) P0550 Power Steering Pressure Sensor Circuit Malfunction.
(14) P0551 Power Steering Pressure Sensor Circuit Malfunction.
(15) P0552 Power Steering Pressure Sensor Circuit Low Input.
(16) P0553 Power Steering Pressure Sensor Circuit Intermittent.
(17) P0554 Power Steering Pressure Sensor Circuit Intermittent.
(18) P0560 System Voltage Malfunction.
(19) P0561 System Voltage Unstable.
(20) P0562 System Voltage Low.
(21) P0563 System Voltage High.
(22) Any PX6XX Computer and Output Circuits codes.
(23) P0703 Brake Switch Input Malfunction.
(24) P0705 Transmission Range Sensor Circuit Malfunction (PRNDL Input).
(25) P0706 Transmission Range Sensor Circuit Range/Performance.
(26) P0707 Transmission Range Sensor Circuit Low Input.
(27) P0708 Transmission Range Sensor Circuit High Input.
(28) P0709 Transmission Range Sensor Circuit Intermittent.
(29) P0719 Torque Converter/Brake Switch ''B'' Circuit Low.
(30) P0720 Output Speed Sensor Circuit Malfunction.
(31) P0721 Output Speed Sensor Circuit Range/Performance.
(32) P0722 Output Speed Sensor Circuit No Signal.
(33) P0723 Output Speed Sensor Circuit Intermittent.
(34) P0724 Torque Converter/Brake Switch ''B'' Circuit High.
(35) P0725 Engine Speed Input Circuit Malfunction.
(36) P0726 Engine Speed Input Circuit Range/Performance.
(37) P0727 Engine Speed Input Circuit No Signal.
(38) P0728 Engine Speed Input Circuit Intermittent.
(39) P0740 Torque Converter Clutch System Malfunction.
(40) P0741 Torque Converter System Performance or Stuck Off.
(41) P0742 Torque Converter Clutch System Stuck On.
(42) P0743 Torque Converter Clutch System Electrical.
(43) P0744 Torque Converter Clutch Circuit Intermittent.

(e) The list of codes shall be updated with future revisions of this section, in conjunction with changes to 40 CFR 86.094–17(h)(3).

13. Section 85.2213 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 85.2213 Idle test—EPA 91.

* * * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

14. Section 85.2215 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 85.2215 Two speed idle test—EPA 91.

* * * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

15. Section 85.2218 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 85.2218 Preconditioned idle test—EPA 91.

* * * * *

(b) * * *.

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

16. Section 85.2220 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 85.2220 Preconditioned two speed idle test—EPA 91.

* * * * *

(b) * * *

(2) * * *

(ii) For all pre-1996 model year vehicles, a tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions. For 1996 and newer model year vehicles the OBD data link connector will be used to monitor RPM. In the event that an OBD data link connector is not available or that an RPM signal is not available over the data link connector, a tachometer shall be used instead.

* * * * *

17. A new § 85.2222 is added to read as follows:

§ 85.2222 On-board diagnostic test procedures.

The test sequence for the inspection of on-board diagnostic systems on 1996 and newer light-duty vehicles and light-duty trucks shall consist of the following steps:

(a) The on-board diagnostic inspection shall be conducted with key-on/engine-running (KOER).

(b) The inspector shall locate the vehicle connector and plug the test system into the connector.

(c) The test system shall send a Mode $01, PID $01 request in accordance with SAE J1979 to determine the evaluation status of the vehicle's on-board diagnostic system. The test system shall determine what monitors are supported by the on-board diagnostic system, and the readiness evaluation for applicable monitors in accordance with SAE J1979. The procedure shall be done in accordance with SAE J1979 ''E/E Diagnostic Test Modes,'' (DEC91). This incorporation of reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of SAE J1979 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at the EPA Docket No. A–94–21 at EPA's Air Docket, (LE-131) Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Beginning January 1, 2000, if the readiness evaluation indicates that any on-board tests are not complete the customer shall be instructed to return after the vehicle has been run under conditions that allow completion of all applicable on-board tests. If the readiness evaluation again indicates that any on-board test is not complete the vehicle shall be failed.

(d) The test system shall evaluate the malfunction indicator light status bit and record status information in the vehicle test record.

(1) If the malfunction indicator status bit indicates that the malfunction indicator light has been commanded to be illuminated the test system shall send a Mode $03 request to determine the stored emission related power train trouble codes. The system shall repeat this cycle until the number of codes reported equals the number expected based on the Mode 1 response. If any of the codes listed in § 85.2207(d) are present they shall be recorded in the vehicle test record and the vehicle shall fail the on-board diagnostic inspection.

(2) If the malfunction indicator light bit is not commanded to be illuminated the vehicle shall pass the on-board diagnostic inspection, even if codes listed at § 85.2207(d) are present.

(3) If the malfunction indicator light bit is commanded to be illuminated, the inspector shall visually inspect the malfunction indicator light to determine if it is illuminated. If the malfunction indicator light is commanded to be illuminated but is not, the vehicle shall fail the on-board diagnostic inspection.

18. A new § 85.2223 is added to read as follows:

§ 85.2223 On-board diagnostic test report.

(a) Motorists whose vehicles fail the on-board diagnostic test described in § 85.2222 shall be provided with the on-board diagnostic test results, including the codes retrieved (as listed in paragraph (b) of this section), the status of the MIL illumination command, and the customer alert statement (as stated in paragraph (c) of this section).

(b) If any of the following codes are retrieved the corresponding component shall be listed on the test report in the following way:

Code	Component
PX1XX	Fuel and Air Metering.
PX2XX	Fuel and Air Metering.
PX3XX	Ignition System or Misfire.
PX4XX	Auxiliary Emission Controls.
P0500	Vehicle Speed Sensor.
P0501	Vehicle Speed Sensor.
P0502	Vehicle Speed Sensor.
P0503	Vehicle Speed Sensor.
P0505	Idle Control System.
P0506	Idle Control System.
P0507	Idle Control System.
P0510	Closed Throttle Position Switch.
P0550	Power Steering Pressure Sensor Circuit.
P0551	Power Steering Pressure Sensor Circuit.
P0552	Power Steering Pressure Sensor Circuit.
P0553	Power Steering Pressure Sensor Circuit.
P0554	Power Steering Pressure Sensor Circuit.
P0560	System Voltage.
P0561	System Voltage.
P0562	System Voltage.
P0563	System Voltage.
PX6XX	Computer and Output Circuits.
P0703	Brake Switch.
P0705	Transmission Range Sensor Circuit.
P0706	Transmission Range Sensor Circuit.
P0707	Transmission Range Sensor Circuit.
P0708	Transmission Range Sensor Circuit.
P0709	Transmission Range Sensor Circuit.
P0719	Torque Converter/Brake Switch.
P0720	Output Speed Sensor.
P0721	Output Speed Sensor.
P0722	Output Speed Sensor.
P0723	Output Speed Sensor.
P0724	Torque Converter/Brake Switch.
P0725	Engine Speed Input Circuit.
P0726	Engine Speed Input Circuit.
P0727	Engine Speed Input Circuit.
P0728	Engine Speed Input Circuit.
P0740	Torque Converter Clutch System.
P0741	Torque Converter System.
P0742	Torque Converter Clutch System.
P0743	Torque Converter Clutch System.
P0744	Torque Converter Clutch System.

(c) In addition to any codes which were retrieved, the test report shall include the following language:

Your vehicle's computerized self-diagnostic system (OBD) registered the fault(s) listed below. This fault(s) is probably an indication of a malfunction of an emission component. However, multiple and/or seemingly unrelated faults may be an indication of an emission-related problem that occurred previously but upon further evaluation by the OBD system was determined to be only temporary. Therefore, proper diagnosis by a qualified technician is required to positively identify the source of any emission-related problem.

19. A new § 85.2231 is added to read as follows:

§ 85.2231 On-board diagnostic test equipment requirements.

(a) The test system interface to the vehicle shall include a plug that conforms to SAE J1962 ''Diagnostic Connector.'' The procedure shall be done in accordance with SAE J1962 ''Diagnostic Connector'' (JUN92). This incorporation of reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. Copies of SAE J1962 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at the EPA Docket No. A–94–21 at EPA's Air Docket, (LE–131) Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The test system shall be capable of communicating via the J1962 connector with a vehicle certified as complying with the on-board diagnostic requirements of 40 CFR 86.094–17.

(c) The test system shall be capable of checking for the monitors supported by the on-board diagnostic system and the evaluation status of supported monitors (test complete/test not complete) in Mode $01 PID $01, as well as be able to request the diagnostic trouble codes, as specified in SAE J1979. In addition, the system shall have the capability to include bi-directional communication for control of the evaporative canister vent solenoid. SAE J1979 is incorporated by reference and approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of all the SAE documents cited above may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at the EPA Docket No. A–94–21 at EPA's Air Docket, (LE–131) Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) The test system shall automatically make a pass, fail, or reject decision, as specified in the test procedure in § 85.2222.

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This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 497/P.L. 104–169

National Gambling Impact Study Commission Act (Aug. 3, 1996; 110 Stat. 1482)

H.R. 1627/P.L. 104–170

Food Quality Protection Act of 1996 (Aug. 3, 1996; 110 Stat. 1489)

H.R. 3161/P.L. 104–171

To authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania. (Aug. 3, 1996; 110 Stat. 1539)

Last List August 1, 1996