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Federal Register

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WASHINGTON, DC

WHEN: January 28, 1997 at 9:00 am

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Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 61, No. 247
Monday, December 23, 1996

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH54

Prevailing Rate Systems; Redefinition of Anchorage, AK, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the Anchorage, AK, nonappropriated fund (NAF) Federal Wage System (FWS) wage area for pay-setting purposes.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On July 12, 1996, OPM published an interim rule redefining the Anchorage, AK, FWS NAF wage area to add the Valdez-Cordova census area (a new NAF employment site) as an area of application, to delete 10 area of application census divisions that no longer have NAF employees, and to make other updates to reflect changes in the names and boundaries of certain Alaska boroughs and census areas made since the Anchorage, Alaska, NAF wage area was last defined. The interim rule provide a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on July 12, 1996, (61 FR 36609), is adopted as final without changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–32502 Filed 12–20–96; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 532

RIN 3206–AH41

Prevailing Rate Systems; Redefinition of Oneida, NY, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Oneida, NY, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and to establish a new Jefferson, NY, NAF wage area with a survey area consisting of Jefferson County—currently an unsurveyed county in the Oneida wage area. The Oneida wage area is presently composed of one survey area county (Oneida) and nine area of application counties (Albany, Clinton, Jefferson, Onondaga, Ontario, Schenectady, Saratoga, Seneca, and Steuben). After this change, a new wage area, Jefferson, NY, will include seven of these counties, with Jefferson designated as the survey area and Albany, Oneida, Onondaga, Ontario, Schenectady, and Steuben designated as areas of application. Clinton, Saratoga, and Seneca, which have no FWS employees, will be deleted.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On June 4, 1996, OPM published an interim rule to abolish the Oneida, NY, wage area and to establish a new Jefferson, NY, NAF wage area with a survey area consisting of Jefferson County—currently an unsurveyed county in the Oneida wage area. The Oneida wage area is presently composed of one survey area county (Oneida) and nine area of application counties (Albany, Clinton, Jefferson, Onondaga, Ontario, Schenectady, Saratoga, Seneca, and Steuben).

The new wage area, Jefferson, NY, will include seven of these counties, with Jefferson designated as the survey area and Albany, Oneida, Onondaga, Ontario, Schenectady, and Steuben designated as areas of application. Clinton, Saratoga, and Seneca, which have no FWS employees, will be deleted. The interim rule provided a 30-day public comment period. No comments were received. Therefore, the rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on June 4, 1996 (61 FR 27995), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–32503 Filed 12–20–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

Dairy Grading and Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to OMB control numbers currently contained in the Code of Federal Regulations (CFR). The regulations relate to information reporting requirements for dairy plants

approved for USDA inspection and grading service.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Duane Spomer (202) 720–9382.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the CFR, the regulations contain errors which may proved to be misleading and are in need of clarification.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 58 is corrected by making the following correcting amendments.

PART 58—[AMENDED]

1. The authority citation for Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 58.100 the table is revised to read a follows:

§ 58.100 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

7 CFR section where requirements are described	Current OMB control No.
58.139	0581–0110
58.148	0581–0110
58.441	0581–0110

Dated: December 16, 1996.

Silvio Capponi,

Acting Director, Dairy Division.

[FR Doc. 96–32513 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 770, and 774

[Docket No. 961216357–6357–01]

RIN 0694–AB54

Revisions to the Export Administration Regulations: Computer Revisions

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 25, 1996, the Bureau of Export Administration (BXA) published an interim rule (61 FR 12714) that restructured and reorganized the Export Administration Regulations (EAR). The interim rule clarified the language of the EAR and simplified the application and made the export control regulatory regime more user friendly. This rule amends the EAR by making certain revisions and clarifications and in some cases, inserts material inadvertently omitted from the March 25 interim rule for the export and reexport of computers as described in the Commerce Control List and described by License Exception CTP. Among other revisions, this rule provides that ''No License Required'' (NLR) is available for the export and reexport of digital computers (other than those controlled for MT reasons) with a CTP of 2,000 Mtops or less, except to embargoed or terrorist-supporting destinations.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 FR 42767), and notice of August 14, 1996 (61 FR 42527).

EFFECTIVE DATE: This rule is effective December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

Specifically, this rule revises the computer provisions of the EAR, consistent with the Presidential Directive of October 6, 1995, as follows:

1. By revising § 740.7(a), scope of License Exception CTP, to limit the scope of this License Exception to apply to digital computers controlled by a CTP parameter, specially designed components therefor and related equipment therefor.

2. By revising § 740.7(e)(2), restrictions, to apply only to digital computers and specially designed components therefor.

3. By revising § 770.2, to add an interpretation for computers, to clarify that:

a. Digital computers or computer systems classified under paragraphs (a), (b), or (c) of ECCN 4A003, that qualify for ''No License Required'' (NLR) must be evaluated on the basis of CTP alone, to the exclusion of all other technical parameters. Digital computers or computer systems classified under paragraphs (a), (b), or (c) of ECCN 4A003 that qualify for License Exception CTP must be evaluated on the basis of CTP, to the exclusion of all other technical parameters, except for parameters of Missile Technology concern, or for paragraph (e) of ECCN 4A003 (equipment performing analog-to-digital conversions exceeding the limits in paragraph (a.5.a) of ECCN 3A001); and

b. Related equipment classified under paragraphs (d), (e), (f), or (g) of ECCN 4A003 may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, License Exception CTP is available for the computer system including the related equipment.

4. In Export Control Classification Number (ECCN) 4A001, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to electronic computers with a CTP greater than 2,000 Mtops.

5. In Export Control Classification Number (ECCN) 4A002, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to hybrid computers with a CTP greater than 2,000 Mtops.

6. By revising Export Control Classification Number (ECCN) 4A003, as follows:

a. By creating a ''Note'' in the License Requirements section that specifies that ''No License Required'' (NLR) applies to the export or reexport of digital computers with a CTP between 260 and 2,000 Mtops, except to embargoed or terrorist-supporting destinations and computers controlled for MT reasons.

b. By revising the control language for national security controls to specify that NS Column 1 applies to paragraphs (b) and (c) and NS Column 2 applies to paragraphs (a), (d), (e), (f), and (g).

c. By revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to digital computers with a CTP greater than 2,000 Mtops.

d. By revising License Exception GBS to clarify that related equipment described in paragraphs (d), (e), (f), and (g) are eligible for License Exception GBS.

e. By revising License Exception CTP to clarify that this License Exception is available for computers controlled by paragraphs (a), (b), and (c), to the exclusion of other technical parameters, with the exception of the parameters specified as controlled for Missile Technology (MT) concerns or paragraph (e) (equipment performing analog-to-

digital conversions exceeding the limits of ECCN 3A001.a.5.a).

f. By revising License Exception CIV to clarify that related equipment described in paragraphs (d)(having a 3–D vector rate less than 10 M vectors/sec.), (e), (f), and (g) are eligible for License Exception CIV.

7. In Export Control Classification Number (ECCN) 4D001, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to software for computers with a CTP greater than 2,000 Mtops.

8. In Export Control Classification Number (ECCN) 4D002, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to software for computers with a CTP greater than 2,000 Mtops.

9. In Export Control Classification Number (ECCN) 4E001, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to technology for computers with a CTP greater than 2,000 Mtops.

Savings Clause

Shipments of items removed from eligibility for export or reexport under a particular General License or License Exception symbol or the designator NLR, as a result of this regulatory action, may continue to be exported under that designator until March 24, 1997.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, 0694–0097, and 0694–0013.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 740 and 744

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 770

Exports, Foreign Trade.

Accordingly, parts 740, 770, and 774, of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 740 and 770 continue to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

2. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

PART 740—[AMENDED]

3. Section 740.7 amended by

a. By revising paragraph (a);

b. By revising paragraph (b)(2);

c. By revising paragraph (c)(2);

d. By revising paragraph (d)(2); and

e. By revising paragraph (e), as follows:

§ 740.7 Computers (CTP).

(a) *Scope.* License Exception CTP authorizes exports and reexports of digital computers and specially designed components therefor, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. (Related equipment controlled under 4A003.d, .f, and .g is authorized under this License Exception, only when exported or reexported with these computers as part of a system.) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003.a, .b and .c, except for parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This License Exception does not authorize the export or reexport of graphic accelerators or coprocessors, or computers controlled for MT reasons.

(b) Computer Tier 1.

(1) * * *

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 1 destinations are those with a CTP greater than 2,000 Mtops.

(c) * * *

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 2 destinations are those having a Composite Theoretical Performance (CTP) greater than 2000, but equal to or less than 10,000 Millions of Theoretical Operations Per Second (Mtops).

(d) * * *

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 3 destinations are those having a Composite Theoretical Performance (CTP) greater than 2,000 Millions of Theoretical Operations Per Second (Mtops), but less than or equal to 7,000 Mtops.

* * * * *

(e) *Restrictions.* (1) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from

giving such nationals user-accessible programmability.

(2) Computers eligible for License Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6(a)(ii) of the EAR.

* * * * *

PART 770—[AMENDED]

4. Section 770.2 is amended by adding a new paragraph (l) to read as follows:

§ 770.2 Commodity interpretations.

* * * * *

(l) *Interpretation 12: Computers.* (1) Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c, that qualify for ''No License Required'' (NLR) must be evaluated on the basis of CTP alone, to the exclusion of all other technical parameters. Computers controlled in this entry for MT reasons are not eligible for License Exception CTP regardles of the CTP of the computer. Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c that qualify for License Exception CTP must be evaluated on the basis of CTP, to the exclusion of all other technical parameters, except for parameters of Missile Technology concern, or ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This License Exception does not authorize the export or reexport of computers controlled for MT purposes regardless of the CTP. Assemblies performing analog-to-digital conversions are evaluated under Category 3—Electronics, ECCN 3A001.a.5.a.

(2) Related equipment classified under ECCN 4A003.d, .e, .f, or .g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, NLR or License Exception CTP is available for the computer system and the related equipment, as appropriate.

PART 774—[AMENDED]

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the ''License Requirements'' section for ECCNs 4A001 and 4A002;

b. By revising the ''License Requirements'' and the ''License Exceptions'' sections for 4A003;

c. By revising the ''License Requirements'' section for ECCNs 4D001 and 4D002; and

d. By revising the ''License Requirements'' section for ECCN 4E001, as follows:

4A001 Electronic computers and related equipment, and ''electronic assemblies'' and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
MT applies to 4A001.a	MT Column 1.
AT applies to entire entry	AT Column 1.

NP applies to electronic computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to electronic computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

* * * * *

4A002 ''Hybrid computers'', and ''electronic assemblies'' and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
MT applies to hybrid computers combined with specially designed ''software'', for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems that are usable in systems controlled for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.

NP applies to hybrid computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to hybrid computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

* * * * *

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC. AT, NP, XP.

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, d, .e, .f, and .g.	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to digital computers for computerized fingerprint equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on computers with a CTP ≥ 6 but ≤ to 260 Mtops).	AT Column 1.

NP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, N.Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP between 260 and 2,000 Mtops., and for assemblies described in 4A003.c that are not capable of exceeding a CTP of 2,000 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Exceptions

LVS: $5000.

GBS: Yes, for 4A003.d, .e, .f, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: Yes, for 4A003.d (having a 3–D vector rate less than 10 M vectors/sec), .e, .f and .g.

* * * * *

4D001 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 4A001 to 4A004, 4A101, or ''software'' controlled by 4D001 to 4D003.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to ''software'' for equipment controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
MT applies to ''software'' for equipment controlled by 4A001 to 4A003 or 4A101 for MT reasons.	MT Column 1.
CC applies to ''software'' for equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.12 of the EAR for information on applicable licensing review policies.

* * * * *

4D002 ''Software'' specially designed or modified to support ''technology'' controlled by 4E001 or 4E002.

License Requirements

Reason for Control: NS, MT, AT, NP, XP.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''software'' for equipment controlled by 4A001 to 4A003 or 4A101 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.

NP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.12 of the EAR for information on applicable licensing review policies.

* * * * *

4E001 ''Technology'' according to the General Technology Note, for the ''development'', ''production'' or ''use'' of equipment controlled by 4A001 to 4A004, 4A101 or ''software'' controlled by 4D001 to 4D003.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to ''technology'' for equipment controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
MT applies to ''technology'' for equipment controlled by 4A001 to 4A003, 4A101 4D001 or 4D002 for MT reasons.	MT Column 1.
CC applies to ''technology'' for equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies to ''technology'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''technology'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.12 of the EAR for information on applicable licensing review policies.

* * * * *

Dated: December 18, 1996.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 96–32483 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0153]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims and Health Claims; Restaurant Foods; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of August 2, 1996 (61 FR 40320). The document amended the food labeling regulations to remove the provisions that exempt restaurant menus from the requirements for how nutrient content claims and health claims are to be made and from the requirements for the provision of nutrition information with respect to the nutrients that are the basis for the claim, when claims are made. The document was published with some errors. Among other things, FDA inadvertently neglected to remove the reference to restaurant menus from 21 CFR 101.13(b). This document corrects those errors.

EFFECTIVE DATE: May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

These corrections do not, in any way, alter the scope or intent of the August 2, 1996, final rule.

In FR Doc. No. 96–19645, appearing on page 40320 in the Federal Register of Friday, August 2, 1996, the following corrections are made:

1. On page 40321, in the first column, in the second full paragraph, in the third and fourth lines, ''§ 101.13(q)(5) (21 CFR 101.13(q)(5)) exempts'' is corrected to read ''§ 101.13(b) and (q)(5) (21 CFR 101.13(b) and (q)(5)) exempt''.

2. On page 40325, in the third column, in the first full paragraph, in line 12, after ''(2)'' the phrase ''from § 101.13(b), pertaining to nutrient content claims, the language that reads ''* * *, with the exception to such claims on restaurant menus, * * *'';'' is added, and in line 13 add ''(3)'' before the phrase ''from § 101.13(q)(5),''; and in line 16, ''(3)'' is removed and ''(4)'' is added in its place.

3. On page 40328, in the second column, in the 18th line from the bottom of the page, ''(b) and '' is added between ''101.13'' and ''(q)(5)''. In the third column, in the second full paragraph, the first sentence is corrected to read ''Thus, the deletion of the phrase '(except for menus)' that exempted menus from nutrient content claim requirements in §§ 101.10 and 101.13(q)(5) and the deletion of the phrase ',with the exception of such claims on restaurant menus,' in § 101.13(b) will be effective on May 2, 1997.''

4. On page 40331, in the first column, under the caption ''*Description*:'', in line 10, ''(b) and '' is added between ''101.13'' and ''(q)(5)''. On the same page, in the second column, in the first full paragraph, in line 25, ''(b) and '' is added between ''101.13'' and ''(q)(5)'', and in the same paragraph, the first 23 lines are removed. The paragraph now begins with ''Once it becomes effective''.

5. On page 40332, in the second column, amendatory item ''3.'' is corrected to read as follows:

3. Section 101.13 is amended by revising the introductory text of paragraphs (b) and (q)(5) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(b) A claim that expressly or implicitly characterizes the level of a nutrient (a nutrient content claim) of the type required in nutrition labeling under § 101.9 may not be made on the label or in labeling of foods unless the claim is made in accordance with this section and with the applicable regulations in subpart D of this part or in part 105 or part 107 of this chapter.

* * * * *

(q) * * *

(5) A nutrient content claim used on food that is served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments shall comply with the requirements of this section and the appropriate definition in subpart D of this part, except that:

* * * * *

Dated: December 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32428 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Bolus

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Research Laboratories. The NADA provides for use of an ivermectin-containing, sustained-release bolus in cattle for treatment and control for approximately 135 days of certain internal and external parasitic infections throughout the grazing season.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065–0914, filed NADA 140–988, which provides for the use of Ivomec® (1.72 grams ivermectin) Sustained-Release Bolus for Cattle for the treatment and control of certain gastrointestinal roundworm, lungworm, mange mite, sucking lice, cattle grub, and tick infections in cattle weighing at least 275 pounds (lb) (125 kilograms (kg)) but not more than 660 lb (300 kg) of body weight on the day of administration. The NADA is approved as of November 18, 1996, and the regulations are amended in 21 CFR part 520 by adding new § 520.1197 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning November 18, 1996, because the application contains substantial evidence of the effectiveness of the drug involved, studies of animal safety, or in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.1197 is added to read as follows:

§ 520.1197 Ivermectin sustained-release bolus.

(a) *Specifications.* Each sustained-release bolus contains 1.72 grams of ivermectin.

(b) *Sponsor.* See No. 000006 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.344 of this chapter.

(d) *Conditions of use in ruminating calves*—(1) *Amount.* Administer one bolus per calf weighing at least 275 pounds (lb) (125 kilograms (kg)) and not more than 660 lb (300 kg) on the day of administration.

(2) *Indications.* For treatment and control, throughout the grazing season (approximately 135 days), of gastrointestinal roundworms *Haemonchus placei, Ostertagia ostertagi* (including inhibited fourth-stage larvae), *Trichostrongylus axei, T. colubriformis, Cooperia* spp., *Nematodirus helvetianus, Bunostomum phlebotomum, Oesophagostomum radiatum;* lungworms *Dictyocaulus viviparus;* grubs *Hypoderma* spp.; sucking lice *Linognathus vituli, Solenopotes capillatus;* mange mites *Psoroptes ovis, Sarcoptes scabiei,* and ticks *Amblyomma americanum.*

(3) *Limitations.* The bolus was specifically designed for use in cattle; do not use in other animal species. Calves must be ruminating and older than 12 weeks of age. Do not administer to calves weighing less than 275 lb (125 kg). Do not administer a damaged bolus. Because a milk withdrawal time has not been established, do not use in female dairy cattle of breeding age. Do not slaughter cattle within 180 days of treatment. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: December 12, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32431 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer Animal Health. The supplemental NADA provides for revised tolerances for residues of oxytetracycline in edible tissues.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, is sponsor of NADA 113–232, which provides for the use of Liquamycin® LA–200® (oxytetracycline) sterile suspension for injection in beef cattle, beef calves, nonlactating dairy cattle, dairy calves, and swine for the indications for use as in 21 CFR 522.1662a.

The supplement provides for a change in the tolerance levels specified in § 556.500 (21 CFR 556.500) for oxytetracycline residues in edible tissues of cattle, beef calves, nonlactating dairy cattle, dairy calves, and swine. Review of the supplement involved a reevaluation of the data and information in the original approval using criteria in the ''Human Food Safety Guideline for Antimicrobial Drugs.'' The supplement is approved as of May 31, 1996, and the regulation in § 556.500 is revised to reflect the approval.

In evaluating this supplement, FDA's Center for Veterinary Medicine (CVM) considered the cumulative effects of all tetracyclines approved for use as new animal drugs because all tetracycline drugs have a similar end point of toxicological concern, i.e., an effect on the intestinal microflora. Based on the cumulative effect, the acceptable daily intake (ADI) was established for total tetracycline activity at 1.5 milligrams per person per day. Forty percent of that ADI is being assigned to edible tissues and 60 percent of the ADI is reserved for milk. Based on this evaluation, CVM has established the revised tolerance for residues of all tetracycline new animal drugs (including chlortetracycline, oxytetracycline, and tetracycline) to 2 parts per million (ppm) in muscle, 6 ppm in liver, and 12 ppm in fat and kidney. As such, § 556.500 has been amended to provide that for oxytetracycline, tolerances are established for the sum of residues of the tetracyclines including chlortetracycline, oxytetracycline, and tetracycline at 2 ppm in muscle, 6 ppm in liver, and 12 ppm in kidney and fat.

Although approval of Pfizer's supplement did not require submission of new safety or effectiveness data, a summary of data and information used to support approval of this supplement as described in 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii) may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Because the revised tolerance approved in this supplement for oxytetracycline is based on the total tetracycline activity, it, in effect, revises the tolerances for chlortetracycline and tetracycline. Therefore, FDA has also revised 21 CFR 556.150 (chlortetracycline) and 556.720 (tetracycline) to be consistent with the new tolerance for oxytetracycline based on the total tetracycline activity.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.150 is revised to read as follows:

§ 556.150 Chlortetracycline.

Tolerances are established for the sum of residues of the tetracyclines including chlortetracycline, oxytetracycline, and tetracycline, in tissues of beef cattle, nonlactating dairy cows, calves, swine, sheep, chickens, turkeys, and ducks, as follows:

(a) 2 parts per million (ppm) in muscle.

(b) 6 ppm in liver.

(c) 12 ppm in fat and kidney.

3. Section 556.500 is revised to read as follows:

§ 556.500 Oxytetracycline.

Tolerances are established for the sum of residues of the tetracyclines including chlortetracycline, oxytetracycline, and tetracycline, in tissues of cattle, beef calves, nonlactating dairy cattle, dairy calves, swine, sheep, chickens, turkeys, catfish, lobsters, and salmonids, as follows:

(a) 2 parts per million (ppm) in muscle.

(b) 6 ppm in liver.

(c) 12 ppm in fat and kidney.

4. Section 556.720 is revised to read as follows:

§ 556.720 Tetracycline.

Tolerances are established for the sum of residues of the tetracyclines including chlortetracycline, oxytetracycline, and tetracycline, in tissues of calves, swine, sheep, chickens, and turkeys, as follows:

(a) 2 parts per million (ppm) in muscle.

(b) 6 ppm in liver.

(c) 12 ppm in fat and kidney.

Dated: December 9, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32430 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 18, and 602

[TD 8696]

RIN 1545–AE94

Definitions Under Subchapter S of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations for S corporations and their shareholders relating to the definitions and the special rule provided in section 1377 of the Internal Revenue Code. The final regulations reflect changes to the law made by the Subchapter S Revision Act of 1982 and the Small Business Job Protection Act of 1996. These final regulations are necessary to provide guidance for taxpayers to comply with the law.

EFFECTIVE DATE: These regulations are effective January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Laura Howell, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1462. Responses to this collection of information are required to verify the event giving rise to the making of an election under section 1377(a)(2) by an S corporation.

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

The estimated annual burden per respondent varies from .2 hour to .5 hour, depending on individual circumstances, with an estimated average of .25 hour.

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

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

Background

On July 12, 1995, the IRS published in the Federal Register a notice of proposed rulemaking containing proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1377 of the Internal Revenue Code (Code). These amendments were proposed to conform the regulations to the addition of section 1377 to the Code by section 2 of the Subchapter S Revision Act of 1982, Public Law 97–354 (1982–2 C.B. 702, 710). Written comments responding to this notice were received. No public hearing was held because no hearing was requested. On August 20, 1996, the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755, was enacted. Sections 1306 and 1307 of the Small Business Job Protection Act of 1996 amended section 1377 of the Code. After consideration of all comments received, and the changes to section 1377 by the Small Business Job Protection Act of 1996, the proposed amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Days on Which Stock Has Not Been Issued

Section 1366(a)(1) requires a shareholder of an S corporation to take into account the shareholder's pro rata share of the corporation's items of income, loss, deduction, and credit. Section 1377(a) provides that, except in the case of an election under section 1377(a)(2), each shareholders's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of such item to each day of the taxable year, and then by dividing that portion pro rata among the shares outstanding on such day. The proposed regulations provide that solely for purposes of determining a shareholder's pro rata share of an item, an S corporation's taxable year does not include any day on which the corporation has no shareholders.

One commentator suggested that a person who beneficially owns the corporation should be treated as a shareholder of an S corporation for any day on which the corporation has assets and conducts business, but has not issued any stock. The final regulations revise the rule concerning no shareholder days and provide that, solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a), the beneficial owners of the corporation are treated as the shareholders of the corporation for any day on which the corporation has not issued any stock.

When a Post-Termination Transition Period Arises

The proposed regulations provide that a post-termination transition period (PTTP) arises following the termination under section 1362(d) of a corporation's S election. By example, the proposed regulations state that a PTTP arises when a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. Several commentators requested clarification concerning whether the example results in a termination under section 1362(d) of the corporation's election to be an S corporation or merely the cessation of the S corporation's taxable year. The final regulations clarify that, pursuant to the rule in section 1377(b)(1), a PTTP arises the day after the last day that an S corporation was in existence if a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies.

Changes to Section 1377 Made by the Small Business Job Protection Act of 1996

Agreement to Terminate Year

Section 1306 of the Small Business Job Protection Act of 1996 amended section 1377(a)(2) to provide that only the affected shareholders and the corporation must consent to an election to treat the corporation's taxable year as two taxable years in the event of a complete termination of a shareholder's interest in the corporation. In addition, the terminating election under section 1377(a)(2) applies only to the affected shareholders. H.R. Conf. Rep. No. 104–737, 104th Cong., 2d Sess. 222 (1986). The term *affected shareholders* is defined as the shareholder whose interest is terminated and all shareholders to whom the shareholder has transferred shares during the taxable year. If the shareholder has transferred shares to the corporation, *affected shareholders* include all persons who are shareholders during the taxable year. The final regulations reflect these changes made to section 1377(a)(2) by the Small Business Job Protection Act of 1996.

Expansion of Post-Termination Transition Period

Section 1307(a) of the Small Business Job Protection Act of 1996 expands the definition of PTTP under section 1377(b)(1) to include the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer that follows the termination of the S corporation's election and that adjusts a subchapter S item of income, loss, or deduction of the S corporation during the S period. In addition, the definition of *determination* is expanded to include any determination under section 1313(a). The effect of this change is to expand the definition of *determination* to include a final disposition by the Secretary of a claim for refund and certain agreements between the Secretary and any person relating to the tax liability of the person. The final regulations reflect these changes made to section 1377(b) by section 1307 of the Small Business Job Protection Act of 1996.

Coordination With Other Provisions and Other Clarifying Changes

In response to comments, the final regulations add cross-references and make certain clarifying revisions. The proposed regulations coordinate the application of the terminating election under section 1377(a)(2) with the election that may be made under § 1.1368–1(g)(2) when there is a qualifying disposition by: (i) Removing the section 1377 reference in § 1.1368–1(g)(1) because all of the rules for a section 1377(a)(2) terminating election are now entirely stated in these final regulations; and (ii) amending § 1.1368–1(g)(2) to provide that a qualifying disposition election cannot be made if a transfer results in a termination of the shareholder's entire interest as a shareholder.

The proposed regulations provide that a section 1377(a)(2) terminating election must contain the written consent of each shareholder. The final regulations revise the shareholder consent rules by removing the written consent requirement for each shareholder. The final regulations merely require an S corporation to include a statement by the corporation that each affected shareholder and the corporation consent to the election.

In response to comments, the final regulations clarify that a shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock, including an interest treated as stock under § 1.1361–1(l), that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). In addition, the final regulations clarify that a shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to an election under section 1377(a)(2) for a subsequent termination of another shareholder within the taxable year unless the shareholder is an affected shareholder with respect to the subsequent termination.

Effective Date

These regulations apply to taxable years of an S corporation beginning after December 31, 1996.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects

26 CFR Parts 1 and 18

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 18, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1377–1 also issued under 26 U.S.C. 1377 (a)(2) and (c). * * *

Par. 2. Section 1.1368–0 is amended by:

1. Revising the entry for paragraphs (g) and (g)(1) of § 1.1368–1.

2. Adding an entry for paragraph (g)(2)(iv) of § 1.1368–1.

The revisions and addition read as follows:

§ 1.1368–0 Table of contents.

* * * * *

§ 1.1368–1 Distributions by S corporations.

* * * * *

(g) Special rule.

(1) Election to terminate year under § 1.1368–1(g)(2).

(2) * * *

(iv) Coordination with election under section 1377(a)(2).

* * * * *

Par. 3. Section 1.1368–1 is amended by:

1. Revising the heading for paragraph (g).

2. Revising paragraph (g)(1).

3. Adding paragraph (g)(2)(iv).

The revisions and addition read as follows:

§ 1.1368–1 Distributions by S corporations.

* * * * *

(g) *Special rule*—(1) *Election to terminate year under § 1.1368–1(g)(2).* If an election is made under paragraph (g)(2) of this section to terminate the year when there is a qualifying disposition, this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which there is a qualifying disposition of stock.

(2) * * *

(iv) *Coordination with election under section 1377(a)(2).* If the event resulting in a qualifying disposition also results in a termination of a shareholder's entire interest as described in § 1.1377–1(b)(4), the election under this paragraph (g)(2) cannot be made. Rather, the election under section 1377(a)(2) and § 1.1377–1(b) may be made. See § 1.1377–1(b) (concerning the election under section 1377(a)(2)).

Par. 4. Sections 1.1377–0, 1.1377–1, 1.1377–2, and 1.1377–3 are added under the undesignated center heading ''Small Business Corporations and Their Shareholders'' to read as follows:

§ 1.1377–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1377–1 through 1.1377–3:

§ 1.1377–1 Pro rata share.

(a) *Computation of pro rata shares*—(1) *In general.* For purposes of subchapter S of chapter 1 of the Internal Revenue Code and this section, each shareholder's pro rata share of any S corporation item described in section 1366(a) for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. See paragraph (b) of this section for rules pertaining to the computation of each shareholder's pro rata share when an election is made under section 1377(a)(2) to treat the taxable year of an S corporation as if it consisted of two taxable years in the case of a termination of a shareholder's entire interest in the corporation.

(2) *Special rules*—(i) *Days on which stock has not been issued.* Solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a) and this section, the beneficial owners of the corporation are treated as the shareholders of the corporation for any day on which the corporation has not issued any stock.

(ii) *Determining shareholder for day of stock disposition.* A shareholder who disposes of stock in an S corporation is treated as the shareholder for the day of the disposition. A shareholder who dies is treated as the shareholder for the day of the shareholder's death.

(b) *Election to terminate year*—(1) *In general.* If a shareholder's entire interest in an S corporation is terminated during the S corporation's taxable year and the corporation and all affected shareholders agree, the S corporation may elect under section 1377(a)(2) and this paragraph (b) (terminating election) to apply paragraph (a) of this section to the affected shareholders as if the corporation's taxable year consisted of two separate taxable years, the first of which ends at the close of the day on which the shareholder's entire interest in the S corporation is terminated. If the event resulting in the termination of the shareholder's entire interest also constitutes a qualifying disposition as described in § 1.1368–1(g)(2)(i), the election under § 1.1368–1(g)(2) cannot be made. An S corporation may not make a terminating election if the cessation of a shareholder's interest occurs in a transaction that results in a termination under section 1362(d)(2) of the corporation's election to be an S corporation. (See section 1362(e)(3) for an election to have items assigned to each short taxable year under normal tax accounting rules in the case of a termination of a corporation's election to be an S corporation.) A terminating election is irrevocable and is effective only for the terminating event for which it is made.

(2) *Affected shareholders.* For purposes of the terminating election under section 1377(a)(2) and paragraph (b) of this section, the term *affected shareholders* means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term *affected shareholders* includes all persons who are shareholders during the taxable year.

(3) *Effect of the terminating election*—(i) *In general.* An S corporation that makes a terminating election for a taxable year must treat the taxable year as separate taxable years for all affected shareholders for purposes of allocating items of income (including tax-exempt income), loss, deduction, and credit; making adjustments to the accumulated adjustments account, earnings and profits, and basis; and determining the tax effect of a distribution. An S corporation that makes a terminating election must assign items of income (including tax-exempt income), loss, deduction, and credit to each deemed separate taxable year using its normal method of accounting as determined under section 446(a).

(ii) *Due date of S corporation return.* A terminating election does not affect the due date of the S corporation's return required to be filed under section 6037(a) for a taxable year (determined without regard to a terminating election).

(iii) *Taxable year of inclusion by shareholder.* A terminating election does not affect the taxable year in which an affected shareholder must take into account the affected shareholder's pro rata share of the S corporation's items of income, loss, deduction, and credit.

(iv) *S corporation that is a partner in a partnership.* A terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) (relating to closing the partnership taxable year), if the taxable year of the partnership ends after the shareholder's interest is terminated and within the taxable year of the S corporation (determined without regard to any terminating election) for which the terminating election is made.

(4) *Determination of whether an S shareholder's entire interest has terminated.* For purposes of the terminating election under section 1377(a)(2) and paragraph (b) of this section, a shareholder's entire interest in an S corporation is terminated on the occurrence of any event through which a shareholder's entire stock ownership in the S corporation ceases, including a sale, exchange, or other disposition of all of the stock held by the shareholder; a gift under section 102(a) of all the shareholder's stock; a spousal transfer under section 1041(a) of all the shareholder's stock; a redemption, as defined in section 317(b), of all the shareholder's stock, regardless of the tax treatment of the redemption under section 302; and the death of the shareholder. A shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock (including an interest treated as stock under § 1.1361–1(l)) that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). Thus, in determining whether a shareholder's entire interest in an S corporation has been terminated, any interest held by the shareholder as a creditor, employee,

director, or in any other non-shareholder capacity is disregarded.

(5) *Time and manner of making a terminating election*—(i) *In general.* An S corporation makes a terminating election by attaching a statement to its timely filed original or amended return required to be filed under section 6037(a) (that is, a Form 1120S) for the taxable year during which a shareholder's entire interest is terminated. A single election statement may be filed by the S corporation for all terminating elections for the taxable year. The election statement must include—

(A) A declaration by the S corporation that it is electing under section 1377(a)(2) and this paragraph (b) to treat the taxable year as if it consisted of two separate taxable years;

(B) Information setting forth when and how the shareholder's entire interest was terminated (for example, a sale or gift);

(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury; and

(D) A statement by the corporation that the corporation and each affected shareholder consent to the S corporation making the terminating election.

(ii) *Affected shareholders required to consent.* For purposes of paragraph (b)(5)(i)(D) of this section, a shareholder of the S corporation for the taxable year is a shareholder as described in section 1362(a)(2). For example, the person who under § 1.1362–6(b)(2) must consent to a corporation's S election in certain special cases is the person who must consent to the terminating election. In addition, an executor or administrator of the estate of a deceased affected shareholder may consent to the terminating election on behalf of the deceased affected shareholder.

(iii) *More than one terminating election.* A shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to a terminating election made with respect to a subsequent termination within the same taxable year unless the shareholder is an affected shareholder with respect to the subsequent termination.

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Shareholder's pro rata share in the case of a partial disposition of stock. (i) On January 6, 1997, X incorporates as a calendar year corporation, issues 100 shares of common stock to each of A and B, and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells 50 shares of X stock to C. Thus, in 1997, A owned 50 percent of the outstanding shares of X on each day of X's 1997 taxable year, B owned 50 percent on each day from January 6, 1997, to July 24, 1997 (200 days), and 25 percent from July 25, 1997, to December 31, 1997 (160 days), and C owned 25 percent from July 25, 1997, to December 31, 1997 (160 days).

(ii) Because B's entire interest in X is not terminated when B sells 50 shares to C on July 24, 1997, X cannot make a terminating election under section 1377(a)(2) and paragraph (b) of this section for B's sale of 50 shares to C. Although B's sale of 50 shares to C is a qualifying disposition under § 1.1368–1(g)(2)(i), X does not make an election to terminate its taxable year under § 1.1368–1(g)(2). During its 1997 taxable year, X has nonseparately computed income of $720,000.

(iii) For each day in X's 1997 taxable year, A's daily pro rata share of X's nonseparately computed income is $1,000 ($720,000/360 days×50%). Thus, A's pro rata share of X's nonseparately computed income for 1997 is $360,000 ($1,000×360 days). B's daily pro rata share of X's nonseparately computed income is $1,000 ($720,000/360×50%) for the first 200 days of X's 1997 taxable year, and $500 ($720,000/360×25%) for the following 160 days in 1997. Thus, B's pro rata share of X's nonseparately computed income for 1997 is $280,000 (($1,000×200 days) + ($500×160 days)). C's daily pro rata share of X's nonseparately computed income is $500 ($720,000/360×25%) for 160 days in 1997. Thus, C's pro rata share of X's nonseparately computed income for 1997 is $80,000 ($500×160 days).

Example 2. Shareholder's pro rata share when an S corporation makes a terminating election under section 1377(a)(2). (i) On January 6, 1997, X incorporates as a calendar year corporation, issues 100 shares of common stock to each of A and B, and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells B's entire 100 shares of X stock to C. With the consent of B and C, X makes an election under section 1377(a)(2) and paragraph (b) of this section for the termination of B's entire interest arising from B's sale of 100 shares to C. As a result of the election, the pro rata shares of B and C are determined as if X's taxable year consisted of two separate taxable years, the first of which ends on July 24, 1997, the date B's entire interest in X terminates. Because A is not an affected shareholder as defined by section 1377(a)(2)(B) and paragraph (b)(2) of this section, the treatment as separate taxable years does not apply to A.

(ii) During its 1997 taxable year, X has nonseparately computed income of $720,000. Under X's normal method of accounting, $200,000 of the $720,000 of nonseparately computed income is allocable to the period of January 6, 1997, through July 24, 1997 (the first deemed taxable year), and the remaining $520,000 is allocable to the period of July 25, 1997, through December 31, 1997 (the second deemed taxable year).

(iii) B's pro rata share of the $200,000 of nonseparately computed income for the first deemed taxable year is determined by assigning the $200,000 of nonseparately computed income to each day of the first deemed taxable year ($200,000/200 days = $1,000 per day). Because B held 50% of X's authorized and issued shares on each day of the first deemed taxable year, B's daily pro rata share for each day of the first deemed taxable year is $500 ($1,000 per day × 50%). Thus, B's pro rata share of the $200,000 of nonseparately computed income for the first deemed taxable year is $100,000 ($500 per day × 200 days). B must report this amount for B's taxable year with or within which X's full taxable year ends (December 31, 1997).

(iv) C's pro rata share of the $520,000 of nonseparately computed income for the second deemed taxable year is determined by assigning the $520,000 of nonseparately computed income to each day of the second deemed taxable year ($520,000/160 days = $3,250 per day). Because C held 50% of X's authorized and issued shares on each day of the second deemed taxable year, C's daily pro rata shares for each day of the second deemed taxable year is $1,625 ($3,250 per day × 50%). Therefore, C's pro rata share of the $520,000 of nonseparately computed income is $260,000 ($1,625 per day × 160 days). C must report this amount for C's taxable year with or within which X's full taxable year ends (December 31, 1997).

§ 1.1377–2 Post-termination transition period.

(a) *In general.* For purposes of subchapter S of chapter 1 of the Internal Revenue Code (Code) and this section, the term *post-termination transition period* means—

(1) The period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) The day which is 1 year after such last day; or

(ii) The due date for filing the return for the last taxable year as an S corporation (including extensions);

(2) The 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)); and

(3) The 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(b) *Special rules for post-termination transition period.* Pursuant to section 1377(b)(1) and paragraph (a)(1) of this section, a post-termination transition period arises the day after the last day that an S corporation was in existence if a C corporation acquires the assets of the S corporation in a transaction to which section 381(a)(2) applies. However, if an S corporation acquires the assets of another S corporation in a

transaction to which section 381(a)(2) applies, a post-termination transition period does not arise. (See § 1.1368–2(d)(2) for the treatment of the acquisition of the assets of an S corporation by another S corporation in a transaction to which section 381(a)(2) applies.) The special treatment under section 1371(e)(1) of distributions of money by a corporation with respect to its stock during the post-termination transition period is available only to those shareholders who were shareholders in the S corporation at the time of the termination.

(c) *Determination defined.* For purposes of section 1377(b)(1) and paragraph (a) of this section, the term *determination* means—

(1) A determination as defined in section 1313(a);

(2) A written agreement between the corporation and the Commissioner (including a statement acknowledging that the corporation's election to be an S corporation terminated under section 1362(d)) that the corporation failed to qualify as an S corporation;

(3) For a corporation subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A of the Code, the expiration of the period specified in section 6226 for filing a petition for readjustment of a final S corporation administrative adjustment finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period; and

(4) For a corporation not subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A of the Code, the expiration of the period for filing a petition under section 6213 for the shareholder's taxable year for which the Commissioner has made a finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period.

(d) *Date a determination becomes effective*—(1) *Determination under section 1313(a).* A determination under paragraph (c)(1) of this section becomes effective on the date prescribed in section 1313 and the regulations thereunder.

(2) *Written agreement.* A determination under paragraph (c)(2) of this section becomes effective when it is signed by the district director having jurisdiction over the corporation (or by another Service official to whom authority to sign the agreement is delegated) and by an officer of the corporation authorized to sign on its behalf. Neither the request for a written agreement nor the terms of the written agreement suspend the running of any statute of limitations.

(3) *Implied agreement.* A determination under paragraph (c) (3) or (4) of this section becomes effective on the day after the date of expiration of the period specified under section 6226 or 6213, respectively.

§ 1.1377–3 Effective date.

Sections 1.1377–1 and 1.1377–2 apply to taxable years of an S corporation beginning after December 31, 1996.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 5. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 18.1377–1 [Removed]

Par. 6. Section 18.1377–1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
18.1377–1	1545–0130
* * * * *	

2. Adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part of section where identified and described	Current OMB control No.
* * * * *	
1.1377–1	1545–1462
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 1, 1996.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

[FR Doc. 96–31966 Filed 12–20–96; 8:45 am]
BILLING CODE 4830–01–U

26 CFR Parts 301 and 602

[TD 8698]

RIN 1545–AS09

Selection of Tax Matters Partner for Limited Liability Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations giving guidance necessary for the designation or selection of a tax matters partner for partnerships including limited liability companies classified as partnerships.

DATES: These regulations are effective December 23, 1996.

For dates of applicability of these regulations, see § 301.6231(a)(7)–2(c).

FOR FURTHER INFORMATION CONTACT: D. Lindsay Russell, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0790. Responses to these collections of information enable the designation, and the termination of the designation, of a tax matters partner for a partnership.

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

The estimated annual burden per respondent varies from .50 hour to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

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

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

Background

Prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), adjustments attributable to the tax items of a partnership were made at the partner level. Section 402 of TEFRA added sections 6221 through 6231 to the Internal Revenue Code to allow for consolidated administrative and judicial proceedings to determine the tax treatment of partnership items at the partnership level. Under this consolidated proceeding, the tax matters partner of a partnership represents the partnership before the IRS in all tax matters for a specific taxable year.

Section 6231(a)(7) provides that the tax matters partner of a partnership is the general partner designated as the tax matters partner as provided in regulations or, if no general partner is designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (largest-profits-interest rule). Section 6231(a)(7) also provides that, if no general partner is designated and the Commissioner determines that it is impracticable to apply the largest-profits-interest rule, the partner selected by the Commissioner is treated as the tax matters partner.

On April 18, 1986, a notice of proposed rulemaking (LR–205–82) concerning sections 6221 through 6231 and section 6233 was published in the Federal Register (51 FR 13231). The notice of proposed rulemaking included guidance concerning designating tax matters partners. Several comments on the proposed regulations were received, but no public hearing was requested and none was held. Temporary regulations identical to the proposed regulations in LR–205–82 were published in the Federal Register (52 FR 6779) on March 5, 1987.

On February 29, 1988, the IRS published Rev. Proc. 88–16 (1988–1 C.B. 691). This revenue procedure describes circumstances under which the IRS will determine that it is impracticable to apply the largest-profits-interest rule and describes the criteria the IRS will consider in selecting a tax matters partner for the partnership.

Since the enactment of TEFRA, all states and several foreign jurisdictions have enacted laws providing for the formation of limited liability companies (LLCs). LLCs in most jurisdictions may be classified for Federal tax purposes either as partnerships or associations that are taxable as corporations. For LLCs that are classified as partnerships for Federal tax purposes, it is necessary to determine the tax matters partner for the LLC.

On October 30, 1995, a notice of proposed rulemaking (PS–34–92) concerning section 6231(a)(7) was published in the Federal Register (60 FR 55228). The notice of proposed rulemaking amended proposed regulations to consolidate certain guidance necessary to determine the tax matters partner for partnerships. The notice of proposed rulemaking also proposed guidance concerning the designation or selection of a tax matters partner for limited liability companies classified as partnerships. No public hearing was requested or held, and no written comments were received.

Explanation of Provisions

The regulations concerning the designation or selection of tax matters partners proposed by LR–205–82 and PS–34–92 are adopted, with minor stylistic changes, by this Treasury decision. The corresponding temporary regulations are removed.

Effect on Other Documents

Rev. Proc. 88–16 is obsolete as of December 23, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these regulations is D. Lindsay Russell, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by removing the entry for Section 301.6231(a)(7)–1T and adding entries in numerical order to read as follows:

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

Section 301.6231(a)(7)–1 also issued under 26 U.S.C. 6230 (i) and (k).

Section 301.6231(a)(7)–2 also issued under 26 U.S.C. 6230 (i) and (k). * * *

§ 301.623(a)(7)–1T [Removed]

Par. 2. Section 301.6231(a)(7)–1T is removed.

Par. 3. Section 301.6231(a)(7)–1 is added to read as follows:

§ 301.6231(a)(7)–1 Designation or selection of tax matters partner.

(a) *In general.* A partnership may designate a partner as its tax matters partner for a specific taxable year only as provided in this section. Similarly, the designation of a partner as the tax matters partner for a specific taxable year may be terminated only as provided in this section. If a partnership does not designate a general partner as the tax matters partner for a specific taxable year, or if the designation is terminated without the partnership designating another general partner as the tax matters partner, the tax matters partner is the partner determined under this section.

(b) *Person who may be designated tax matters partner*—(1) *General requirement.* A person may be designated as the tax matters partner of a partnership for a taxable year only if that person—

(i) Was a general partner in the partnership at some time during the taxable year for which the designation is made; or

(ii) Is a general partner in the partnership as of the time the designation is made.

(2) *Limitation on designation of tax matters partner who is not a United States person.* If any United States person would be eligible under paragraph (a) of this section to be designated as the tax matters partner of a partnership for a taxable year, no person who is not a United States person may be designated as the tax matters partner of the partnership for

that year without the consent of the Commissioner. For the definition of *United States person*, see section 7701(a)(30).

(c) *Designation of tax matters partner at time partnership return is filed.* The partnership may designate a tax matters partner for a partnership taxable year on the partnership return for that taxable year in accordance with the instructions for that form.

(d) *Certification by current tax matters partner of selection of successor.* If a partner properly designated as the tax matters partner of a partnership for a partnership taxable year under this section certifies that another partner has been selected as the tax matters partner of the partnership for that taxable year, that other partner is thereby designated as the tax matters partner for that year. The current tax matters partner shall make the certification by filing with the service center with which the partnership return is filed a statement that—

(1) Identifies the partnership, the partner filing the statement, and the successor tax matters partner by name, address, and taxpayer identification number;

(2) Specifies the partnership taxable year to which the designation relates;

(3) Declares that the partner filing the statement has been properly designated as the tax matters partner of the partnership for the partnership taxable year and that that designation is in effect immediately before the filing of the statement;

(4) Certifies that the other named partner has been selected as the tax matters partner of the partnership for that taxable year in accordance with the partnership's procedure for making that selection; and

(5) Is signed by the partner filing the statement.

(e) *Designation by general partners with majority interest.* The partnership may designate a tax matters partner for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. The statement shall—

(1) Identify the partnership and the designated partner by name, address, and taxpayer identification number;

(2) Specify the partnership taxable year to which the designation relates;

(3) Declare that it is a designation of a tax matters partner for the taxable year specified; and

(4) Be signed by persons who were general partners at the close of the year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all general partners as of the close of that taxable year. For purposes of this paragraph (e)(4), all limited partnership interests held by general partners shall be included in determining the aggregate interest in partnership profits held by such general partners.

(f) *Designation by partners with majority interest under certain circumstances*—(1) *In general.* A tax matters partner may be designated for a partnership taxable year under this paragraph (f) only if, at the time the designation is made, each partner who was a general partner at the close of such partnership taxable year is described in one or more of paragraphs (f)(1)(i) through (iv) of this section as follows:

(i) The general partner is dead, or, if the general partner is an entity, has been liquidated or dissolved;

(ii) The general partner has been adjudicated by a court of competent jurisdiction to be no longer capable of managing his or her person or estate;

(iii) The general partner's partnership items have become nonpartnership items under section 6231(b); or

(iv) The general partner is no longer a partner in the partnership.

(2) *Method of making designation.* A tax matters partner for a partnership taxable year may be designated under this paragraph (f) at any time after the filing of the partnership return for such taxable year by filing a written statement with the service center with which the partnership return was filed. The statement shall—

(i) Identify the partnership and the designated tax matters partner by name, address, and taxpayer identification number;

(ii) Specify the partnership taxable year to which the designation relates;

(iii) Declare that it is a designation of a tax matters partner for the partnership taxable year specified; and

(iv) Be signed by persons who were partners at the close of such taxable year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all partners as of the close of such taxable year.

(g) *Designation of alternate tax matters partner.* If an individual is designated as the tax matters partner of a partnership under paragraph (c), (d), (e), or (f) of this section, the document by which that individual is designated may also designate an alternate tax matters partner who will become tax matters partner upon the occurrence of one or more of the events described in paragraph (l)(1) (i) or (ii) of this section. The person designated as the alternate tax matters partner becomes the tax matters partner as of the time the designation of the tax matters partner is terminated under paragraph (l)(1) (i) or (ii) of this section. The designation of a person as the alternate tax matters partner shall have no effect in any other case.

(h) *Prior designations superseded.* A designation of a tax matters partner for a partnership taxable year under paragraphs (d), (e), or (f) of this section shall supersede all prior designations of a tax matters partner for that year, including a prior designation of an alternate tax matters partner under paragraph (g) of this section.

(i) *Resignation of designated tax matters partner.* A person designated as the tax matters partner of a partnership under this section may resign at any time by a written statement to that effect. The statement shall specify the partnership taxable year to which the resignation relates and shall identify the partnership and the tax matters partner by name, address, and taxpayer identification number. The statement shall also be signed by the resigning tax matters partner and shall be filed with the service center with which the partnership return was filed.

(j) *Revocation of designation.* The partnership may revoke the designation of the tax matters partner for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. The statement shall—

(1) Identify by name, address, and taxpayer identification number the partnership and the general partner whose designation as tax matters partner is being revoked;

(2) Specify the partnership taxable year to which the revocation relates;

(3) Declare that it is a revocation of a designation of the tax matters partner for the taxable year specified; and

(4) Be signed by the persons described in paragraph (e)(4) of this section, or, if at the time that the revocation is made, each partner who was a general partner at the close of the partnership taxable year to which the revocation relates is described in one or more of paragraphs (f)(1) (i) through (iv) of this section, by the persons described in paragraph (f)(2)(iv) of this section.

(k) *When designation, etc., becomes effective*—(1) *In general.* Except as otherwise provided in paragraph (k)(2) of this section, a designation, resignation, or revocation provided for in this section becomes effective on the day that the statement required by the

applicable paragraph of this section is filed.

(2) *Notice of proceeding mailed.* If a notice of beginning of an administrative proceeding with respect to a partnership taxable year is mailed before the date on which a statement of designation, resignation, or revocation provided for in this section with respect to that taxable year is filed, the Service is not required to give effect to such designation, resignation, or revocation until 30 days after the statement is filed.

(l) *Termination of designation*—(1) *In general.* A designation of a tax matters partner for a taxable year under this section shall remain in effect until—

(i) The death of the designated tax matters partner;

(ii) An adjudication by a court of competent jurisdiction that the individual designated as the tax matters partner is no longer capable of managing the individual's person or estate;

(iii) The liquidation or dissolution of the tax matters partner, if the tax matters partner is an entity;

(iv) The partnership items of the tax matters partner become nonpartnership items under section 6231(c) (relating to special enforcement areas); or

(v) The day on which—

(A) The resignation of the tax matters partner under paragraph (i) of this section;

(B) A subsequent designation under paragraph (d), (e), or (f) of this section; or

(C) A revocation of the designation under paragraph (j) of this section becomes effective.

(2) *Actions by the tax matters partner before termination of designation.* The termination of the designation of a partner as the tax matters partner under paragraph (l)(1) of this section does not affect the validity of any action taken by that partner as tax matters partner before the designation is terminated. For example, if that tax matters partner had previously consented to an extension of the period for assessments under section 6229(b)(1)(B), that extension remains valid even after termination of the designation.

(m) *Tax matters partner where no partnership designation made*—(1) *In general.* The tax matters partner for a partnership taxable year shall be determined under this paragraph (m) if—

(i) The partnership has not designated a tax matters partner under this section for that taxable year; or

(ii) The partnership has designated a tax matters partner under this section for that taxable year, that designation has been terminated under paragraph (l)(1) of this section, and the partnership has not made a subsequent designation under this section for that taxable year.

(2) *General partner having the largest profits interest is the tax matters partner.* The tax matters partner for any partnership taxable year to which this paragraph (m) applies is the general partner having the largest profits interest in the partnership at the close of that taxable year (or where there is more than one such partner, the one of such partners whose name would appear first in an alphabetical listing). For purposes of this paragraph (m)(2), all limited partnership interests held by a general partner shall be included in determining that general partner's profits interest in the partnership. For purposes of this paragraph (m)(2), the general partner with the largest profits interest is determined based on the year-end profits interests reported on the Schedules K–1 filed with the partnership income tax return for the taxable year for which the determination is being made.

(3) *Termination of designation.* A designation of a tax matters partner for a partnership taxable year under this paragraph (m) shall remain in effect until the earlier of the occurrence of one or more of the events described in paragraphs (l)(1) (i) through (iv) of this section or the day on which a designation under paragraph (d), (e), or (f) of this section becomes effective. If a designation of a tax matters partner for a partnership taxable year is terminated under this paragraph (m)(3) and the partnership has not subsequently designated a tax matters partner for that taxable year under paragraph (d), (e), or (f) of this section, the tax matters partner for that taxable year shall be determined under paragraph (m)(2) of this section, and, for purposes of applying paragraph (m)(2) of this section, the general partner whose designation was so terminated shall be treated as having no profits interest in the partnership for that taxable year.

(n) *Selection of tax matters partner by Commissioner when impracticable to apply the largest-profits-interest rule.* If the partnership has not designated a tax matters partner under this section for the taxable year and it is impracticable (as determined under paragraph (o) of this section) to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a tax matters partner as described in paragraph (p) of this section.

(o) *Impracticability of largest-profits-interest rule.* It is impracticable to apply the largest-profits-interest rule of paragraph (m)(2) of this section if, on the date the rule is applied, any one of the following three conditions is met:

(1) *General partner with the largest profits interest is not apparent.* The general partner with the largest profits interest is not apparent from the Schedules K–1 and is not otherwise readily determinable.

(2) *Each general partner is deemed to have no profits interest in the partnership.* Each general partner is deemed to have no profits interest in the partnership under paragraph (m)(3) of this section (concerning termination of a designation under the largest-profits-interest rule) because of the occurrence of one or more of the events described in paragraphs (l)(1) (i) through (iv) of this section (involving death, adjudication of incompetency, liquidation, and conversion of partnership items to nonpartnership items).

(3) *General partner with the largest profits interest is disqualified.* The general partner with the largest profits interest determined under paragraph (m)(2) of this section—

(i) Has been notified of suspension from practice before the Internal Revenue Service;

(ii) Is incarcerated;

(iii) Is residing outside the United States, its possessions, or territories; or

(iv) Cannot be located or cannot perform the functions of a tax matters partner for any reason, except that lack of cooperation with the Internal Revenue Service by the general partner with the largest profits interest is not a basis for finding that the partner cannot perform the functions of a tax matters partner.

(p) *Commissioner's selection of the tax matters partner*—(1) *When the general partner with the largest profits interest is not apparent.* If it is impracticable under paragraph (o)(1) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select (in accordance with the notification procedures set forth in paragraph (r) of this section) as the tax matters partner any person who was a general partner at any time during the taxable year under examination.

(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under paragraph (o)(2) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify both the partner selected and the partnership of the selection,

effective as of the date specified in the notice.

(3) *When the general partner with the largest profits interest is disqualified*—(i) *In general.* Except as otherwise provided in paragraph (p)(3)(ii) of this section, if it is impracticable under paragraph (o)(3) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will treat each general partner who fits the criteria contained in paragraph (o)(3) of this section as having no profits interest in the partnership for the taxable year and will select (in accordance with the notification procedures set forth in paragraph (r) of this section) a tax matters partner from the remaining persons who were general partners at any time during the taxable year.

(ii) *Partner selected if no general partner may be selected.* If all general partners during the taxable year either are treated as having no profits interest in the partnership for the taxable year under paragraph (m)(3) of this section (concerning termination of a designation under the largest-profits-interest rule) or are described in paragraph (o)(3) of this section (general partner with the largest profits interest is disqualified), the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify both the partner selected and the partnership of the selection, effective as of the date specified in the notice.

(q) *Criteria for selecting a partner as tax matters partner*—(1) *In general.* The Commissioner will select a partner as the tax matters partner under paragraph (p) (2) or (3)(ii) of this section only if the partner was a partner in the partnership at the close of the taxable year under examination.

(2) *Criteria to be considered.* The Commissioner may consider the following criteria in selecting a partner as the tax matters partner:

(i) The general knowledge of the partner in tax matters and the administrative operation of the partnership.

(ii) The partner's access to the books and records of the partnership.

(iii) The profits interest held by the partner.

(iv) The views of the partners having a majority interest in the partnership regarding the selection.

(v) Whether the partner is a partner of the partnership at the time the tax-matters-partner selection is made.

(vi) Whether the partner is a United States person (within the meaning of section 7701(a)(30)).

(3) *Limited restriction on subsequent designation of a tax matters partner by the partnership.* For purposes of paragraphs (p) (2) and (3)(ii) of this section, the partnership cannot designate a partner who is not a general partner to serve as tax matters partner in lieu of a partner selected by the Commissioner.

(r) *Notification of partnership*—(1) *In general.* If the Commissioner selects a tax matters partner under the provisions of paragraph (p) (1) or (3)(i) of this section, the Commissioner will notify both the partner selected and the partnership of the selection, effective as of the date specified in the notice.

(2) *Limited opportunity for partnership to designate the tax matters partner.* (i) Before the Commissioner selects a tax matters partner under paragraphs (p) (1) and (3)(i) of this section, the Commissioner will notify the partnership by mail that, after 30 days from the date of the notice, the Commissioner will make a determination that it is impracticable to apply the largest-profits-interest rule of paragraph (m)(2) of this section and will select the tax matters partner unless a prior designation is made by the partnership. This delay in making the determination will permit the partnership to designate a tax matters partner under paragraph (e) of this section (designation by general partners with a majority interest) or paragraph (f) of this section (designation by partners with a majority interest under certain circumstances), thereby avoiding a selection made by the Commissioner.

(ii) During the 30-day period and prior to a tax-matters-partner designation by the partnership, the Commissioner will communicate with the partnership by sending all correspondence or notices to ''The Tax Matters Partner'' in care of the partnership at the partnership's address.

(iii) Any subsequent designation of a tax matters partner by the partnership after the 30-day period will become effective as provided under paragraph (k)(2) of this section (concerning designations made after a notice of beginning of administrative proceeding is mailed).

(s) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner occurring on or after December 23, 1996.

Par. 4. Section 301.6231(a)(7)–2 is added to read as follows:

§ 301.6231(a)(7)–2 Designation or selection of tax matters partner for a limited liability company (LLC).

(a) *In general.* Solely for purposes of applying section 6231(a)(7) and § 301.6231(a)(7)–1 to an LLC, only a member-manager of an LLC is treated as a general partner, and a member of an LLC who is not a member-manager is treated as a partner other than a general partner.

(b) *Definitions*—(1) *LLC.* Solely for purposes of this section, *LLC* means an organization—

(i) Formed under a law that allows the limitation of the liability of all members for the organization's debts and other obligations within the meaning of § 301.7701–3(b)(2)(ii); and

(ii) Classified as a partnership for Federal tax purposes.

(2) *Member.* Solely for purposes of this section, *member* means any person who owns an interest in an LLC.

(3) *Member-manager.* Solely for purposes of this section, *member-manager* means a member of an LLC who, alone or together with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which the organization was formed. Generally, an LLC statute may permit the LLC to choose management by one or more managers (whether or not members) or by all of the members. If there are no elected or designated member-managers (as so defined in this paragraph (b)(3)) of the LLC, each member will be treated as a member-manager for purposes of this section.

(c) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner of an LLC occurring on or after December 23, 1996. Any other reasonable designation or selection of a tax matters partner of an LLC is binding for periods prior to December 23, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. In § 602.101, paragraph (c) is amended by adding the entry ''301.6231(a)(7)–1....1545–0790'' in numerical order to the table.

Approved: November 8, 1996.
Michael P. Dolan,
Acting Commissioner of Internal Revenue.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 96–32121 Filed 12–20–96; 8:45 am]
BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF–386; Re: Notice No. 838]

RIN 1512–AA07

Redwood Valley Viticultural Area (95R–053P)

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

ACTION: Final rule, Treasury decision

SUMMARY: This final rule establishes a viticultural area located within the east central interior portion of Mendocino County, California to be known as ''Redwood Valley,'' under 27 CFR part 9. This is the result of a petition submitted by Mr. Timothy R. Buckner and prepared by Mr. Buckner, Mr. Jefferson Hinchliffe, Mr. Ulysses Lolonis, and Mr. Rudolph H. Light. The petition was signed by 20 growers and winemakers in ''Redwood Valley.'' In addition, 4 letters of support for the area were received with the petition from growers and winemakers in the area. ''Redwood Valley'' is an unincorporated rural community in Mendocino County of northwestern California with approximately 6,000 people spread out over about 35 square miles. It is currently the home of seven wineries that produce varietal wines distributed around the world. There are 66 vineyard owners farming 2,371 acres of wine grapes.

EFFECTIVE DATE: February 21, 1997.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 [44 FR 56692] which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(l), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Mr. Timothy Buckner proposing to establish a new viticultural area located within the east central interior portion of Mendocino County, California to be known as ''Redwood Valley,'' under 27 CFR part 9.

There are currently seven wineries in ''Redwood Valley.'' The dates they were bonded are as follows: Fetzer (1968), Weibel (1972), Frey (1980), Lolonis (1983), Elizabeth (1987), Konrad (1989), and Gabrielli (1991). Weibel and Konrad wineries have recently changed ownership and were renamed Redwood Valley Cellars and Fife Vineyards, respectively.

Notice of Proposed Rulemaking

In response to Mr. Buckner's petition, ATF published a notice of proposed rulemaking, Notice No. 838, in the Federal Register on September 3, 1996 [61 FR 46403] proposing the establishment of the ''Redwood Valley'' viticultural area. The notice requested comments from all interested persons by October 18, 1996.

Comments on Notice of Proposed Rulemaking

ATF did not receive any letters of comment in response to Notice No. 838.

Evidence That The Name Of The Viticultural Area Is Locally Or Nationally Known

''Redwood Valley'' is an unincorporated rural community in Mendocino County of northwestern California with approximately 6,000 people spread out over about 35 square miles. It is currently the home of seven wineries that produce premium to ultra premium varietal wines distributed around the world. ''Redwood Valley'' grapes are used in vineyard designated wines made by wineries throughout the region. There are 66 vineyard owners farming 2,371 acres of wine grapes in Redwood Valley. There are 855 acres of white winegrapes (36%) and 1,516 (64%) planted in red varieties in Redwood Valley.

History and Tradition

The area has been known by the viticultural area name for over a century. Some early settlers arrived in ''Redwood Valley'' in the mid 1850s, and there was a thriving community by 1900. From as early as the 1870s, grape growing and wine making were an important part of the economy and culture of ''Redwood Valley.'' One of the earliest published mentions of ''Redwood Valley'' as a grape growing region was in a March 7, 1913, article in the Ukiah *Republican Press* (1885–1954), which described ''Redwood Valley'' as ''* * * admirably adapted for the grape and fruit land in Northern California.''

In the March 17, 1913 issue of the Ukiah *Dispatch Democrat*, the petitioner found the following article: *The Redwood Valley Improvement Club Accomplishing Splendid Results By Concentrated Action and Progressiveness*, which stated as follows: ''This is perhaps at the present time one of the most important industries of the valley, with hundreds of acres in vineyards and several important wineries in active operation, and because of the statements made * * * by Professor Bioletti, the grape question has taken on a renewed activity. Redwood Valley grapes are exceptionally rich in sugar and are in demand because they raise the quality of wine. Much of the valley's product is contracted for over a term of years * * * (g)rapes produce splendidly on

the bench lands of the valley, and because of the sunshine and climatic conditions mature and produce the ideal wine grapes.''

In the Santa Rosa *Press Democrat*, the petitioner found an article printed on July 31, 1949, and titled, ''It's Howdy Neighbor To Calpella, Redwood Valley,'' by Mike Pardee. This article states that, ''[a]pproximately half of Mendocino County's present grape acreage of 7,700 acres is in Redwood Valley. Farm Advisor R.D. Foote of Mendocino County said. ''The Valley thus raised about half of the county's 17,000 tons produced last year (1948) * * *. Redwood Valley for years has been one of Mendocino County's most important farming sections. Its 314 families for the most part farmers * * *. They'll tell you that those grapes make the finest wines in the region'.''

Name Evidence

''Redwood Valley'' is recognized by the United States Postal Service as a distinct community with the Zip Code 95470. The U.S.G.S. uses the name ''Redwood Valley'' Quadrangle on its 1:24,000 topographic map. The valley has a domestic and irrigation water supplier known as ''Redwood Valley County Water District.'' A number of entities give the area its sense of identity, including the ''Redwood Valley Grange,'' ''Redwood Valley School,'' ''Redwood Valley Shopping Center,'' ''Redwood Valley Industrial Park.'' Businesses and organizations using the ''Redwood Valley'' name include a large vineyard, a gravel plant, 2 churches, a Pomo Indian Rancheria, and so on. The petitioner provided photocopies of stationery and business cards from six private and three public entities that use the name ''Redwood Valley'' in their title. Each of the entities are currently in business and located in ''Redwood Valley.''

Historical or Current Evidence that the Boundaries of the Viticultural Area are as Specified in the Petition

The ''Redwood Valley'' viticultural area boundaries are roughly the watershed that forms the headwaters of the west fork of the Russian River, including Forsythe Creek. Starting at the northern tip of the valley and following the ridge tops, the area widens out to the south as far as State Highway 20. Across Highway 20 to the south is the community of Calpella. Highway 20 provides a distinct southern boundary for the viticultural area. Calpella has a different zip code, water district, school, etc than ''Redwood Valley.'' Furthermore, the soils and climate of Calpella occupy a transition zone between Ukiah and ''Redwood Valley.''

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Area from Surrounding Areas.

Topography

The geography of the area sets it apart from surrounding areas in several respects. ''Redwood Valley'' is clearly defined by the ridges of the coastal mountain range that surrounds it and that the Valley floor slopes gently up in elevation from around 750′ to 900′ above sea level. The mountain ridges rise steeply from the valley floor to over 3,350' elevation. Most of the grapes are grown at an elevation between 750′ and 1,500′ above sea level. At the south end of the valley the foothills close in from the east and west to form a narrowed throat through which the Russian River flows south. This narrowing is also where Highway 20 crosses the valley and the river to intersect with Highway 101. This combination of landforms provides a natural set of boundaries for the viticultural area. These features combine in several ways to produce growing conditions which distinguish the area from surrounding areas. The soils, as well as the micro-, meso-, and macro-climates are all factors that distinguish the viticultural area from surrounding areas.

Soils

While all of the specific soil series that are found in ''Redwood Valley'' also exist in the surrounding areas, the proportions of the soils in ''Redwood Valley'' distinguish it from the surrounding areas. *The Wine Regions of America*, a book written by John J. Baxevanis in 1992, gives the following description of the Redwood Valley area. ''*Redwood Valley*, the northernmost of the string of Russian River Valleys, lies (eight) miles north of Ukiah and Lake Mendocino on a series of higher terraces. Representing the birthplace of Mendocino winemaking, it is the home of some of the county's largest wineries. With more than 40 percent of the county's acreage, it is the most important of all the producing regions in the two county region [Lake and Mendocino]. A region II area, it produces above-average quality Zinfandel, Cabernet Sauvignon, Chardonnay, Petite Sirah, and Sauvignon Blanc. One of its elements of celebrity is the considerable quantity of Manzanita soil.'' (pg. 295). The petitioner was unable to ascertain the origin of the term ''Manzanita soil.'' However, he states that, ''Redwood Valley does contain the largest deposit of the famous Redvine soil in the region and perhaps it is this to which Baxevanis refers.''

The soils in the viticultural area have several unique features as determined by the U.S.D.A. Soil Conservation Service (SCS). The 1991 *Soil Survey of Mendocino County, Eastern Part, and Trinity County, Southwestern Part, California*, was used extensively by the petitioner to determine the identity and areas of soils for comparison. Whereas all of the specific soil series that are found in ''Redwood Valley'' occur in the surrounding area, it is the proportions in which they appear in ''Redwood Valley'' that are unique. ''Redwood Valley'' has by far the largest deposit of Redvine Series soil (#184–186 SCS Survey) in the area. Nearly one quarter of the viticultural area's plantable acreage is composed of soils of the Redvine Series. Potter Valley Viticultural Area to the east has no Redvine Series soils. The Calpella/Ukiah area to the south of ''Redwood Valley'' has a few small and isolated pockets of Redvine soils but their combined area amounts to less than 10% of the area covered by Redvine Series soils in ''Redwood Valley.''

Another soil series that stands out, is the Pinole Gravelly Loam (#178–180 SCS Survey), which also occurs in the Potter Valley and Ukiah areas, but is a much smaller component of the area's overall composition. ''Redwood Valley'' has three times as much Pinole Gravelly Loam as either of these other two areas. This soil type makes up nearly a third of ''Redwood Valley's'' growing area.

The Redvine and Pinole Gravelly Loam soil series comprise over half of the vineyard acreage of ''Redwood Valley.'' The rest are an amalgam of six other types: Feliz, Pinnobie, Yokayo, Russian, Talmage, and Yokayo/Pinole/Pinobie. These last six general types (plus traces of a few more types) evidence themselves in the neighboring areas in varying proportion, but all play a larger role elsewhere than they do in ''Redwood Valley.''

The petitioner provided a table illustrating the proportions of soil types in the ''Redwood Valley'' area compared with the Ukiah/Calpella area. These figures were derived from SCS maps and soil descriptions, and were measured with a Compensating Polar Planimeter. The table indicates that, while ''Redwood Valley'' contains most of the same soil types as the Ukiah Valley, such soils are present in different quantities in the respective areas.

Climate

One local winemaker, Jefferson Hinchliffe of Gabrielli Winery stated as follows about the way ''Redwood Valley's'' unique climate and soils manifest themselves in the wine: ''I have been making wines from the many districts of Mendocino County for (t)en years. During that period I have developed a sense of what distinguishes the wines of Redwood Valley * * *. The wines in general are of higher acidity and later maturity than of Ukiah Valley. The typical picking schedule for a given variety would begin with the Hopland-Sanel area, followed by Ukiah-Calpella, and then Redwood Valley. Comparisons with Potter Valley are based on fewer varieties since Potter Valley is planted mainly to early ripening Pinot and Chardonnay. Anderson Valley north of Boonville ripens later than Redwood Valley * * *. Acidity, color (especially in Pinot Noir), and phenolic content are higher in Redwood Valley than in adjacent regions. Higher temperatures in general lower phenolic content, color, and acidity * * *. Late ripening varieties can have difficulty ripening in Redwood Valley. Cabernet in general is able to tolerate the rain associated with the late season, but more fragile varieties such as Petite Sirah, Carignane, and Sangiovese can rot before ripening in heavier soils when bearing large crops. Conservative farming can produce stellar examples of these varieties * * *.''

Another wine maker, Jed Steele, of Steele Wines submitted a letter of support for the petition, in which he stated as follows. ''[T]he REDWOOD VALLEY of Mendocino County is an excellent and singular grape growing region, certainly worthy of receiving a separate viticultural district designation * * *. It appears that REDWOOD VALLEY's particular climate allows for attaining many of the positive quality factors found in grapes grown in the cooler regions of Mendocino (Anderson Valley, etc.) as well as giving harvests that allow for more consistent maturity found in the more interior valleys (Potter Valley, etc.) of this county.''

In addition, the February 15, 1993 issue of *The Wine Spectator,* page 11, contains an article entitled ''California's Redwood Valley Moves Out of the Shadows,'' by Robyn Bullard, which states as follows. ''Wineries such as Fetzer, Weibel, and Frey have been in Redwood Valley for years, but now four more wineries have cropped up. The region boasts good soil and operating costs that are cheaper than other areas in Northern California * * *. Costs aside, Redwood Valley vineyards have long yielded quality grapes * * *. Compared to the hot Ukiah Valley, Redwood Valley is much cooler. The area rarely gets fog, but the terrain and location allow ocean breezes—the same winds that cool Anderson Valley.''

There are a number of factors that make ''Redwood Valley'' climatically distinct. The petitioner provided a table listing the major agricultural areas of Mendocino County and their respective climatic region and number of degree days, as reflected in the SCS *Soil Survey,* 1991, pg. 4. Degree day figures for Anderson Valley were unavailable. The table indicates that ''Redwood Valley'' has 2,914 degree days and is the only Region II Climate in Mendocino County, factors that the petitioner states are significant. In support of this assertion, the petitioner cites the grape growing textbook *General Viticulture,* 1974, by Winkler et al., which he states contains the following excerpt: ''Region II.—An area of great importance. The valleys can produce most of the premium-quality and good standard white and red table wines of California. The less productive slopes and hillsides vineyards cannot compete in growing grapes for standard wines, because of lower yield, but, nevertheless, can produce favorable yields of fine wines'' (pgs. 66–67).

The petitioner states that, ''(s)ince November of 1987, Light Vineyard of Redwood Valley (Latitude 39 degrees 18.32′, Longitude 123 degrees 12.46′, elevation 800′) has maintained a U.S. Weather Bureau standard weather station including the following instruments: maximum/minimum thermometer, Belfort Recording Hygrothermograph, Belfort Recording Pyranograph, Totalizing Anemometer, Evaporation Pan, and Rain Gauge. Readings are taken daily, and data are transmitted monthly to the California Irrigation Management Information Service in Sacramento.''

Records from this station show that, in the most recent eight year period, the ''Redwood Valley'' received 22% more rainfall than the Ukiah Valley. The petitioner provided a table comparing the monthly totals for rainfall in ''Redwood Valley'' and Ukiah, for the eight year period for which they have maintained records. The table and charts were prepared from data gathered from the Light Vineyard Weather station which meets U.S. Weather Bureau standards. According to these records, the average total monthly rainfall in Ukiah Valley was 32.48 inches during the period of July through June compared to an average total of 39.62 inches for ''Redwood Valley'' during the same period. The petitioner also provided a graph comparing the annual rainfall values for ''Redwood Valley'' and Ukiah Valley averaged over a six year period. The graph indicates that the precipitation values for ''Redwood Valley'' were consistently higher than those for Ukiah Valley over the six year period measured.

''Redwood Valley's'' temperatures are several degrees lower in daily lows than Ukiah Valley. The petitioner states that, ''(t)his accounts for the lower growing degree day totals in Redwood Valley and its placement in Region II. So, although Redwood Valley may reach daily high temperatures similar to the Ukiah area, because of cooler nights there remains a longer morning cool period.'' The petitioner also provided a chart comparing monthly average temperatures for the two areas averaged over a six year period. This chart supports the petitioner's contentions regarding average maximum and minimum temperatures.

Boundaries

The ''Redwood Valley'' viticultural area is located in east central Mendocino County, California. The boundaries of the viticultural area can be found on four U.S. Geological Survey Quadrangle Maps labeled, ''Redwood Valley, Calif.'' 1960, photorevised 1975, ''Ukiah, Calif.'' 1958, photorevised 1975, ''Laughlin Range, Calif.'' 1991 and, ''Orr Springs, California, provisional edition'' 1991. All are 7.5 minute series maps. It should be noted that the entire eastern boundary of the ''Redwood Valley'' viticultural area abuts the western boundary of the Potter Valley viticultural area.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they

purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because this final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 C.F.R. Part 1320, do not apply to this rulemaking because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.153 to read as follows:

* * * * *

§ 9.153 Redwood Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Redwood Valley.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Redwood Valley viticultural area are four Quadrangle 7.5 minute series 1:24,000 scale U.S.G.S. topographical maps. They are titled:

(1) ''Redwood Valley, Calif.'' 1960, photorevised 1975.

(2) ''Ukiah, Calif.'' 1958, photorevised 1975.

(3) ''Laughlin Range, Calif.'' 1991.

(4) ''Orrs Springs, California, provisional edition'' 1991.

(c) *Boundary.* The Redwood Valley viticultural area is located in the east central interior portion of Mendocino County, California. The boundaries of the Redwood Valley viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, are:

(1) The beginning point is the intersection of State Highway 20 with the eastern boundary of Section 13, T16N/R12W located in the extreme northeast portion of the U.S.G.S. map, ''Ukiah, Calif.'';

(2) Then north along the east boundary line of Sections 12 and 1 to the northeast corner of Section 1, T16N/R12W on the U.S.G.S. map, ''Redwood Valley, Calif.'';

(3) Then west along the northern boundary line of Section 1 to the northwest corner of Section 1, T16N/R12W;

(4) Then north along the east boundary line of sections 35, 26, 23, 14, 11, and 2 to the northeast corner of Section 2, T17N/R12W;

(5) Then west along the northern boundary of Sections 2, 3, 4, 5, and 6 to the northwest corner of Section 6, T17N/R12W;

(6) Then 10 degrees southwest cutting diagonally across Sections 1, 12, 13 ,24, 25, and 36 to a point at the northwest corner of Section 1, T16N/R13W on the U.S.G.S. map, ''Laughlin, Range, Calif.'';

(7) Then south along the western boundary line of Sections 1 and 12 to the southwest corner of Section 12, T16N/R13W;

(8) Then 13 degrees southeast across Sections 13, 18, and 17 to the intersection of State Highway 20 and U.S. Highway 101, T16N/R12W on the U.S.G.S. map, Ukiah, Calif.''; and

(9) Then easterly along a line following State Highway 20 back to the beginning point at the eastern boundary of Section 13, T16N/R12W located in the extreme northeast portion of the U.S.G.S. map ''Ukiah, Calif.''

Signed: November 8, 1996.

John W. Magaw,

Director.

Approved: November 22, 1996.

Dennis M. O'Connell,

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

[FR Doc. 96–32422 Filed 12–20–96; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO24–1–5701a, CO25–1–5700a, CO26–1–5702a; FRL–5664–3]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; 1990 Base Year Carbon Monoxide Emission Inventories for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the 1990 base year carbon monoxide (CO) emission inventories for Colorado Springs, Denver/Longmont, and Fort Collins that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990.

DATES: This final rule will be effective February 21, 1997 unless adverse or critical comments are received by January 22, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 ph. (303) 312–6479.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the CAA provides the State the opportunity to update its State Implementation Plan (SIP) as needed or to address new statutory requirements. The State is utilizing this authority to include the Colorado Springs, Denver/Longmont, and Fort Collins 1990 base year CO emission inventories as part of the SIP.

I. Background to the Action

As required by the CAA, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions

over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment.

The CAA required CO nonattainment areas classified as moderate or serious to submit a 1990 base year inventory of actual CO emissions that occurred in the 1990 CO season, by November 15, 1992. Moderate and serious CO nonattainment areas are also required to submit a three-year periodic inventory. The first periodic inventory, which must represent actual CO season emissions for 1993 was to be submitted no later than September 30, 1995. A periodic inventory is due every three years thereafter until the area is redesignated to attainment. Moderate CO nonattainment areas with a design value of 12.7 ppm CO or more were required to submit a plan by November 15, 1992, that demonstrates attainment of the CO NAAQS by December 31, 1995.

To prepare the attainment demonstration, a 1990 base year and projected modeling inventories are needed. The 1990 base year inventory is the primary inventory from which the periodic and modeling inventories are derived. Further information on these inventories and their purpose can be found in the document ''Emission Inventory Requirements for Carbon Monoxide State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, dated March, 1991.

The air quality planning requirements for CO nonattainment areas are set out in sections 172(c), 182 (a)(1), (a)(5), and (a)(7) of Title I of the CAA; special planning requirements for Denver are provided in section 187(a)(2)(B). EPA previously issued a General Preamble describing EPA's preliminary views on how EPA intended to review SIP revisions submitted under Title I of the CAA, including requirements for the preparation of the 1990 base year inventory (57 FR 13529, April 16, 1992, and 57 FR 18070, April 28, 1992). Because EPA is describing its interpretations in this action only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and its supporting rationale.

Those States containing moderate and serious carbon monoxide nonattainment areas were required under Section 187(a)(1) of the CAA to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual CO season emissions from all sources for each nonattainment area (see also 57 FR 13530, April 16, 1992). Stationary point sources, stationary area sources, on-road mobile, and non-road mobile sources of carbon monoxide (CO) were to be included in each inventory. This inventory for calendar year 1990 was denoted as the base year inventory. The inventory was to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peak CO concentrations occur. For areas where winter is the peak CO season, as is the case for Colorado Springs, Denver/Longmont, and Fort Collins, the 1990 base year inventory was to include the period November 1989 through January 1990. Available guidance for preparing emission inventories was provided in the General Preamble (57 FR 13498, April 16, 1992).

II. Analysis of the State's Submittal

Section 110(k) of the Act sets out provisions governing EPA's action on plan submissions of the 1990 base year CO emission inventory based on whether or not the inventory satisfies the requirements of Section 187(a)(1) and Section 172(c) (see also, 57 FR 13565–66, April 16, 1992). EPA is approving the CO 1990 base year emission inventories for Colorado Springs, Denver/Longmont, and Fort Collins as submitted to EPA on December 31, 1992 (with revisions for Colorado Springs and Fort Collins, dated March 23, 1995, and revisions for Denver/Longmont, dated July 11, 1994, and October 21, 1994), based on EPA's review findings.

The following describes the review procedures associated with determining the acceptability of a 1990 base year emission inventory and discusses the levels of acceptance or disapproval that can result from the findings of the review process.

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision (including emission inventories) be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA.[1] CO nonattainment areas with design values greater than 12.7 ppm (i.e., Metro Denver) were required to submit the entire SIP revision (1990 base year emissions inventory, attainment demonstration, and control strategies) by November 15, 1992. CO areas with design values of 12.7 ppm and below (i.e., Colorado Springs and Fort Collins) were required to submit a 1990 base year emissions inventory by November 15, 1992.

The State of Colorado held a public hearing on November 19, 1992, directly after which the three CO inventories were adopted by the Colorado Air Quality Control Commission (AQCC). The Governor submitted the 1990 base year inventories to EPA by a letter dated December 31, 1992. Supplemental revisions to the Colorado Springs and Fort Collins inventories were submitted by Thomas Getz, Director, Air Pollution Control Division, by a letter dated March 23, 1995. Revisions to the Denver/Longmont inventory were adopted on June 16, 1994, (in conjunction with the Denver CO SIP revision) and were submitted by the Governor to EPA by a letter dated July 11, 1994. Additional revisions to the Denver/Longmont inventory were submitted by Thomas Getz by a letter dated October 21, 1994.

Colorado's December 31, 1992, CO emission inventories submittal was reviewed by EPA and found to be complete on March 5, 1993.

B. Review of Colorado's 1990 Base Year SIP CO Inventories

EPA's Level I, II, and III review process checklists are used to determine if all components of a CO base year inventory are present and approvable. EPA's detailed Level I and II review procedures can be found in the following document: ''Quality Review Guidelines for 1990 Base Year Emission Inventories,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. The Level III review procedures are specified in a memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Regions I–X, ''Final Emission Inventory Level III Acceptance Critera,'' October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors, dated June 24, 1993.[2] EPA's review also evaluates the level of supporting documentation provided by the State and assesses whether the emission calculations were developed, and data

[1] See, Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, ''Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992.

[2] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, ''Emission Inventory Issues,'' June 24, 1993.

quality assured, according to current EPA guidance.

The Level III review process is outlined below and consists of nine requirements that a CO base year inventory must include. For a base year CO emission inventory to be acceptable, it must pass all of the following acceptance criteria:

Note: For all information that follows—Colorado Springs inventory refers to the March 23, 1995, version; the Denver/Longmont inventory refers to the July 11, 1994, version; and the Fort Collins inventory refers to the March 23, 1995, version.

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance (QA) program contained in the IPP was performed and its implementation documented.

Analysis: Colorado's IPP was approved by EPA on March 13, 1992. The IPP's QA program requirements were addressed in Section 5 of the Colorado Springs inventory, in Section 5 of the Denver/Longmont inventory, and in Section 5 of the Fort Collins inventory.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

Analysis: This requirement was addressed in Sections 2 through 4 and Appendices 2 through 9 in each of the three CO inventories.

3. The point source inventory must be complete.

Analysis: This requirement was addressed in Section 4.1 and Appendix 6 of the Colorado Springs and Denver/Longmont inventories. There are no CO major point sources (equal to or greater than 100 tons per year of CO) located in the Fort Collins nonattainment area.

4. Point source emissions were calculated according to the current EPA guidance.

Analysis: This requirement was addressed in Section 4.1 and Appendix 6 of the Colorado Springs and Denver/Longmont inventories. There are no CO major point sources (equal to or greater than 100 tons per year of CO) located in the Fort Collins nonattainment area.

5. The area source inventory must be complete.

Analysis: This requirement was addressed in Section 4.5 and Appendices 7 through 9 of the Colorado Springs and Fort Collins inventories, and Section 4.1 and Appendices 7 through 9 of the Denver/Longmont inventory.

6. The area source emissions must have been prepared or calculated according to the current EPA guidance.

Analysis: This requirement was addressed in Section 4.5 and Appendices 7 through 9 of the Colorado Springs and Fort Collins inventories, and Section 4.1 and Appendices 7 through 9 of the Denver/Longmont inventory.

7. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources'', U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

Analysis: This requirement was addressed in Section 2 and Appendix 2 in each of the three inventories.

8. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.

Analysis: This requirement was addressed in Section 2 and Appendix 2 in each of the three inventories.

9. Non-road mobile emissions estimates were prepared according to current EPA guidance for all of the source categories.

Analysis: This requirement was addressed in Section 3 and Appendices 3 through 5 in each of the three inventories.

The 1990 base year CO emissions from point sources, area sources, on-road mobile sources, and non-road mobile sources for Colorado Springs, Denver/Longmont, and Fort Collins are summarized in the following table:

CARBON MONOXIDE SEASONAL EMISSIONS IN TONS PER DAY

Non-attainment area	Point source emissions*	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Total emissions
Colorado Springs	1.09	29.49	250.80	34.70	316.08
Denver/Longmont	13.37	72.10	1441.97	153.23	1680.67
Fort Collins	N/A	7.54	49.99	8.96	66.49

*Major CO point sources (i.e., CO emissions equal to or greater than 100 tons per year).

III. Final Action

EPA is approving the carbon monoxide 1990 base year emission inventories for Colorado Springs, Denver/Longmont, and Fort Collins.

All supporting calculations and documentation for these three 1990 carbon monoxide base year inventories are contained in the Technical Support Document (TSD) for this action.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this issue of the Federal Register, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 21, 1997 unless, by January 22, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 21, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the

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

B. Regulatory Flexibility Act

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

SIP approvals under Section 110 and Subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing.

Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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 rules that include a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 12, 1996.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR Part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.348 is added to subpart G to read as follows:

§ 52.348 Emission inventories.

The Governor of the State of Colorado submitted the 1990 carbon monoxide base year emission inventories for the Colorado Springs, Denver/Longmont, and Fort Collins nonattainment areas on December 31, 1992, as a revision to the State Implementation Plan (SIP). The Governor submitted revisions to the Colorado Springs and Fort Collins inventories by a letter dated March 23, 1995. The Governor submitted revisions to the Denver/Longmont inventory by letters dated July 11, 1994, and October 21, 1994. The inventories address emissions from point, area, on-road mobile, and non-road sources. These 1990 base year carbon monoxide inventories satisfy the requirements of section 187(a)(1) of the Clean Air Act for each of these nonattainment areas.

[FR Doc. 96–32222 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL144–1a; FRL 5648–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 10, 1996, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the EPA which grants a variance to Rexam Medical Packaging Inc. facility located in Mundelein, Lake County, Illinois (Rexam). This variance extends the date by which certain flexographic printing presses operated by Rexam must comply with Illinois' Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) rules. This rulemaking action approves, through direct final, this SIP revision request; the rationale for this approval is set forth in **SUPPLEMENTARY INFORMATION**. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new

final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: The ''direct final'' is effective on February 21, 1997, unless EPA receives adverse or critical comments by January 22, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of this SIP revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(a)(2)(A) of the Clean Air Act (Act) requires states to ''fix-up'' deficient RACT regulations for ozone nonattainment areas, and section 182(b)(2) of the Act requires States with severe ozone nonattainment areas to ''catch-up'' by revising the RACT applicability threshold from 100 tons per year (TPY) potential to emit to 25 TPY potential to emit. On September 9, 1994, EPA approved, as a revision to the Illinois SIP for ozone, a number of VOM RACT regulations, including 35 Illinois Administrative Code part 218, subpart H (section 218.401 through 218.405), which governs the control of VOM from printing and publishing operations in the Chicago ozone nonattainment area (59 FR at 46562). These regulations were submitted in order to meet the State's ''fix-up'' requirement for the Chicago severe ozone nonattainment area. This area includes Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County.

On January 26, 1996, EPA promulgated a direct final rulemaking approving a second set of Illinois VOM RACT regulations, part of which includes a revision to section 218.402, which changed the RACT applicability threshold to include sources with flexographic and/or rotogravure printing line(s) with a potential to emit of 25 TPY or more of VOM (including emissions from solvents used for cleanup operations associated with the flexographic and rotogravure printing line(s)), in order to comply with the RACT ''catch-up'' requirements. Also included was a revision to section 218.106, the general compliance date provisions for regulations under part 218 (61 FR 2423). This revision provides a compliance date of March 15, 1995, for sources newly subject to the 25 TPY applicability threshold. The direct final approval was withdrawn on March 25, 1996 (61 FR 12030), due to an adverse comment addressing an issue unrelated to the new applicability requirements for printing presses. The comment will be addressed in a new final rule in an upcoming Federal Register.

Section 218.401(a) of subpart H requires subject sources to apply no coating or ink on any flexographic or rotogravure printing line unless the VOM content does not exceed either 40% VOM by volume of the coating/ink as applied (minus water and any compounds specifically exempted from the definition of VOM), or 25% VOM by volume of the volatile content in the coating and ink. Section 218.401(b) allows daily-weighted averaging to comply with the above listed VOM content limits, whereby coatings/inks with higher VOM content can be used if offset by lower VOM content coatings/inks. Section 218.401(c) allows for alternative compliance with the VOM content limits through operation of a control device which reduces captured VOM emissions by at least 90% by weight, in a capture system with the control device which provides an overall reduction in VOM emissions of at least 75% for publication rotogravure printing lines, 65% for packaging rotogravure printing lines, and 60% for flexographic printing lines.

II. Summary of SIP Submittal

Rexam manufactures sterilizable flexible packaging and other film products such as bags, pouches, and rollstock for sterilization protection of medical devices and products. The packages are sold to medical device manufacturers and health care providers, and are designed to permit gas sterilization and aeration of the contents while maintaining sterility until the packages are opened. To meet customer approval, the packages must be printed with user instructions which will stay adhered to the packages and not contaminate the medical product when opened. In addition, the packages must be printed with special inks used as sterilization indicators. These inks change color to indicate whether the medical product inside the package has been sterilized.

On March 14, 1995, Rexam filed a petition for variance with the Illinois Pollution Control Board (Board). At the time of the petition, the Rexam facility operated 18 flexographic printing presses subject to the RACT requirements of subpart H and the compliance date of March 15, 1995. In the petition, Rexam indicated that in 1990, the facility began a process to install and test press equipment for the application of water-based ink that would not only meet VOM content requirements, but customer approval, as well. Rexam indicated that this process was difficult because the use of water-based inks was new to the medical packaging industry. On March 15, 1995, 13 of the 18 presses were applying water-based inks to medical packaging which both complied with VOM content requirements and met customer specifications. The 5 presses not in compliance included, Inline Press No. 105, Inline Press No. 107, Inline Press No. 111, Offline 32-inch press, and Offline 36-inch press.

Rexam contended Inline Press No. 105 and Offline 32-inch press, the presses used to print indicator inks, were out of compliance because no trialed technology for water-based indicator inks was available. Further, the remaining presses were out of compliance because, according to Rexam, customer approval to convert the presses to water-based technology had not yet been obtained. Rexam indicated the delay in customer approval was due primarily to the extensive validation and testing trial period used by the customers to determine the integrity of the water-based inks and the packaging's sterilization capability. Because of these compliance difficulties, Rexam requested a compliance date extension to install and operate a catalytic oxidizer in accordance with subpart H, which would control emissions from the presses applying indicator inks. In addition, the extended compliance would allow the customer approval process for the remaining presses to reach completion. The petition also requested that a proposed 42-inch offline press to apply indicator inks also be covered under the variance Subsequent to the petition, Inline Press No. 107 was converted to water-based ink.

A public hearing on the variance petition was held on August 18, 1995, in Libertyville, Illinois, before the Board. On October 19, 1995, the Board granted a variance (PCB 95–99) from subpart H to Rexam for its Inline Press No. 105, Inline Press No. 111, Offline 32-inch Press, Offline 42-inch Press, and

Offline 36-inch Press. The variance extends the compliance date for the 5 presses from March 15, 1995, until June 15, 1996, or upon submittal of the ''certificate of compliance'' required under section 218.404 of subpart H, whichever occurs first. The variance includes a compliance plan requiring the installation and use of a catalytic oxidizer to control emissions from Inline Press No. 105, Inline Press No. 111, Offline 32-inch Press, and Offline 42-inch Press. The remaining press, Offline 36-inch Press, is required to convert to water-based ink, or be controlled by the oxidizer if the press is not converted by March 1, 1996. The variance is contingent upon certain compliance milestone conditions intended to assure that all the presses are in compliance by June 15, 1996.

The variance was granted because Rexam presented adequate proof to the Board that immediate compliance with subpart H would result in an arbitrary or unreasonable hardship which outweighs the public interest in attaining immediate compliance with regulations designed to protect the public. Such a burden of proof is required by Illinois law before a variance can be granted. The effective date of the variance is March 15, 1995. The Illinois Environmental Protection Agency formally submitted the variance to EPA on January 10, 1996, as a revision to the Illinois SIP for ozone.

III. EPA Evaluation of Submittal

Section 182(b)(2) requires state rules intended to meet RACT ''catch-up'' requirements be implemented by May 31, 1995. Under this variance, Rexam's compliance with Illinois' rule would extend beyond this date. However, based on the information provided in the SIP submittal, the EPA finds that the variance for Rexam is justified, and the compliance milestone provisions required by the variance represent a reasonable approach to bringing the Rexam facility into compliance in a timely manner. Therefore, the EPA finds this SIP submittal approvable.

IV. Final Rulemaking Action.

The EPA approves, through direct final, the Illinois SIP revision request. With the effective date of this approval, the October 19, 1995 variance, PCB 95–99, for Rexam, becomes federally enforceable.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on February 21, 1997 unless, by January 22, 1997, adverse or critical comments on the approval are received.

If the EPA receives adverse comment by the date listed above, the direct final will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 21, 1997.

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

VII. Administrative Requirements

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

B. Regulatory Flexibility

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

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

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile Organic Compounds.

Dated: September 27, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(131) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(131) On January 10, 1996, the State of Illinois submitted a site-specific State Implementation Plan (SIP) revision request for ozone, which extends the required deadline for the Rexam Medical Packaging Inc. facility in Mundelein, Lake County, Illinois (Rexam), to comply with 35 Illinois Administrative Code, part 218, subpart H, as it applies to its Inline Press Number No.105, Inline Press No. 111, Offline 32-inch Press, Offline 36-inch Press, and Offline 42-inch press. The compliance date is extended from March 15, 1995, until June 15, 1996, or upon submittal of the ''certificate of compliance'' required under section 218.404 of subpart H, whichever occurs first. The variance includes a compliance plan requiring the installation and use of a catalytic oxidizer to control emissions from Inline Press No. 105, Inline Press No. 111, Offline 32-inch Press, and Offline 42-inch Press. The Offline 36-inch Press is required to convert to water-based ink, or be controlled by the oxidizer if the press is not converted by March 1, 1996. The variance is contingent upon certain compliance milestone conditions.

(i) *Incorporation by reference.* (A) Illinois Pollution Control Board Final Opinion and Order, PCB 95–99, adopted on October 19, 1995, and effective March 15, 1995. Certification of Acceptance dated November 29, 1996, by Rexam.

[FR Doc. 96–32371 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300440A; FRL–5572–2]

RIN 2070–AB78

Sodium Bicarbonate and Potassium Bicarbonate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of the biochemical pesticides sodium bicarbonate and potassium bicarbonate in or on all raw agricultural commodities (RACs), when applied as fungicides or post-harvest fungicides in accordance with good agricultural practices.

DATES: This regulation becomes effective December 23, 1996. Objections and requests for hearings must be received by EPA on February 21, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300440A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted 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. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300440A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5–W57, CSI, 2800 Crystal Drive, Arlington, VA 22202. (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 25, 1995 (60 FR 54689), EPA issued a notice (FRL–4982–4) that the Meiji Milk Products Co., Ltd., 2-Chome, Kyabashi Chuoku, Tokyo, Japan 250 (represented by Stewart Pesticide Registration Associates, Inc. of 1901 North Moore Street, Suite 603, Arlington, VA 22209), had submitted pesticide petition (PP) 5F4481 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the biochemical pesticide sodium bicarbonate in or on citrus when applied as a fungicide in accordance with good agricultural practices. There were no comments received in response to this notice of filing. Another company, Church and Dwight Co., Inc., obtained registration of the active ingredients sodium bicarbonate and potassium bicarbonate on December 20, 1994 as manufacturing products for formulating into fungicides to control powdery mildew and other fungal diseases of food and non-food crops. The Agency concluded that the historical knowledge of the effects of sodium bicarbonate and potassium bicarbonate on humans and the environment was adequate to allow the waiver of all data requirements. The Meiji Milk Products Co., Ltd. Pesticide Petition (PP 5F4481) was filed because associated registration applications from that company represent the first fungicidal food use sodium bicarbonate end-use products.

In the Federal Register of November 6, 1996 (61 FR 57356), the EPA issued a proposed rule (FRL–5572–2) to expand the tolerance exemption originally sought by Meiji Milk Products Co., Ltd. to (1) include the related compound, potassium bicarbonate, and (2) to permit pre-harvest and post-harvest use of both active ingredients in or on all raw agricultural commodities. The Administrator, for good cause, found it in the public interest to reduce the comment period for the proposed regulation from 60 to 30 days (FFDCA 408(e)(2)). There were no comments received in response to the proposed rule.

Based on the information, data, and findings described in the preamble to the proposed rule, EPA establishes the exemptions from the requirement of a tolerance as set forth below.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance

exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 21, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information 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.

II. Public Docket

A record has been established for this rulemaking under the docket number [OPP–300440A] (including any comments and data submitted electronically). 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 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 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 22202.

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 rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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 in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 12, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I, part 180 is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new §§ 180.1176 and 180.1177 to subpart D to read as follows:

§ 180.1176 Sodium bicarbonate; exemption from the requirement of a tolerance.

The biochemical pesticide sodium bicarbonate is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a fungicide or post-harvest fungicide in accordance with good agricultural practices.

§ 180.1177 Potassium bicarbonate; exemption from the requirement of a tolerance.

The biochemical pesticide potassium bicarbonate is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a fungicide or post-harvest fungicide in accordance with good agricultural practices.

[FR Doc. 96–32527 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR PART 271

[FRL–5666–8]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for authorization to revise its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA reviewed New Mexico's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, the EPA intends to approve the New Mexico's hazardous waste program revision subject to the authority retained by the EPA in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA). New Mexico's application for the program revision is available for public review and comment.

DATES: This authorization for New Mexico shall be effective March 10, 1997 unless EPA publishes a prior Federal Register (FR) action withdrawing this Immediate Final Rule. All comments on New Mexico's program revision application must be received by the close of business February 6, 1997.

ADDRESSES: Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: New Mexico Environment Department, 1190 St Francis Drive, Santa Fe, New Mexico 87502, phone (505) 827–1558 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number NM–96–1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–262, 263, 264, 265, 266, 268, and 270.

B. New Mexico

The State of New Mexico received authorization January 25, 1985, (50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (55 FR 4604), July 25, 1990 (55 FR 28397), December 4, 1992 (57 FR 45717), August 23, 1994 (59 FR 29734), December 21, 1994 (59 FR 51122), (60 FR 20238) July 10, 1995 and (61 FR 2450) January 2, 1996. The authorized New Mexico RCRA program was incorporated by reference to the CFR, effective December 13, 1993 (58 FR 52677) and November 18, 1996 (61 FR 49266). On September 16, 1996, New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

On September 27, 1995, New Mexico promulgated 20 New Mexico Administrative Code (NMAC) 4.1 which adopts the July 1, 1994, version of 40 CFR part 261. Specifically, 20 NMAC 4.1, incorporates by reference 40 CFR part 261 at 20 NMAC 4.1.200. This is the version that is referred to in the Attorney General's Statement submitted with this program revision. The 20 NMAC 4.1. became effective on November 1, 1995. The 20 NMAC 4.1.200 is inclusive of the identification and listing amendments to 40 CFR part 261 promulgated January 4, 1994 at 59 FR 458. New Mexico Statutes Annotated (NMSA) 1978, §§ 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993) provides New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

The EPA reviewed New Mexico's application and made an immediate final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's proposed final decision until February 6, 1997. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

New Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–263, 264, 265, 266, and 270 that were published in the FR through June 30, 1994. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [58 FR 38816] July 20, 1993. (Checklist 125).	New Mexico Statutes Annotated (NMSA) 1978, §§ 74–4–4A and 74–4–4E (Replacement Pamphlet 1993); Hazardous Waste Management, New Mexico Environmental Improvement Board, 20 New Mexico Administrative Code (NMAC) 4.1.101, Subparts I, and VII, .101, .102 and 700 as amended November 1, 1995, effective November 1, 1995.
2. Testing and Monitoring Activities, [58 FR 46040] August 31, 1993. (Checklist 126).	NMSA 1978, §§ 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.101 Subparts I, II, V, VI, VIII, and IX, .102, .200, .500, 501, .600, .601, .800, and .900, as amended November 1, 1995, effective November 1, 1995.
3. Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste from Wood Surface Protection, [59 FR 458] January 4, 1994. (Checklist 128).	NMSA 1978, §§ 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.101, .102, Subparts I, and II, .101, and .200, as amended September 23, 1994, effective November 1, 1995.
4. Recording Instructions, [59 FR 13891] March 24, 1994. (Checklist 131).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.500, Subparts V, and VI, .501, .600 and .601, as amended November 1, 1995, effective November 1, 1995.
5. Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction, [59 FR 28484] June 2, 1994. (Checklist 132).	NMSA 1978, §§ 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.101, .102, Subpart I, as amended November 1, 1995, effective November 23, 1995.
6. Hazardous Waste Management System; Correction of Listing of P015–Beryllium Powder, [59 FR 31551] June 20, 1994. (Checklist 134).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.800, Subparts II, and VIII, .200, as amended November 1, 1995, effective November 1, 1995.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that the EPA will enforce under section 3008, 3013, and 7003 of RCRA. Therefore, the EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an Environmental Protection Agency rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of New Mexico's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. New Mexico's request for approval of a hazardous waste program is voluntary; if a state chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures $100 million or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of New Mexico's hazardous waste program

referenced in today's notice will result in annual costs of $100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs and underground storage tanks under the approved State program, the in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether the EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 11, 1996.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 96–32090 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–280]

Organization and Delegation of Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, the authority contained in 46 U.S.C. 14104 to prescribe, by regulation, an alternate tonnage for vessels whenever a statute specifies that an alternate tonnage may be prescribed under that section. In order that the *Code of Federal Regulations* reflects this delegation, a change is necessary.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Eareckson, Marine Safety Center (MSC), (202) 366–6502, U.S. Coast Guard, 400 Seventh Street SW., Washington, DC 20590, or Mr. Ron Gordon, Office of the Executive Secretariat, S–10, (202) 366–9761, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Public Law 104–324; October 19, 1996) amends 46 U.S.C. 14104 to authorize the Secretary of Transportation, as the head of the Department in which the Coast Guard is operating, to prescribe by regulation an alternate tonnage for a vessel, if a statute allows for an alternate tonnage to be prescribed under 46 U.S.C. 14104. Sections 703 through 744 of the Act amend various statutes that specify vessel tonnage parameters based on regulatory measurement under 46 U.S.C. 14502. Each statute is amended to authorize an alternate tonnage to be prescribed based on convention measurement under 46 U.S.C. 14302, rather than regulatory measurement. The use of convention measurement may result in the building of safer, more efficient vessels and may enable vessel builders and operators to be competitive in the international market.

This rule amends 49 CFR 1.46 by adding a new paragraph to reflect the delegation of the Secretary's authority under 46 U.S.C. 14104 to the Commandant of the Coast Guard.

This rule is being published as a final rule and is being made effective on the

date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary for good cause finds, under 5 U.S.C. 553(b)(B) and (d)(3), that notice, and public procedure on the notice, before the effective date of this rule are unnecessary and that this rule should be made effective in less than 30 days after publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.46 [Amended]

2. In § 1.46, paragraph (eee) is added to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(eee) Carry out the functions vested in the Secretary by 46 U.S.C. 14104 to prescribe alternate tonnages for vessels.

Issued in Washington, DC this 12th day of December, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–32542 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA Docket No. RAR–4, Notice No. 16]

RIN 2130–AB13

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to remaining issues in petitions for reconsideration; and miscellaneous amendments.

SUMMARY: On June 18, November 22, and November 29, 1996, FRA published final rules amending the railroad accident reporting regulations at 49 CFR Part 225. 61 FR 30940, 61 FR 59368, 61 FR 60632, respectively. These final rules aim to minimize underreporting and inaccurate reporting of those railroad injuries, illnesses, and accidents meeting FRA reportability requirements; respond to some of the issues raised in petitions for reconsideration of the final rule published June 18; and also increase from $6,300 to $6,500 the monetary threshold for reporting rail equipment accidents/incidents involving property damage that occur on or after January 1, 1997.

FRA now responds to the remaining issues raised in the petitions for reconsideration, issues amendments addressing some of those concerns, and makes minor technical amendments. The primary changes involve the granting of partial relief to small railroads. In particular, railroads that operate or own track on the general railroad system of transportation but that have 15 or fewer employees covered by the hours of service law and tourist railroads that operate or own track only off the general system are excepted from the requirements to record ''accountable'' injuries, illnesses, and rail equipment accident/incidents and to adopt and comply with a complete Internal Control Plan. (The excepted railroads must, however, have a harassment and intimidation policy.) In addition, tourist railroads that operate or own track only off the general system are excepted from part 225 requirements regarding most ''non-train incidents.''

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–632–3386); or Nancy L. Goldman, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION: On June 18, November 22, and November 29, 1996, FRA published final rules amending the railroad accident reporting regulations at 49 CFR Part 225. 61 FR 30940, 61 FR 59368, 61 FR 60632, respectively. In response to the final rule published June 18, 1996, several railroads and railroad associations filed petitions for reconsideration raising various concerns with its contents and its implementation date of January 1, 1997.

The final rule published on November 22, 1996, 61 FR 59368, responded to certain issues raised in the petitions for reconsideration and amended the requirements in §§ 225.25(c) and 225.35 regarding access by railroad employees and FRA representatives, respectively, to certain railroad accident records and reports. This document responds to the remaining issues and concerns stated in the petitions for reconsideration.

A. Summary of Remaining Concerns Raised in the Petitions for Reconsideration and FRA's Responses to those Concerns

FRA received petitions for reconsideration and requests to change the effective date of the final rule from the Association of American Railroads (AAR), The American Short Line Railroad Association (ASLRA), Union Pacific Railroad Company (UP), CSX Transportation, Inc., Canadian Pacific Railway, Burlington Northern Santa Fe Corporation (BNSF), Norfolk Southern Corporation, Consolidated Rail Corporation, Southern Pacific Lines, the Association of Railway Museums, Inc. (ARM), the Tourist Railroad Association (TRAIN), Maryland Midway Railway, Inc., Delaware Otsego Corporation, The Everett Railroad Company, Crab Orchard and Egyptian Railroad, Minnesota Commercial Railway Company, Angelina & Neches River Railroad Company, and the City of Prineville Railway.

Section 211.31 of FRA's rules of practice states that FRA must decide to grant or deny, in whole or in part, each petition for reconsideration not later than four months after receipt by FRA's Docket Clerk. 49 CFR 211.31. In this case, FRA's decision on the petitions for reconsideration is due no later than December 19, 1996. If FRA grants a petition for reconsideration, a notice of this decision must appear in the Federal Register. *Id.* To provide a fuller explanation of the issues, this document addresses both grants and denials of the petitions for reconsideration. Accordingly, a copy of this document is being mailed to all petitioners.

1. Section 225.33—Internal Control Plans

a. Section 225.33—Implementation of an Internal Control Plan

Section 225.33 mandates that each railroad ''adopt and comply with a written Internal Control Plan (ICP) [to be] maintained at the office where the railroad's reporting officer conducts his or her official business.'' The ICP is to include, at a minimum, ten identified components as outlined in § 225.33 (a)(1) through (a)(10). Further, the ICP must be amended, ''as necessary, to reflect any significant changes to the railroad's internal reporting procedures.'' 49 CFR 225.33(a).

ASLRA and most of its members, as well as ARM and TRAIN, request relief from implementing an ICP. These

petitioners mainly assert that the final rule, as written, lacks flexibility as to what must be contained in the railroad's ICP and how the ICP must be structured. They also state that the rule fails to take into account the vast differences between the requirements of large and small railroads and thus request that they be allowed to develop their own ICP appropriate to their specific reporting and recordkeeping needs.

Final Rule

FRA has concluded that an ICP, while helpful to ensure that the lines of communication between the various railroad departments are maintained, is not essential in the case of extremely small railroads. These railroads have very few personnel, and the recording and reporting of accidents/incidents is usually done by one or two individuals.

Therefore, the applicability section of the final rule, § 225.3, is amended by adding § 225.3(b) to except from the ICP requirements outlined in § 225.33(a) (3)—(10) the following: (i) railroads that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service laws (49 U.S.C. 21101–21107) and (ii) railroads that operate or own track exclusively off the general railroad system of transportation. See 49 CFR Part 228, App. A for a discussion of covered employees. In addition, since the introductory text of § 225.33(a) states that each ICP must contain ''each of the following ten components'' (referring to paragraphs (a) (1) through (10)), the quoted text is amended by removing the word ''ten,'' to avoid a contradiction between §§ 225.3(b) and 225.33(a).

The excepted railroads must, however, adopt and comply with the intimidation and harassment policies outlined in § 225.33(a) (1) and (2).

FRA encourages these excepted railroads to review their current accident reporting process to ensure that they are obtaining complete and accurate data.

b. Appendix A to Part 225—Civil Penalties Associated with the ICP

The final rule published June 18, 1996, specifies three separate civil penalties for violation of § 225.33. 61 FR 30973; 49 CFR Part 225, Appendix A. If a railroad fails to adopt an ICP, then the railroad is subject to the assessment of a civil monetary penalty in the amount of $2,500 or, if the failure is willful, $5,000. (Appendix A to Part 225, applicable computer code: 225.33(1)). Also each railroad's reporting error or omission arising from noncompliance with the ICP subjects that railroad to the assessment of a civil monetary penalty in the amount of $2,500 or, if willful, $5,000. (Appendix A to Part 225, applicable computer code: 225.33(2)). Consequently, if a reporting violation is found, then the railroad may be fined for both the reporting violation and any departure from the ICP which resulted in the reporting violation. However, if there is a reporting violation, but FRA determines that the ICP was in fact followed by the railroad, then just one violation may be written. Additionally, FRA may assess a civil monetary penalty against any railroad employee, manager, or supervisor who willfully causes a violation of any requirement of Part 225, including § 225.33(a) (1) and (2), requiring adherence to the railroad's intimidation and harassment policy and noninterference with that policy. (Appendix A to Part 225, applicable computer code: 225.33(3)).

ASLRA and its members oppose the multiple penalties associated with the ICP and ask that FRA reconsider imposing these fines on small railroads. The rationale for this objection seemingly stems from the fact that FRA already may impose a civil penalty on the railroad for inaccurate reporting. ASLRA states that a separate cumulative civil penalty for failure to adopt the ICP and failure to comply with the intimidation and harassment policy in the ICP is not necessary should FRA grant its request to allow small railroads flexibility in writing their ICPs.

Final Rule

The penalty provisions contained in 49 CFR 225.33, as specified in Appendix A to Part 225, are not withdrawn. FRA believes that the multiple penalties are important and necessary so that railroads take the ICP seriously and follow the ICP to ensure accurate reporting. FRA also believes that the availability of a monetary civil penalty is necessary in order to compel the railroads to correct procedural deficiencies and weaknesses in their ICPs. FRA may issue these civil penalties pursuant to 49 U.S.C. 21301, 21302, and 21304.

The General Accounting Office (GAO) studied FRA's railroad injury and accident reporting data and issued a report in April 1989 (GAO/RCED–89–109) (hereinafter, ''GAO Audit'') that raised important questions about the quality of railroad compliance with FRA's accident reporting regulations. GAO found underreporting and inaccurate reporting of injury and accident data for 1987 by the railroads it audited. GAO recommended that railroads develop and comply with an ICP and that FRA use its authority to cite those railroads for inaccurate reporting arising from noncompliance with an ICP. GAO Audit at 29. Civil monetary penalties will ensure that railroads are extremely careful in drafting the ICP and in complying with the ICP. It is also unlikely that all railroads, given the various pressures and structural changes in the industry, would adhere to their ICPs consistently and over an extended period of time without steady pressure from FRA.

c. Section 225.33(a) (1) and (2)—Intimidation and Harassment Policy in the ICP

Section 225.33(a)(1) of the ICP requires that each railroad adopt a policy statement which affirms that intimidation or harassment by any officer, manager, supervisor, or employee of the railroad that aims to undermine or negatively influence the treatment of persons with an injury or illness or that adversely affects the reporting of such injuries and illnesses will not be tolerated nor permitted and that appropriate prescribed disciplinary action may be taken by the railroad against such person committing the harassment or intimidation.

Section 225.33(a)(2) requires each railroad to disseminate the policy statement addressing intimidation and harassment to all employees and supervisors and to all levels of railroad management. Further, the railroad must have procedures in place to process complaints that the railroad's intimidation and harassment policy has been violated, and such procedures also be disseminated to all employees and management or supervisory personnel. The railroad also must provide ''whistle blower'' protection to any person subject to this policy, and such policy must be disclosed to all railroad employees, supervisors, and management.

AAR asserts that intimidation and harassment policies outlined in the ICP are invalid and unlawful because FRA did not give public notice of such policies and provide the public the opportunity to comment. AAR states that FRA should provide information supporting its belief that intimidation and harassment are widespread and further request that FRA use its civil penalty and disqualification powers to punish the bad actors and not condemn the entire industry under general rulemaking.

Final Rule

AAR's argument that FRA failed to give notice is without merit. The Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) sets out three

procedural requirements: the notice of the proposed rulemaking; the opportunity for all interested persons to comment on the proposed rule; and a concise general statement of the basis and purpose of the rule ultimately adopted. 5 U.S.C. 553 (b),(c).

Those requirements were served adequately here. The Notice of Proposed Rulemaking made clear that the principal purpose of the rulemaking was to enhance the accuracy of accident/incident reporting. 59 FR 42880 (Aug. 19, 1994). While the NPRM did not expressly discuss intimidation and harassment, the NPRM did include a provision, § 225.33(a)(6), requiring:

> A description of the method by which all pertinent officers and workers * * * are apprised of their responsibilities, including any training necessary to make such officers and workers aware of the duty of the railroad to report the information in question.
>
> 59 FR 42897 (Aug. 19, 1994).

Witnesses testifying in the proceeding addressed intimidation and harassment because, to the degree such tactics succeed, they have an obvious effect on the accuracy of reported data. That testimony clearly relates to the purposes of proposed § 225.33(a)(6) because it may be fruitless for a worker to be aware of his or her responsibilities if he or she is afraid to carry them out. FRA responded in the final rule by acting to protect the accuracy and completeness of the data reported to it and said so clearly in the final rule.

Both intimidation and harassment were discussed at the rulemaking hearings and at the public regulatory conference. Labor representatives stated that intimidation and harassment of railroad employees exist and that they manifest themselves in many different ways. First, due to the railroads' desire to reduce the number of reportable injuries and illnesses, many railroad employees are reluctant to seek needed medical attention for fear of possible discipline or retaliation by their employer. Second, many employees who are injured on the job fail to report their injury to the railroad within the prescribed time period because, at the time the injury was incurred, they believed it was minor or insignificant. If and when the injury worsens, the employee is reluctant to report the injury because he or she may be subject to investigation or discipline, or both, for reporting late. Third, other employees request medical treatment that would render the injury or illness nonreportable to FRA, such as requesting that they be given nonprescription medication, because of intimidation or harassment by the employer. (Transcript (Tr.) November 2, 1994 at 154–156; Tr. January 30, 1995 at 159, 161, 164, and 171. All accident reporting hearing transcripts are referenced as ''Tr.'' with the date of the hearing.)

As is plainly evident, these comments expressly raise the employee intimidation and harassment issue. Petitioners were represented at the hearings in which testimony on these subjects was offered and had ample opportunity to present evidence and reasoning of their own on these subjects. Given the record in this proceeding, the logic was compelling for FRA to act to prevent the frustration of the educational and training purposes of § 225.33(a)(6) and of the overall purpose of obtaining complete and accurate data. The final rule's requirement for an intimidation and harassment policy in the ICP is a ''logical outgrowth'' of discussions and oral and written comments presented to FRA. *See AFL–CIO* v. *Donovan,* 244 U.S. App. D.C. 255, 757 F.2d 330, 338 (D.C. Cir. 1985) (quoting *United Steelworkers* v. *Marshall,* 208 U.S. App. D.C. 60, 647 F.2d 1189, 1221 (D.C. Cir. 1980). That FRA enunciated the intimidation and harassment policy in the final rule is consistent with the tenor of these discussions and comments at the proposal stage and further indicates that FRA treated the notice and comment process seriously.

d. Request To Adopt AAR's Proposed Performance Standard in Lieu of the ICP Requirement in § 225.33

Throughout the rulemaking process, AAR and its member railroads suggested that FRA adopt a performance standard for determining and measuring a railroad's compliance with reporting requirements instead of the ICP mandated by FRA. The performance standard proposed by AAR was based on methods selected from a set of statistical procedures developed for use by the U.S. Military (MIL–STD–105E, 1989) as means of statistically controlling process quality in a stable environment.

AAR and its members repeatedly claim that the 1989 GAO audit report on accident/incident reporting is outdated and that, therefore, the GAO findings should not have been considered for this rulemaking. AAR also asserts that FRA failed to give a reasoned explanation for its rejection of AAR's proposed performance standard, and that the APA requires FRA to do more than unquestioningly accept FRA's consultant's conclusions criticizing AAR's proposal. AAR thus requests elimination of the ICP and adoption of AAR's proposed performance standard.

Final Rule

FRA rejects use of AAR's proposed performance standard and retains the mandatory requirement that railroads adopt and comply with an ICP as delineated in § 225.33. At base, AAR's complaint is that FRA did not adopt the standard AAR prefers. The record, however, demonstrates the superiority of the standard adopted for the purposes of this rule. For a performance standard to be meaningful, it must be specific about outcomes to be produced. FRA's ICP does this without imposing a detailed standard plan on everyone. Moreover, the requirements related to the ICP are performance standards, simply meaningful ones that the railroads dislike.

In FRA's initial review of the AAR's performance standard, FRA had general doubts about the standard. In addition, FRA had already noticed the problem of the dilution of the denominator and questioned whether the standard would, in fact, achieve a 99-percent compliance rate. Concerned about these problems, FRA hired an independent statistical firm to review AAR's proposed performance standard. See firm's report, appended to final rule published June 18, 1996, 61 FR 30973–30976. FRA's independent evaluation of this firm's analysis and of AAR's proposal shows that AAR's performance standard will not improve the accuracy of the safety data.

Among other things, AAR's proposed standard would draw no distinction between a failure to report a minor accident and a failure to report a major one or to report it accurately. Under that proposal, so long as a railroad met the standard of accuracy in reporting the *number* of accidents and incidents it had, the railroad could inaccurately report the *seriousness* of its accidents and incidents with impunity. That could introduce very serious distortions into FRA's safety data, potentially making them far less accurate than they now are. FRA concluded that AAR's proposed performance standard would erode the integrity of FRA's safety data.

Mr. Thomas Guins, Senior Program Manager, Engineering Economics, in the Research & Test Department of AAR, provided a statement attached to the AAR's petition for reconsideration which, among other things, evaluates FRA's rejection of AAR's proposed performance standard. Mr. Guins notes that FRA's consultant's objection to the sample-inclusion process is justified. Mr. Guins offers a remedy where he suggests use of a denominator that

would change from year to year based upon the previous year's nonreportable cases. Guins at 3–4. The failure to include a denominator is a serious omission. Furthermore, the base year Mr. Guins uses in his example, 1995, could never be tested for the development of a denominator the following year. The more that Mr. Guins tries to fix the performance standard as proposed, the more complex it gets. This is directly contrary to Mr. Guins' characterization of AAR's performance standard as ''uncomplicated.'' Guins at 7.

AAR also states that FRA's consultant raised an invalid objection in that the sampling plan achieves only a 97-percent compliance rate. AAR's proposed performance standard was based on a 99-percent compliance rate. However, AAR admits that its plan would not provide the 99-percent compliance level. AAR Petition at 20. The important consideration is that a random sample of a large population has a statistical error in predicting the actual number of defects in the group from which the sample is taken; the answer could be plus or minus two percent. When the desired outcome is 99 percent, by definition the actual outcome could be below 99 percent. Mr. Guins' ''uncomplicated performance standard'' gets more complex as he changes the sampling plan to alter the shape of the Operating Characteristic Curve.

In the preamble to the June 18 final rule, FRA stated that even if AAR's proposed performance standard were to deal with some of FRA's criticisms of it, the performance standard would still fail to meet the main objective of the ICP—to improve the accuracy of the submitted accident and injury reports. AAR's response to this is its admission that the accuracy of the reports would still be in question. But, for the sake of simplicity and to prove that its proposed performance standard would work, AAR is willing to forgo the accuracy of the submitted reports. AAR Petition at 21–22. AAR's approach does not resolve the problem identified in the initial GAO report, *i.e.*, how to improve the accuracy of submitted reports. Throughout the rulemaking hearings, public regulatory conference, and in written testimony, there was no statement by AAR and member railroads that an independent audit was conducted by any railroad to determine that proper and accurate accident and incident reporting was being performed, nor did any railroad state that even an internal audit was performed to determine whether or not the GAO audit was in fact outdated. Based on subsequent instances of inaccurate reporting identified during FRA inspection activity, the GAO audit, and the absence of compelling evidence that GAO erred, FRA concludes that the GAO audit is not outdated as claimed by AAR and that it truly reflects that inaccurate reporting remains a problem in the industry or could easily recur in the future.

AAR also claimed that most of its members already had some sort of ICP in place (Tr. January 30, 1995 at 100–101, 104–105). Yet, when FRA asked these members to produce these plans, not a single railroad could produce an ICP. Some railroads stated that they had memoranda or loose instructions, or both, that were similar to an ICP, but these also were not available for FRA review. Consequently, in order to assist the industry, FRA developed criteria for a model ICP which ultimately incorporated many of AAR's recommendations.

FRA does agree with the statements of AAR and its member railroads, that these railroads have ICPs in the form of memoranda and directives which would satisfy most of the mandated ICP requirements in § 225.33. That is one more reason why AAR's insistence on the use of a different performance standard, which would also require development of an ICP, is unpersuasive, since the AAR performance standard audit would consume considerable FRA inspector resources and would most likely use additional railroad resources without improving the accuracy of FRA's accident/incident data.

e. Section 225.33(a)(9)—Annual Railroad Audit

Section 225.33(a)(9) requires each railroad to provide a statement that specifies the name and title of the railroad officer responsible for auditing the performance of the reporting function; a statement of the frequency (not less than once per calendar year) with which audits are conducted; and identification of the site where the most recent audit report may be found for inspection.

AAR claims this provision has not been justified and that FRA never responded to the railroads' concerns about this provision's rejection of the self-critical analysis privilege. AAR cites a law review article (96 Harv. L. Rev. 1083)(1983)), which notes that railroads regularly investigate accidents involving their employees. After these internal investigations are completed, outsiders may seek discovery of the resulting analyses and, as a result, a privilege of self-critical analysis has developed to shield certain self-analyses from discovery. AAR analogizes this privilege to the self-audit requirement of the ICP, *i.e.*, that since each railroad must conduct at a minimum, one yearly audit, the results of this audit should be privileged and not subject to FRA review.

Final Rule

AAR's argument is without merit. The self-critical analysis privilege is not recognized by many courts and, if recognized, it is in the context of tort litigation, not administrative law. FRA believes that it is necessary that railroads perform the required audit as a means to ensure that the ICP delivers the desired outcome, *i.e.*, accurate reporting through effective communication amongst the various railroad departments, and no public purpose would be served by affording railroads a ''self-critical analysis'' privilege. The audit allows railroads to identify problem areas and make the appropriate changes or corrections to their internal control procedures.

2. Definition of ''Establishment'' in § 225.5 and Scope of the Posting Requirement in § 225.25(h)

Section 225.5 defines an ''establishment'' as ''a single physical location where workers report to work, where business is conducted or where services or operations are performed, for example, an operating division, general office, and major installation, such as a locomotive or car repair or construction facility.''

AAR and individual railroads state the importance of limiting the definition of an ''establishment'' to the examples FRA used above and to omit from the definition the terminology ''where workers report to work.'' They state that the current definition is unlawful because railroads will be vulnerable to ''second guessing'' by FRA inspectors as to its meaning.

Large railroads also criticized the description in § 225.25(h) of the requirement to post injury and illness lists at and for each ''establishment.'' Here, the ''establishment'' where posting is required is one that has been in continual operation for a minimum of 90 calendar days. Since large railroads could have numerous locations where employees report to work or where business is conducted, these railroads believe that the burden associated with posting injury and illness data monthly at numerous small establishments would be great and not justified by any safety benefit.

Final Rule

Clarification of Definition of ''Establishment''

Requests to limit the definition of an ''establishment'' to only those examples in the definition are denied. However, the definition of ''establishment'' in § 225.5 is amended for clarification purposes. As amended,

Establishment means a single physical location where workers report to work, where railroad business is conducted, or where services or operations are performed. Examples are: a division office, general office, repair or maintenance facility, major switching yard or terminal. For employees who are engaged in dispersed operations, such as signal or track maintenance workers, an ''establishment'' is typically a location where work assignments are initially made and oversight responsibility exists, *e.g.*, the establishment where the signal supervisor or roadmaster is located.

Clarification of ''Establishment'' for Purposes of Posting the List of Reportable Injuries and Illnesses

FRA is also amending § 225.25(h) in order to clarify its scope and assist the industry in comprehending the scope of what types of facilities qualify as an ''establishment'' for purposes of posting the list of reportable injuries and illnesses.

FRA realizes that it is not practical for railroads to physically post the list of injuries and illnesses at and for all of the diverse locations and centers where employees may report for assignments on a monthly basis. Many of these facilities are only utilized for limited periods of time, do not have a permanent staff assigned to them, or are simply locations where workers go to pick up, or meet, an assignment. At a minimum, listings must be posted at locations where railroad employees who suffered reportable injures or illnesses could reasonably expect to report sometime during a 12-month period and have the opportunity to observe the posted list containing their reportable injuries or illnesses. FRA does expect to find the required posting of the reportable injuries and illnesses at and for each establishment on bulletin boards or bulletin book locations where the railroad posts company policies, *e.g.*, the policy statement concerning harassment and intimidation as required by the ICP; notices of changes to its operating, general, or safety rules; and where informational notices, such as job advertisements or local special instructions, are posted; near or adjacent to postings required by other government agencies, such as the federal minimum wage notice; or where the time-clock for the establishment is located.

The establishment at which the list of reportable injuries and illnesses is posted may be a higher organizational facility, such as an operating division headquarters; a major classification yard or terminal headquarters; a major equipment maintenance or repair installation, *e.g.*, a locomotive or rail car repair or construction facility; a railroad signal and maintenance-of-way division headquarters; or a central location where track or signal maintenance employees are assigned as a headquarters or where they receive work assignments. These examples include facilities that are generally major facilities of a permanent nature.

There are endless examples of the types of locations that may qualify as an establishment for purposes of § 225.25(h). Some illustrations: for a railroad without divisions or diverse departmental headquarters, an ''establishment'' may be the system headquarters or general office which is accessible to all employees; for train service employees and crews, an ''establishment'' is a home terminal (as commonly defined in collective bargaining agreements), but is not a layover terminal, outlying support yard, or their away-from-home terminal; for employees who are engaged in dispersed operations, such as signal or track maintenance workers, the ''establishment'' is the location where these employees regularly report for work assignments; for railroad system track or signal maintenance or construction work groups, who perform duties at various locations throughout a railroad system, the ''establishment'' may be at the transient group's mobile headquarters or it may be the location where job assignments and postings are made (if the location is reasonably accessible to employees).

An ''establishment,'' for purposes of § 225.25(h), would not include remote locations where temporary construction or maintenance work is in progress; outlying support or switching yards; or tie-up points for road switch trains or work trains away from a home terminal.

3. Section 225.25(h)—Monthly Posting of Reportable Injuries and Illnesses

As previously discussed under the definition of ''establishment,'' § 225.25(h) requires that each railroad post at each railroad establishment a list of all injuries and illnesses reported for that establishment in a conspicuous location, within 30 days after expiration of the month during which the injuries/illnesses occurred, if the establishment has been in continual operation for a minimum of 90 calendar days. If the establishment has not been in continual operation for a minimum of 90 calendar days, the listing of all injuries and occupational illnesses reported to FRA as having occurred at the establishment shall be posted, within 30 days after the expiration of the month during which the injuries and illnesses occurred, at the next higher organizational level establishment.

Most railroads assert that there is no safety justification for this provision and that this requirement is therefore not necessary. Many state that posting the list will reveal the identity of the individuals involved, thereby invading their privacy rights. Some railroads request that they should be allowed to ''electronically'' post this information. ASLRA states that the monthly posting requirement is superfluous and that the added paperwork burden is significant.

Final Rule

The requirement to post the monthly list of reportable injuries and illnesses at and for each defined establishment poses a minimal burden, even for small railroads, which have few incidents which will fall into this category. Although some railroads requested that they be allowed to post this list ''electronically,'' many more railroads claimed that they did not have the means or capability to post this information electronically at and for each establishment.

Since the monthly list of reportable injuries and illnesses does not include the name of the injured or ill employee and since the list will improve the accuracy of FRA's injury and illness data base, thereby improving FRA's ability to shape the federal railroad safety program so as to prevent and mitigate future injuries and illnesses, the argument that privacy rights of the employee are invaded is without merit. However, FRA is revising § 225.25(h), by adding § 225.25(h)(15), to address any possible concerns with privacy rights of the employee. Paragraph (15) provides that the railroad is permitted to not post information on a reported injury or illness, if the employee who incurred the injury or illness makes a request in writing to the railroad's reporting officer that his or her particular injury or illness not be posted.

Some railroads reported to FRA that they have multiple locations qualifying as an establishment that are in continual operation for a minimum of 90 calendar days. These railroads requested some sort of relief in § 225.25(h)(12), which requires the signature of the preparer on

the monthly list of reportable injuries and illnesses.

In order to minimize the burden of requiring the preparer's signature on each and every list for the railroad, FRA amends § 225.25(h)(12) so as to provide railroads with an alternative to signing each establishment's monthly list. A railroad is provided the option of not having the preparer's signature on the posted list of reportable injuries and illnesses at any location away from the reporting office. However, if the railroad chooses this option, then a complete duplicate copy of the list of reportable injuries and illnesses, by establishment, must be available for review at the preparer's office. This duplicate copy must have a cover letter or memorandum indicating the month to which the reportable injuries and illnesses apply, and must have the name, title, and signature of the preparing official. The preparer must mail or send by facsimile each establishment's list of reportable injuries and illnesses in the time frame prescribed in § 225.25(h). This option will help alleviate the time burden associated with signing each establishment's list while ensuring that the preparer of all the lists accounts for the information contained in the lists by providing his or her signature on the cover memorandum. This list must contain all the information required under § 225.25(h) (1) through (14).

4. Miscellaneous Other Concerns of Tourist and Museum Railroads

Section 225.3 describes those railroads that must conform to and comply with Part 225. Specifically, § 225.3 states that Part 225

applies to all railroads except—

(a) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(b) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(1) A public highway-rail grade crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

In general, ARM and TRAIN request that the accident reporting regulations should apply only to those railroads that are part of the general railroad system of transportation. Further, they request a separate rulemaking to define the limits of FRA authority over non-insular operations and within that limit, establish regulations that are directed at substantive safety concerns, not paperwork requirements like those found in Part 225.

TRAIN questions, in general, FRA's legal authority to regulate non-general system railroads. TRAIN cites to case law and concludes that ''before there can be any regulation of any private entity there must be, at a minimum, some impact that entity has or is having on interstate commerce. For the most part, that is not the case here,'' ''here'' implying the tourist railroad industry. TRAIN Petition at 7.

Further, TRAIN states that the safety record of its operations does not justify increased FRA regulations and that FRA did not comply with the provisions of the Regulatory Flexibility Act (RFA) because the costs of implementing the regulations far outweigh any safety benefits. TRAIN also disputes the estimated time burden and claims that the regulatory impact analysis reflects an unclear understanding of the requirements of the RFA.

ARM alleges that FRA has excepted amusement park railroads *per se* from Part 225 and that this exception is without merit because there is no rational basis for differing treatment between museum or tourist railroads, on the one hand, and amusement park railroads, on the other. ARM claims that amusement park railroads actually pose a greater safety risk and that FRA does not even know whether amusement park railroads are dangerous.

In general, TRAIN, ARM, and various small railroad petitioners request elimination of all ''nonreporting'' requirements. For example, in addition to ICP requirement discussed earlier in Section 1.a. of this summary and the requirements to record ''accountables,'' to be discussed in Section 5 of this summary, these petitioners seek to be excepted from the following requirements for the following stated reasons: (i) the requirement in § 225.25(h) to post monthly a list of all reportable injuries and illnesses at and for each establishment since such reportable injuries and illnesses and accidents/incidents are extremely rare for this industry; and (ii) the requirement to report the number of miles operated (Item #7 on Form FRA F 6180.99—the ''Batch Control Form for Magnetic Media'') since the apparent purpose of this information is to allow comparisons to be made with numbers of accidents and, since there are so few accidents amongst the historic and tourist railroads, the information would be meaningless.

Final Rule

Initially, FRA wants to make it clear that the accident reporting regulations set forth in Part 225 have always applied to non-general system, non-insular railroad operations, *e.g.*, a tourist railroad that has a public highway-rail grade crossing and that confines its operations to an installation that is not part of the general system. Further, FRA has legal authority to issue rules, as necessary, under its general rulemaking authority at 49 U.S.C. 20103. FRA's conclusion that the accident reporting rules are ''necessary'' for railroad safety is based upon a careful analysis of applicable law and policy considerations, and fully complies with the requirements of 49 U.S.C. 20103(a) and the APA.

Partial Relief From Part 225 Reporting and Recordkeeping Requirements

FRA recognizes that small tourist operations are concerned with the burdens, both in terms of time and expense, that are associated with full implementation of the final rule. Based on additional analysis, FRA concludes that it can grant some relief to certain small operations without compromising the accuracy of its accident reporting data base. Consequently, FRA amends § 225.3, by adding § 225.3(d), to except all railroads that operate exclusively off the general system (including off-the-general-system museum and tourist railroads) from all Part 225 requirements to report or record injuries and illnesses incurred by any classification of person, as defined on the ''Railroad Injury and Illness (Continuation Sheet)'' (Form FRA F 6180.55a), that result from a ''non-train incident,'' unless the non-train incident involves in-service on-track railroad equipment. See definition of ''non-train incident'' in § 225.5.

Railroads that are subject to Part 225 in the first place and that operate exclusively off the general system must, however, continue to comply with Part 225 requirements regarding reporting and recording injuries and illnesses incurred by all classifications of persons that are incurred as a result of a ''train accident,'' ''train incident,'' or a small subset of ''non-train incidents'' that involve railroad equipment in operation but not moving.

Example 1: a visitor or an employee of a non-insular, off-the-general-system museum railroad falls off a railroad car that is on fixed display in the museum building and breaks his or her ankle. This injury is classified as an injury from a ''non-train incident'' with equipment not in railroad service and would, therefore, not be reported to FRA.

Example 2: a volunteer, while collecting tickets on a railroad car for an excursion ride on a non-insular, off-the-general-system tourist railroad, cuts his or her leg. This injury requires stitches even though the car is not moving. This injury is classified as an injury from a ''non-train incident'' with equipment that is in railroad service and would, therefore, be reported to FRA.

Tourist Railroads Required To Post Monthly List of Reportable Injuries and Illnesses for Each Establishment

Apart from railroads already excepted from Part 225 as a whole by § 225.3 (*e.g.,* (i) plant railroads whose operations are confined to their industrial installation and (ii) insular, off-the-general-system tourist railroads), FRA does not believe that any railroad should be excepted from the requirement to post the monthly list of reportable injuries and illnesses at and for each establishment (§ 225.25(h)). The requirements of § 225.25(h) are discussed previously in great detail in this preamble under the definition of ''establishment.''

As explained in the preamble to the June 18 final rule, FRA wanted railroad employees to have some opportunity to be involved in the reporting process and to provide employees the chance to get a one-year picture of reportable injuries and illnesses for the establishment where they report to work. FRA is convinced that posting of this monthly list of injuries and illnesses will improve the overall quality of illness and injury data. Further, since small railroads and the historic and museum rail industry stated they had few reportable injuries and illnesses to report anyway, the burden to list such reportable injuries and illnesses for each establishment will be negligible.

''Batch Control Form for Magnetic Media'' (Form FRA F 6180.99)

As to the tourist and museum railroads' concern with reporting the ''number of miles operated'' on the ''Batch Control Form for Magnetic Media'' (Form FRA F 6180.99), FRA reiterates that the Batch Control Form is used only for those railroads who opt to report using magnetic media or electronic submission. The information contained on the Batch Control Form verifies the completeness and accuracy of the submittals. Moreover, the data on the Batch Control Form is not used in any of FRA's analyses or statistics.

TRAIN's Constitutional Argument

Turning to TRAIN's argument that FRA lacks the legal authority to regulate non-general system, non-insular railroads, TRAIN alleges that FRA's regulation of such railroads is in excess of its delegated statutory authority under the Constitution. For the reasons briefly stated in this preamble, FRA believes that non-general system, non-insular railroads are ''railroad carriers'' covered by the federal railroad safety statutes under which the accident reporting rules were promulgated and that to regulate non-general system, non-insular railroads is permissible under the United States Constitution. FRA will not address the relevant statutory language, legislative history, or delegations since they are never raised by TRAIN, but will focus solely on the TRAIN's Constitutional argument, that because of Constitutional limits on the commerce powers of the Congress, FRA lacks the authority under the Constitution to regulate non-general system, non-insular railroads. TRAIN Petition at 3.

The Commerce Clause of the United States Constitution provides: ''The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. * * *'' U.S. Const. Art. I, § 8, cl. 3. Supreme Court decisions have broadened the notion of interstate commerce to include those actions, however local, which merely affect interstate commerce. The Court has interpreted the Commerce Clause to include those entities whose activities are strictly local but who are members of a class that affect interstate commerce (*Katzenbach* v. *McClung*, 379 U.S. 294 (1964)) or who are members of a class Congress seeks to regulate (*Perez* v. *United States*, 402 U.S. 146 (1970)). Moreover, in *Wickard* v. *Filburn*, 317 U.S. 110 (1942), and in *United States* v. *Darby*, 312 U.S. 100 (1940), the Court said that Congress could reach those entities who are representative of many others similarly situated even if their individual activities do not particularly affect interstate commerce.

Recent estimates show that American tourist railroads transport some five million passengers each year. Some such railroads are interstate lines; many are not. Some tourist railroads share trackage rights with other passenger or freight railroads, while others are stand-alone railroads with their own track. Some of them provide excursions over scores, if not hundreds, of miles; others operate only a few miles. Some travel at relatively high speeds, while others lumber along at very leisurely rates. All comprise that class of railroad, the tourist railroad, whose purpose is to provide recreational train trips and whose very name (''tourist'') indicates that railroads in this class hope to attract passengers from far and near, including those from other states. Accordingly, FRA is authorized to regulate non-general system, non-insular railroads, including those that do not particularly affect interstate commerce, because they are members of a class of railroads that affect interstate commerce or are representative of other similarly situated railroads.

To support the position that FRA is empowered to regulate non-general system, non-insular railroads, FRA cites a case on point, *Historic Reader Foundation, Inc., Reader Industries, Inc., and Reader Railroad* v. *Skinner*, Civ. No. 91–1109 (W.D. Ark. Jan. 16, 1992) (*Reader*). In that case, the plaintiffs asserted that Congress did not intend to empower the FRA with the authority to regulate an intrastate tourist railroad. Like many tourist railroads generally, the Reader Railroad was a standard gage railroad line that provided excursion service for passengers. The railroad consisted of the track right-of-way, concession pavilion and building, maintenance terminal, and railroad machinery and equipment. Equipment included two steam locomotives, three antiquated passenger cars, and one caboose. The Reader offered round-trip excursions over 3.2 miles of track, and had about one mile of side tracks. The route crossed one public highway. A switch that allowed interchange with the Missouri Pacific Railroad and provided a connection with the national railroad system was dismantled, *i.e.*, the Reader was a non-general system, non-insular railroad. Some of the Reader's passengers came from outside of Arkansas, and Reader published an advertisement brochure which was distributed both locally as well as outside of Arkansas. Reader purchased supplies from outside of the State in order to operate the railroad, including lubricating oil, nuts, bolts, and paint.

The District Court held that FRA was empowered to monitor such operations to ensure the safety of the public and that Reader was subject to regulation by FRA. In support of this holding the Court noted,

> [i]t has long been settled that Congress' authority under the Commerce Clause extends to intrastate economic activities that affect interstate commerce. *Garcia* v. *San*

Antonio Metro. Transit Auth., 469 U.S. 528, 537 (1984); *Hodel* v. *Virginia Surface Mining & Recl. Assn*, 452 U.S. 264, 276–277 (1981); *Heart of Atlanta Motel, Inc.* v. *United States*, 370 U.S. 241, 258 (1964) * * *.

Reader, p. 3. In sum, the Court found that the Reader Railroad affected interstate commerce. Similarly, FRA is still empowered to regulate non-general-system, non-insular railroads as a class, since like the Reader, they affect interstate commerce.

To rebut this position, TRAIN relies primarily on the holding in *United States* v. *Lopez*, __ U.S. __ (1995), 115 S.Ct. 1624 (1995), 131 L.Ed 2d 626 (1995) to support the proposition that FRA lacks Constitutional authority to regulate non-general system railroad operations. TRAIN Petition at 4. In *Lopez*, a local student, from a local high school, carried a concealed handgun into his high school and was subsequently charged with violating the Gun-Free School Zones Act of 1990 (the Act), which forbade ''any individual knowingly to possess a firearm at a place that [he] knows * * * is a school zone.'' 18 U.S.C. 922(q)(1)(A). TRAIN argues that the Court used a stricter standard in its reasoning to determine whether the Act exceeded Congress' commerce authority, that Congress may regulate under its commerce power ''those activities having a *substantial relation* [emphasis added] to interstate commerce, *NLRB* v. *Jones & Laughlin Steel Corp*, 301 U.S. 1 at 37 (1937).'' TRAIN Petition at 6. Based upon this stricter standard of the enterprise having to have a substantial effect, rather than just an effect, on interstate commerce, TRAIN argues, the Supreme Court concluded in *Lopez* that the Act exceeded Congress' Commerce Clause authority. The Court reasoned that Section 922(q) was ''a criminal statute that by its terms had nothing to do with ''commerce'' or any sort of any economic enterprise * * *. 115 S.Ct. 1630–1631.

Even if ''substantial effect'' rather than ''effect'' is the appropriate standard, the facts in *Lopez* are easily distinguished from the facts whereby FRA regulates, as authorized by the federal railroad safety statutes, non-general system, non-insular railroads. First, non-general system, non-insular railroads are generally commercial enterprises, unlike a school playground, which is not an economic enterprise. Second, the statute in question in *Lopez* was a criminal law, an area traditionally left to the province of local and State governments. Here, the relevant statutes are civil and deal with a subject, railroad safety, that has traditionally been covered by federal law. Third and most importantly, non-general system, non-insular railroads can, if not regulated, substantially affect interstate commerce. FRA's criteria for insularity indicate the ways in which non-insular railroads substantially affect interstate commerce. *See* 49 CFR 225.3. For example, if the tracks of the non-general system railroad cross a public road that is in use, the operation of the railroad substantially affects interstate commerce in that a commercial truck using the road could collide with one of the trains that operate over the grade crossing. To give another illustration, if the tracks of the non-general system railroad cross a river used for commercial navigation, a derailment of one of the railroad's trains while it was traversing the river could easily interfere with the free flow of barge or other commercial traffic on the river. Accordingly, FRA believes that TRAIN's Constitutional challenge to the validity of FRA's authority to regulate non-general system, non-insular railroads is without merit.

ARM's Concerns About Amusement Park Railroads Excepted From Part 225

ARM, an association of railroad museums, complains that FRA has excluded amusement park railroads from Part 225 requirements without sufficient reason. FRA addressed this issue at some length in the preamble to the June 18 final rule. *See* 61 FR 30959–30960. Of course, FRA's exclusion is not of amusement park railroads as such, but of railroads with less than 24-inch track gage, which FRA considers miniature or imitation railroads, and of insular tourist and museum railroads that operate (or own track) exclusively off the general system, regardless whether they operate in an amusement park. See 61 FR 30960 (June 18, 1996) and § 225.3. Again, the excluded railroads are excepted on the basis of their track gage or their insularity. ''[A] tourist operation is insular if its operations were limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser) would be affected by the operation.'' 61 FR 30960 (June 18, 1996). FRA recognizes, however, that in practice, when the insularity test is applied, many amusement park railroads are excluded. As indicated in the preamble, insular amusement park railroads are excepted on the additional basis of State and local regulation of these entities as amusements. *Id.*

5. Section 225.25 (a) Through (g)—Recording of ''Accountables''

Section 225.25(f) requires each railroad to log each reportable and each accountable rail equipment accident/incident as well as each reportable and each accountable injury or illness not later than seven working days after receiving information or acquiring knowledge that such an injury or illness or rail equipment accident/incident has occurred.

Section 225.5 defines an ''accountable injury or illness'' as encompassing ''any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional. Such treatment would usually occur at a location other than the work environment; however, it may be provided at any location, including the work site.''

Likewise, an ''accountable rail equipment accident/ incident'' is defined in § 225.5 as ''any event, not otherwise reportable, involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment from the track before any rail operations over the track can continue. * * *''

ASLRA and its members and the tourist and museum railroads request that the requirements to record accountable injuries, illnesses, and rail equipment accidents/incidents be eliminated because the information to be gained concerning these nonreportable events is not sufficient to outweigh the greatly increased recordkeeping and administrative burden. They also claim that the injuries or illnesses and rail equipment accidents/incidents that are not reportable to FRA are relatively minor and insignificant and are simply not the kind of data that can be expected to contribute in any meaningful way to improve rail safety. TRAIN, ARM, and various small railroad petitioners opposed the requirement in § 225.25(d) to maintain the ''Initial Rail Equipment Accident/Incident Record,'' indicating that too few such accountable incidents occurred to warrant completion of this record by this segment of the industry.

Final Rule

FRA amends the final rule by granting an exception to the ''accountable'' recordkeeping requirements in § 225.25(a) through (g) for (i) railroads

that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by 49 U.S.C. 21101–21107 (hours of service) and (ii) railroads that operate or own track exclusively off the general system. (These railroads are referred to as ''excepted railroads.'') This exception appears in the ''Applicability'' section of the rule, § 225.3(c). Railroads operating or owning track exclusively off the general system maintain routine records of casualties under the State workers compensation system, and such records may be obtained by FRA pursuant to statutory authority. Railroads operating or owning track on the general system (both tourist or historical and shortline freight railroads) that have 15 or fewer employees covered by 49 U.S.C. 21101–21107 currently have to make some type of record of injuries and illnesses in order to determine whether or not the injury or illness is reportable to FRA. Thus, these records should be adequate in lieu of a formal log pursuant to § 225.25(a) through(g).

Note, however, that the excepted railroads must continue to comply with the requirements in § 225.25(a) through (g) regarding reportable events. These railroads must complete and maintain the Railroad Employee Injury or Illness Record (Form FRA F 6180.98) as required under § 225.25(a), or the alternative railroad-designed record as described in § 225.25(b), of all *reportable* injuries and illnesses of its employees that arise from the operation of the railroad for each railroad establishment where such employees report to work.

Likewise, the excepted railroads must continue to comply with the requirement in § 225.25(d) to complete and maintain the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97) or an alternative railroad-designed record, as described in § 225.25(e), of all *reportable* collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, or track equipment (standing or moving) that result in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed for each railroad establishment where workers report to work.

Consequently, the excepted railroads shall enter each reportable injury and illness and each reportable rail equipment accident/incident on the appropriate record, as required by § 225.25(a) through (e), as early as practicable but no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred. *See* § 225.25(f).

6. Requested Delay in Effective Date Due to Extensive Reprogramming of Computer Systems

AAR and most individual railroads request that the effective date of the rule, which is January 1, 1997, be delayed or changed to January 1, 1998. These petitioners claim that the data processing changes due to new circumstance codes and the addition of new blocks for information on the various forms will require at least six months to complete. FRA understands the six months to run approximately from the date that AAR's petition for reconsideration was received by FRA, *i.e.*, August 19, 1996. ASLRA requested that, due to the extensive amendments to the accident reporting regulations, FRA push the effective date back a year to January 1, 1998, and to phase or stagger implementation of the rule, with an implementation date of January 1, 1998 for Class I railroads; an implementation date of April 1, 1998 for Class II railroads; and an implementation date of July 1, 1998 for Class III railroads.

Some railroads state that the new circumstance codes and special study blocks will not improve safety data and that the new codes will make it impossible to make historical comparisons with the old occurrence codes.

Final Decision

FRA believes that reprogramming efforts can be accomplished in time to meet the January 1, 1997 implementation date. Therefore, the industry should plan to comply with the final rule on the original effective date of January 1, 1997. Railroads were also encouraged to comply by the original effective date in FRA's October 10, 1996, letter to AAR and in FRA's November 22, 1996, Federal Register document (61 FR 59368). In that document, FRA denied requests to stay the effective date of the final rule.

Railroads should have begun software reprogramming efforts shortly after publication of the final rule on June 18, 1996, in order to meet the original effective date. However, in order to assist the industry, FRA published a notice in the Federal Register on November 22, 1996 (61 FR 59485) which notified all concerned parties that FRA is in the process of preparing custom software for reporting railroad accidents and incidents. This software will be available to all reporting railroads at no cost on January 1, 1997, and will facilitate production of all the monthly reports and records required under the accident reporting regulations, as amended in 61 FR 30940 (June 18, 1996), 61 FR 59368 (November 22, 1996), 61 FR 60632 (November 29, 1996), and the present document. FRA will also have an electronic bulletin board for submission of reports.

In the NPRM, FRA expressed its concern to get more information about the circumstances of the injury which could not be described adequately by the data field ''occurrence code.'' The current FRA form (Form FRA F 6180.55(a)—Railroad Injury and Illness Summary (Continuation Sheet)), valid from 1975 to 1996) used the occurrence code to describe what the injured person was doing at the time of the injury. Instead of using the detailed occurrence codes, FRA found that a large portion of the injury records used the various ''miscellaneous'' occurrence codes to describe what the employee was doing at the time the injury was incurred. This made injury analysis and cost-benefit analysis very difficult because of incomplete information. In the NPRM, FRA proposed revisions to Form FRA F 6180.55(a) that contained both the old occurrence codes and the new ''circumstance codes.'' Initially FRA decided to keep both sets of codes to allow historical comparisons. However, throughout the rulemaking, AAR members objected to having both sets of codes as being redundant and an additional burden. Now AAR members complain that use of only the new circumstance codes is unacceptable because historical comparisons will be lost.

FRA made a conscious decision to retain the circumstance codes and to delete the occurrence codes, because of the burden claimed by AAR members. FRA is equally concerned that its decision to use only the new circumstance codes may cause some loss of historical information, but the occurrence codes were not providing the necessary information. Thus, FRA will develop a ''bridging system'' to convert the new circumstance codes to the old occurrence codes. FRA sought and will continue to seek the advice and assistance of labor and the industry in this effort. The new data base structure that FRA developed will still have a data field to store the ''bridged'' occurrence code in the same physical location as the old data base structure. This will allow analysis of the changes and provide historical comparisons.

Although railroads have had since June 18, 1996 to make changes to their computer software to accommodate the

changes in the forms required by FRA, some railroads have requested additional time for computer programming. For many of the reasons suggested already, FRA believes that if railroads had begun their programming efforts shortly after the rule was published, then there would have been sufficient time to accommodate the programming.

FRA is willing to make some accommodation for railroads that generate their own monthly reports using their own custom computer software. Railroads may continue to report using the ''old forms'' for the first three months of 1997. However, the new forms must be used for the April 1997 submissions. Railroads must refile the first three months (January through March 1997) of reports using the new forms by July 31, 1997. Failure to refile the forms would be treated as if no reports were filed at all with FRA and that may be subject to enforcement actions.

7. Definition of ''Qualified Health Care Professional''

Section 225.5 defines a ''qualified health care professional'' (QHCP) as ''a health care professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of repetitive motion injuries.''

AAR and individual railroads state that FRA has failed to give an explanation for maintaining its definition of a ''qualified health care professional.'' These railroads were troubled by the proposed definition, believing that railroad employees should be diagnosed and treated only by licensed physicians or by personnel under a licensed physician's direction.

Final Rule

Requests to limit the definition of a ''qualified health care professional'' to licensed physicians are denied. As stated in the preamble to the final rule, many reportable injuries and illnesses can be treated by a QHCP who is not a physician (one who holds an M.D.). Likewise, a physician (M.D.) may perform first aid treatment. Given the possibilities, FRA believed that limiting the definition of QHCP to encompass only physicians would result in underreporting of injuries and illnesses that require more than first aid treatment. Thus, the definition of a QHCP is retained; however, additional examples of a QHCP are added to the definition to assist the industry in comprehending the scope of what types of individuals qualify as QHCPs. In particular, the definition of a QHCP is amended to state that ''[i]n addition to physicians, the term 'qualified health care professional' includes members of other occupations associated with patient care and treatment * * *.'' Examples include chiropractors, podiatrists, physician's assistants, psychologists, and dentists.

8. Executive Order 12866

AAR asserts that FRA has not based the final rule on Executive Order (EO) 12866 in that FRA ignored its own analysis of the GAO audit; that FRA stated during the rulemaking process that the accident/incident data base is already accurate; that the E.O. directs agencies to use performance standards; that the benefits of the final rule do not justify the costs and burdens associated with its implementation; and finally, that FRA failed to restrict promulgation of rules to those ''made necessary by compelling public need, such as, material failures of private markets to protect or improve the health and safety of the public.''

FRA Response

FRA complied with E.O. 12866. The final rule was considered ''nonsignificant'' under the E.O. FRA stated in the preamble to the final rule published in June 18, 1996, that the qualitative benefits as a result of the final rule, *i.e.*, the collection of consistent and uniform data and the value of well focused regulatory decisions and properly targeted compliance activities, far exceed the costs associated with the rule. 61 FR 30965–30966.

The Federal Government, private organizations, and individuals make decisions on the basis of the ''perceived risks.'' The statistics produced by the requirements of this rule are used to communicate the risks involved (i) in transporting goods and services, and passengers on rail, (ii) with working on a railroad, and (iii) with living or commuting near rail lines or crossings. Thus, these statistics are used to form ''perceptions'' of related risks. With increased accuracy of accident and injury data, effective risk-based decisions can be made by FRA. FRA intends to increase the accuracy of these statistics and to provide the public the most accurate information through issuance of the final rules on railroad accident reporting. Hence, FRA has found promulgation of this rule to be necessary in order to continue protecting the public's health and safety.

As discussed in the preamble to the final rule published on June 18, 1996, and in this preamble, FRA noted that the industry conducted no independent audits to determine the accuracy of railroad reporting. 61 FR 30965. Nor did any railroad do an independent internal audit to determine whether or not the GAO audit was in fact outdated. *Id.* FRA's reasoning for rejection of AAR's proposed performance standard has been previously discussed in this preamble.

Below is a discussion of AAR's economics-related criticisms.

9. Regulatory Impact Analysis

AAR provided numerous criticisms concerning FRA's regulatory impact analysis (RIA) for the railroad accident reporting final rule. Initially, FRA wishes to emphasize that Executive Order 12866 does not create any rights and that FRA's RIA and its response to AAR's criticisms of the RIA do not constitute a final agency action subject to review. Nevertheless, FRA chooses to expound on many of AAR's invalid criticisms.

AAR states that FRA's RIA ''does not even attempt to assess the serious damage to a railroad's treasury resulting from the rule's attempt to favor railroad adversaries in litigation.'' AAR Petition at 28. There was no attempt to favor any private litigants, and the portion of the rule on which AAR based its concern has already been addressed. 61 FR 59368 (Nov. 22, 1996).

AAR also noted that ''the Analysis fails to account for the significant costs that arise from FRA's new definition of 'accountable' equipment accidents (section 225.5).'' AAR Petition at 28, footnote 22.

FRA's definition of ''accountable'' in § 225.5 clearly notes that although these rail equipment accidents/incidents are not reportable to FRA, there should be physical damage such that the equipment requires removal from the track or repair before any railroad operation over the track can continue. Thus, an ''accountable'' rail equipment accident/incident, if not tended to, would disrupt railroad service. 61 FR 30968. FRA's RIA for the final rule noted that railroads claimed that they currently collect this information in order to determine whether a rail equipment accident/incident is reportable to FRA. Therefore, this is, or should be, a practice of the industry prior to this rulemaking. If railroads do not collect such information, then it would be very difficult to determine whether an accident/incident is

reportable. FRA needs such records to ensure that all of the rail equipment accidents/incidents that meet reportability requirements are in fact reported to FRA. Further, FRA granted the railroads' request that they be allowed the option to design their own ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97) and ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). *See* § 225.25 (b) and (e).

Mr. Guins notes that ''[b]ecause of the additional, extensive detail FRA adds to its ICP mandate over and above railroads' existing plans, one Class 1 road has estimated the one-time cost to comply with the ICP section of this rule will require a minimum of 217 hours to write the plan. (Tr. October 5, 1994, at 99).'' Guins at 9. When this comment was made at the October 5th public hearing, FRA also requested details on how these estimates were developed. FRA again requested further details on such estimates at the Portland, Oregon hearing held on November 2, 1994 (Tr. November 2, 1994, at 98). However, the railroad providing these comments never submitted any details on this calculation. If the railroad industry and its representative organizations are going to provide such criticisms of FRA analyses, then they should respond to such requests for details on how such industry estimates are calculated. FRA's RIA provides sufficient detail in its estimates and calculations so that readers can recreate the final numbers. The industry should extend the same courtesy to FRA.

Mr. Guins also notes that AAR estimates the cost to create an ICP meeting FRA requirements for the Class I railroads at $54,684, compared to FRA's figured cost of $14,500. Guins at 9. This is not correct. FRA's estimate for the Class I railroads is actually $21,940. FRA estimated $14,850 for the ICP, and $7,440 for the ''Procedure to Process Complaints'' which is part of the ICP. RIA at 13 and Exhibit 4. Thus, the estimates provided by Mr. Guins for the development of an ICP are severely inflated.

AAR and its member railroads claimed that they already had an ICP for accident/incident reporting. Some claimed that it was not formal, but instead consisted of a series of memoranda and directives held by the railroad's reporting officer. Mr. Guins' response begs the question: what is the quality of the railroad's ICP? Beyond the requirements to develop the intimidation and harassment policy, the ICP requires the railroads to have an effective communication system between the various offices and the reporting officer; a system to audit the process annually; and an organization chart. Mr. Guins notes that one railroad would require a minimum of 217 hours to write an ICP. Guins at 9. That is almost 5½ weeks of effort for that which the railroads said they already had or would have to do in order to be in compliance with the AAR's proposed performance standard. If the member railroads already have a system in place to accomplish this, why would it take more than a week to consolidate the information into one document?

Mr. Guins also addresses software programming costs associated with the special study blocks (SSB). Guins at 9–10. Nearly all the reporting forms were modified, and any railroad that uses a computer to store accident/incident data, will have to modify its data bases, even without the SSBs. FRA estimates that railroads need to add only two additional fields for storing the SSBs in the rail equipment and highway-rail accident/incident data bases. The annual storage costs for these data elements are less than ten cents. To illustrate this cost, FRA provides the following: BNSF had 1478 rail equipment and highway-rail accident/incident reports in 1995. This equates to 59,120 characters of storage for the SSBs. Current costs for a two-gigabyte (2,000,000,000) disk drive is approximately $300. The cost of storing the additional information for BNSF for calendar year 1995 would have been $0.09.

With any change in a computer data base there must be a corresponding change in computer software. If the only change was the addition of the SSBs, then some of the estimates for reprogramming the system would be accurate. However, reprogramming the computer systems would still be required because of various changes to other required forms. Adding two fixed-length character fields that have no editing requirements for the SSBs will barely affect the cost of the reprogramming effort.

Mr. Guins also finds fault with FRA's estimate of $15,000 per Class I railroad for modifications to railroad software programming related to the changes in the various FRA forms. Guins at 11. AAR's estimates vary between $80,000 and $125,000. FRA believes that these estimates for reprogramming are unfounded. For three of the four monthly forms, the changes are minor. FRA acknowledges that one form, the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a), will require a major change. However, this is not a complex form. As discussed earlier, FRA has developed a complete software system for railroads to use at no charge to the railroad. This software is far more extensive in features than the software railroads were going to develop. Given current software technology, it is difficult to imagine the estimated expense and time that large railroads are alleging it would take to accomplish these changes. FRA's software will include ''lookup'' tables (with ''wildcard'' searches); edits and cross-field edits; multiform cross-references; ''help'' screens; a built-in facsimile (FAX) transfer; a bulletin board for electronic transfer; backup and recovery utilities; and a report generator. It even includes the *FRA Guide for Preparing Accidents/Incidents Reports,* by section, when the help key is activated.

In general, AAR criticizes FRA cost-burden estimates associated with the amendments to the final rule. In response, FRA points out that it only estimates the costs for the amendments to the rule and not the total burden for performing a function. This is noted in the RIA's ''Assumptions'' section. RIA at 5. Thus, when the industry is already performing a function, whether it is customary practice or an FRA requirement, and there is a regulatory change that causes this impact to go up or down, then FRA credits or debits only the change in the burden.

Mr. Guins further finds fault with FRA's data-entry costs savings associated with electronic submission of reports where he states that ''this rule is not needed to permit electronic reporting, at least not to the extent proposed. It is my understanding that at least one railroad is currently reporting accident data electronically to the FRA.'' Guins at 12. The final rule, for the first time, *permits* the option of submitting the reports and updates and amendments to the reports by way of magnetic media, or by means of electronic submission over telephone lines or other means, in lieu of submitting the required information on paper. FRA's benefits for this option are based on cost estimates for data entry that will be electronically submitted by those railroads opting to submit data electronically for other reasons. In other words, the benefit, *i.e.*, the reduction in data entry costs, assumes that any railroad that chooses to submit data electronically will do so for its own reasons, and thus will make the decision on its own without a government mandate. If FRA were to mandate that railroads submit data via magnetic media, then almost all of the costs would be added to the total costs, and all of the estimated benefits would be added to the total benefits.

In addition, when FRA first estimated this savings, it did not even take into account its own efforts to create and provide software for the industry. As stated previously in this preamble, FRA has contracted to develop a personal computer (PC) based software program for smaller railroads to use for collecting and reporting accident and injury statistics to FRA. This software, Accident/Incident Report Generator (AIRG), will produce all the monthly reports and records required by the final rule and will be ready for general use as of January 1, 1997. FRA will provide this software free of charge to any railroad choosing the magnetic media/ electronic transfer option. Therefore, the savings from reduced data entry for FRA will probably be larger and realized sooner than estimated in the final rule's RIA. This cost is also FRA's and not the Class I railroads'.

Mr. Guins also criticizes FRA's estimated savings from the reduction in FRA Operating Practices Inspector's time where he states ''[t]he Analysis provides no insight as how this savings was calculated nor what activities currently performed by the inspectors will no longer be required.'' Guins at 13. The final rule requires ICPs, and FRA inspectors have access to review the railroad's ICP. 49 CFR 225.35. FRA's RIA notes that the savings associated with development of an ICP are based on an estimated savings of about five percent of the time inspectors now spend on Part 225 audits. RIA at 27 and Exhibit 11. Access to a written ICP will provide FRA inspectors with a road map of where to look for information and will save these inspectors considerable time in deciphering the unwritten ways of how each railroad functions in the accident reporting arena. FRA additionally provided a detailed exhibit in the RIA detailing the calculation of this benefit. RIA at Exhibit 11.

FRA's experience with Part 225 audits and assessments more than confirms the need for ICPs. It also confirms that FRA inspectors will save time conducting future audits because of better and quicker access to needed information.

10. Necessity of the Rule; Other Miscellaneous Criticisms

AAR asserts that the final rule is ''unlawful because there has been no threshold finding—and none can be made—that a significant risk justifies the rule.'' AAR Petition at 29. Further, AAR contends that FRA has authority to issue only those rules that are ''necessary'' to railroad safety, *i.e.*, necessary to require a finding that a significant risk to safe operations exists. *Id.* AAR claims that FRA has not made any threshold finding that a significant risk exists. AAR Petition at 30–31. AAR specifically cites the following FRA findings and statements to support this conclusion:

(1) The industry is already ''performing at high safety levels'' (60 Fed. Reg. 59637) and the rule has ''minimal safety implications'' (61 Fed. Reg. 23441).

(2) The last four years (1992–95) have been the safest in railroad history. [No citation is offered by AAR].

(3) The 1989 GAO report to which FRA's rule responds is based on accident data that is almost a decade old and ''most of the missing accident reports [found by GAO] were 'fender-benders' and * * * the unreported injuries were minor.'' (59 Fed. Reg. 42881). The report did not involve ''major occurrences, either in terms of injuries or accidents.'' (Tr. January 30, 1995 at 77–78.)

(4) Even though the GAO criticisms were not significant, FRA did act to improve reporting [by issuing the proposed rule (59 FR 42881)]. * * *

(5) FRA reported in 1994 that, based on its own review of all major railroads and a sampling of smaller roads, railroads ''have generally improved their internal control procedures and their accident/incident reporting.'' (59 Fed. Reg. 42882).

(6) The result is a reporting system already in place with an ''accurate data base'' [Tr. January 30, 1995 at 78] that produces reports that ''fairly reflect the true pattern of accident causation'' [Statement of FRA Administrator before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science, and Transportation, June 14, 1994 at 4].

(7) GAO recommended that railroads have internal control procedures for reporting. [I]n 1994, * * * FRA [stated that it] found that all Class I's and 95 percent of other railroads utilize an internal control plan (FRA 1994 Regulatory Impact Analysis at 10).

AAR Petition at 31–32.

Finally, AAR states that FRA never acknowledged the railroads' recommendation that the final rule include language that an employee's failure to provide employers sufficient access to medical information, that is reasonably necessary for the railroads to make reportability decisions, be made a defense to the assessment of a civil penalty for failing to report the injury or illness. AAR Petition at 16–17.

FRA Response

FRA has discussed many of the foregoing criticisms earlier in this preamble. FRA offers and reiterates that the 1989 GAO report specifically found problems with the quality of railroads' accident/incident and injury/illness reports and with the fact that many accidents and injuries were not being reported to FRA. FRA investigations since that time have disclosed additional problems on individual railroads, and recurrence of those problems should be expected absent effective countermeasures. FRA needs the best available safety data so that it can integrate accident and injury data to target problem areas and locations. Moreover, railroads may utilize these same safety data to better define where its resources, both monetary and personnel, should be distributed.

The limitation on FRA's power to issue rules is found in its general rulemaking authority at 49 U.S.C. 20103. This section limits FRA to issue rules that are ''necessary,'' considering relevant safety information. Complete and accurate safety data are necessary for effective safety regulations. That is so obvious, that it is puzzling why anyone would question it. Executive Order 12866 provided that costs and benefits of a rule shall be understood to include both quantifiable costs and qualitative measures of costs that are difficult to quantify, but nevertheless essential to consider. FRA's rule maximizes net benefits and imposes the least burden on the industry.

It has always been FRA's policy to forgo assessing a civil penalty in instances where an employee fails to cooperate with railroad management to provide requested medical documentation to assist the railroad in rendering its decision on the reportability of the injury or illness. This policy is also elucidated in the *FRA Guide for Preparing Accidents/ Incidents Reports.*

11. Data Elements on FRA Accident/ Incident Forms

UP's petition highlighted two issues of particular concern. First, UP sees no reason behind the ''narrative'' block of information, block ''5a'' on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a). UP claims that ''FRA will not be able to perform any analysis using the narrative information, and neither will the carriers. The requirement merely requires unnecessary manual intervention in the reporting process and reams of additional paper.'' UP Petition at 8.

UP also sees no reason for the special study blocks (SSBs), two entries on block ''49'' on the ''Rail Equipment Accident/ Incident Report'' (Form FRA F 6180.54). UP fails ''to see how any meaningful data can be reported on only two lines. Moreover, even if usable data would be drawn from the block, it would not be of assistance for current safety issues.'' *Id.* UP asserts that instead of the SSBs, FRA should request special study data ''from individual railroads outside of the formal accident/

incident reporting system, as FRA does today.'' *Id.*

ASLRA's petition has attached to it Exhibit A, which contains a short statement from Mr. Dean McAllister, Director of Safety and Quality with Rail Management & Consulting Corporation. Most of Mr. McAllister's issues have already been addressed in this preamble. However, he recommends that the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) should provide space for a sketch of the crossing. ''Unless a sketch area is provided, it will be necessary for us to fill out two forms as this information is required by ourselves and insurance underwriters.'' McAllister at 2.

FRA Response

In response to UP, the block for a narrative on the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) has been on this form since 1975. The information in the ''narrative'' block is keyed in and becomes part of FRA's data base. The narrative is printed, and FRA conducts ''key word'' searches on the narrative to select records for subsequent analysis. For example, a key word search could be ''diesel fuel.'' It should also be noted that the new narrative block on ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) and on the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) are required to be completed only when the codes on the forms do not adequately describe the injury or accident, respectively. 61 FR 30948,30952 (June 18, 1996). The information on the narratives should not be summary, but should contain specific detail on the accident or injury so as to provide FRA and railroads using these fields better information.

The SSBs on the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) and on the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) will provide FRA with valuable information. To this end, FRA has redesigned its data bases such that all the new information requests are found at the end or bottom of the existing records, so as to minimize the reprogramming of existing programs. Railroads that use computers already have to redesign their data bases to accommodate the new data elements. Further, railroads may want to collect injury and accident information utilizing the SSBs. The 40 characters of data also could be in a series of codes. This much is certain: it is easier to include the SSBs now, when the data bases have to be redesigned, than in the future, as a separate item.

As to Mr. McAllister's request to include a sketch on the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57), he asserts that inclusion of a sketch would reduce the number of forms he is obligated to complete for insurance underwriters. First, this request was never made during the proposal stage of the rulemaking, although this form and others were discussed in detail in the NPRM and public hearings. Second, storing pictorial data on a computer would be very expensive and would prohibit individuals without advanced software from retrieving the information. Finally, expanding the current form would be a major expense to railroads both in terms of paperwork burden and in retraining of personnel, both of which Mr. McAllister complained about in his statement.

B. Technical Amendments

Section 225.19(c) is amended to reflect that the reporting threshold for calendar year 1991–1996 is $6,300 and for calendar year 1997 is $6,500. This revision was inadvertently omitted from the final rule published November 22, 1996,and is necessary to provide a proper cross-reference for the definition of ''Train accident'' in FRA's alcohol and drug regulations (49 CFR 219.5). 61 FR 60632, 60634. In addition, the definition of ''Reporting threshold'' in 49 CFR 219.5 is revised to reflect that the primary source of the reporting threshold is § 225.19(e), rather than § 225.19(c). 61 FR 60634 (Nov. 29, 1996).

Further, paragraph (4) of the definition of ''Accident/ incident'' is corrected by removing the words ''of a railroad employee'' from the phrase ''Occupational illness of a railroad employee.'' 49 CFR 225.5. This change eliminates an inadvertent inconsistency between that paragraph and the definition of ''Occupational illness'' in the same section, which includes ''any person who falls under the definition for the classifications of Worker on Duty—Employee, Worker on Duty—Contractor, and Worker on Duty—Volunteer * * *.'' Finally, a pronoun reference in § 225.27(a) is corrected.

C. Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

The amendments to the final rule have been evaluated in accordance with existing regulatory policies and procedures and are considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; Feb. 26, 1979). The amendments to the final rule also have been reviewed under Executive Order 12866 and are also considered ''nonsignificant'' under that Order.

The amendments to the final rule will decrease some of the impacts from that in the final rules published on June 18, November 22, and November 29, 1996. 61 FR 30940, 61 FR 59368, 61 FR 60632, respectively. This is especially true for the paperwork related burdens on some small entities. In addition, FRA's decision to produce its own personal computer (PC)-based software and provide it free of charge to any railroad will effectively increase the quantity of accident/incident reporting that will be performed through electronic means. Thus, the savings, that FRA expects to receive from a decrease in its dataentry costs, are also expected to increase above the original estimates that FRA provided in its Regulatory Impact Analysis for the final rule published on June 18, 1996.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments to Part 225 in this document will effectively reduce the impact on some small entities. Railroads that operate off the general railroad system of transportation have been excepted from some requirements. Thus, the economic impact on tourist or excursion railroads that do not operate on the general system is reduced from that expected from the final rules published on June 18, November 22, and November 29, 1996. 61 FR 30940, 61 FR 59368, 61 FR 60632, respectively. In addition, railroads that operate on the general system that have 15 or fewer employees covered by the hours of service law, have also been excepted from some requirements. This will reduce the expected burden on a large number of small entities.

FRA has concluded that the amendments to the final rule will decrease the economic impact from that estimated in the final rules published on June 18, November 22, and November 29, 1996. 61 FR 30940, 61 FR 59368, 61 FR 60632, respectively. Therefore, the amendments to the final rule in this document will have a positive economic impact on these small entities since the final rule, as amended in this document, effectively excepts a large number of

small entities from some paperwork requirements.

Paperwork Reduction Act

The information collection requirements contained in the June 18, 1996 final rule, entitled Railroad Accident Reporting (61 FR 30940), were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) under control number 2130–0500 and are enforceable as approved. The approval will expire on August 31, 1999. Four of the several rules to amend 49 CFR Part 225 published together in this issue of the Federal Register, contain amendments to the approved information collections, while one adds a new information collection requirement. These revisions are subject to review by OMB under the Paperwork Reduction Act of 1995.

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each collection of information. To comply with this requirement, FRA is contemporaneously publishing a notice in the Federal Register. A description of the information collection requirements is shown in this notice along with an estimate of the annual reporting and recordkeeping burden. Should any respondents have comments on these information collection requirements, they should respond to the addresses located in that notice.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new or revised information collection requirements resulting from this rulemaking action. Once OMB approval is received, the OMB control number will be announced by separate notice in the Federal Register.

Environmental Impact

The amendments will not have any identifiable environmental impact.

Federalism Implications

The amendments to the final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Railroad safety.

49 CFR Part 225

Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends Parts 219 and 225, Title 49, Code of Federal Regulations to read as follows:

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; and 49 CFR 1.49(m).

2. In § 219.5, the definition of *Reporting threshold* is amended by removing ''§ 225.19(c)'' in the first sentence and by adding, in its place, ''§ 225.19(e)''.

PART 225—[AMENDED]

1. The authority citation for Part 225 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49 (c), (g), and (m).

2. Section 225.3 is amended by redesignating the introductory text as paragraph (a) introductory text and revising it to read as set forth below: by redesignating paragraphs (a), (b), and (c) introductory text as paragraphs (a) (1), (2), and (3), respectively; by redesignating paragraphs (c) (1), (2), (3), and (4) as paragraphs (a)(3) (i), (ii), (iii), nad (iv), respectively; and by adding new paragraphs (b), (c), and (d) to read as follows:

§ 225.3 Applicability.

(a) Except as provided in paragraphs (b), (c), and (d), this part applies to all railroads except—

* * * * *

(b) The Internal Control Plan requirements in § 225.33(a)(3) through (10) do not apply to—

(1) Railroads that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101–21107) and

(2) Railroads that operate or own track exclusively off the general system.

(c) The recordkeeping requirements regarding accountable injuries and illnesses and accountable rail equipment accidents/incidents found in § 225.25(a) through (g) do not apply to—

(1) Railroads that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101–21107) and

(2) Railroads that operate or own track exclusively off the general system.

(d) All requirements in this part to record or report an injury or illness incurred by any classification of person that results from a non-train incident do not apply to railroads that operate or own track exclusively off the general railroad system of transportation, unless the non-train incident involves in-service on-track equipment.

3. Section 225.5 is amended by revising paragraph (4) in the definition of Accident/incident, by revising the definition of *Establishment,* and by adding one sentence to the end of the definition of *Qualified health care professional* to read as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

* * * * *

(4) Occupational illness.

* * * * *

Establishment means a single physical location where workers report to work, where railroad business is conducted, or where services or operations are performed. Examples are: a division office, general office, repair or maintenance facility, major switching yard or terminal. For employees who are engaged in dispersed operations, such as signal or track maintenance workers, an ''establishment'' is typically a location where work assignments are initially made and oversight responsibility exists, *e.g.,* the establishment where the signal supervisor or roadmaster is located.

* * * * *

Qualified health care professional * * * In addition to licensed physicians, the term ''qualified health care professional'' includes members of other occupations associated with patient care and treatment such as chiropractors, podiatrists, physician's assistants, psychologists, and dentists.

* * * * *

§ 225.19 [Amended]

4. Section 225.19(c) is amended by adding after the phrase ''that result in damages greater than the current reporting threshold'' the following: *''(i.e.,* $6,300 for calendar years 1991 through 1996 and $6,500 for calendar year 1997)''.

5. The introductory text of § 225.25(h) is amended by removing the first and

second sentences and adding, in their place, the following:

§ 225.25 Recordkeeping.

* * * * *

(h) Except as provided in paragraph(h)(15) of this section, a listing of all injuries and occupational illnesses reported to FRA as having occurred at an establishment shall be posted in a conspicuous location at that establishment, within 30 days after the expiration of the month during which the injuries and illnesses occurred, if the establishment has been in continual operation for a minimum of 90 calendar days. If the establishment has not been in continual operation for a minimum of 90 calendar days, the listing of all injuries and occupational illnesses reported to FRA as having occurred at the establishment shall be posted, within 30 days after the expiration of the month during which the injuries and illnesses occurred, in a conspicuous location at the next higher organizational level establishment, such as one of the following: an operating division headquarters; a major classification yard or terminal headquarters; a major equipment maintenance or repair installation, *e.g.*, a locomotive or rail car repair or construction facility; a railroad signal and maintenance-of-way division headquarters; or a central location where track or signal maintenance employees are assigned as a headquarters or receive work assignments. These examples include facilities that are generally major facilities of a permanent nature where the railroad generally posts or disseminates company informational notices and policies, *e.g.*, the policy statement in the internal control plan required by § 225.33 concerning harassment and intimidation. At a minimum, ''establishment'' posting is required and shall include locations where a railroad reasonably expects its employees to report during a 12-month period and to have the opportunity to observe the posted list containing any reportable injuries or illnesses they have suffered during the applicable period.

* * *

* * * * *

6. The introductory text of § 225.25(h) is further amended by removing the last sentence and adding, in its place, the following:

§ 225.25 Recordkeeping.

* * * * *

(h) * * * The listing shall contain, at a minimum, the information specified in paragraphs(h)(1) through (14) of this section.

* * * * *

7. In § 225.25, paragraphs(h)(12) and (13) are revised and new paragraph(h)(15) is added to read as follows:

§ 225.25 Recordkeeping.

* * * * *

(h) * * *

(12) Preparer's name, title, telephone number with area code, and signature (or, in lieu of signing each establishment's list of reportable injuries and illnesses, the railroad's preparer of this monthly list may sign a cover sheet or memorandum which contains a list of each railroad establishment for which a monthly list of reportable injuries and illnesses has been prepared. This cover memorandum shall be signed by the preparer and shall have attached to it a duplicate copy of each establishment's list of monthly reportable injuries and illnesses. The preparer of the monthly lists of reportable injuries and illnesses shall mail or send by facsimile each establishment's list to the establishment in the time frame prescribed in paragraph (h) of this section.); and

(13) Date the record was completed.

* * * * *

(15) The railroad is permitted not to post information on an injury or illness only if the employee who incurred the injury or illness makes a request in writing to the railroad's reporting officer that his or her particular injury or illness not be posted.

§ 225.27 [Amended]

8. The second sentence of § 225.27(a) is amended by removing the words ''they relate'' and adding, in their place, ''it relates''.

§ 225.33 [Amended]

9. The third sentence of the introductory text of § 225.33(a) is amended by removing the word ''ten''.

Issued in Washington, D.C., on December 16, 1996.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–32420 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 96–067; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Final Decision to Grant Exemption

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

ACTION: Final decision.

SUMMARY: This final decision responds to a joint petition filed by Vector Aeromotive Corporation (Vector) and Automobili Lamborghini S.p.A. (Lamborghini) requesting that each company be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MYs) 1995 through 1997, and that lower alternative standards be established. In this document, NHTSA is establishing alternative standards of 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997, for Lamborghini and Vector.

DATES: *Effective date:* February 6, 1997. *Applicability dates:* This exemption and the alternative standards apply to Lamborghini and Vector for MYs 1995, 1996 and 1997.

Petitions for reconsideration: Petitions for reconsideration must be received no later than February 6, 1997.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket number and notice number cited in the heading of this notice and must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Background

NHTSA is exempting Lamborghini and Vector from the generally applicable average fuel economy standard for 1995, 1996 and 1997 model year passenger automobiles and establishing alternative standards applicable to Lamborghini and Vector for each of these model years. This exemption is issued under the authority of section 32902(d) of Chapter 329 of Title 49 of the United States Code (formerly section 502(c) of the Motor Vehicle Information and Cost Savings

Act)(49 U.S.C. 32902(d)). Section 32902(d) provides that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if the agency concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 32902(f) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Proposed Decision and Public Comment

This final decision was preceded by a proposal announcing the agency's tentative conclusion that Lamborghini and Vector should be exempted from the generally applicable MY 1995, 1996 and 1997 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997 be established for Lamborghini and Vector (61 FR 39429; July 29, 1996). The agency did not receive any comments in response to the proposed decision.

NHTSA Final Determination

Therefore, the agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Lamborghini and Vector is 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Lamborghini and Vector from the generally applicable passenger automobile average fuel economy standard for the 1995, 1996 and 1997 model year and establishes an alternative standard of 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997 for Lamborghini and Vector.

Regulatory Impacts

NHTSA has analyzed this decision, and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a ''rule,'' which term is defined as ''an agency statement of general applicability and future effect.'' This exemption is not generally applicable, since it applies only to Lamborghini and Vector. If the Departmental policies and procedures were applicable, the agency would have determined that this action is not ''significant.'' The principal impact of this exemption is that Lamborghini and Vector will not be required to pay civil penalties if they achieve a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Lamborghini and Vector's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Lamborghini and Vector's 1995, 1996 and 1997 model year automobiles cannot achieve better fuel economy than 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997, granting this exemption will not affect the amount of gasoline consumed.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Lamborghini and Vector. It relieves the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY 1995, 1996 and 1997. Since the price of 1995, 1996 and 1997 Lamborghini and Vector automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 is amended as follows:

PART 531—[AMENDED]

1. The authority citation for Part 531 continues to read as follows:

Authority: 49 U.S.C. 32902; Delegation of authority at 49 CFR 1.50.

2. In section 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(12) is added to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(10) Automobili Lamborghini S.p.A./ Vector Aeromotive Corporation.

Model year	Average fuel economy standard (miles per gallon)
1995	12.8
1996	12.6
1997	12.5

* * * * *

Issued on: December 18, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–32546 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–59–U

Federal Transit Administration

49 CFR Part 659

RIN 2132–AA57

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Transit Administration (FTA) is making technical amendments to the State Safety Oversight rule to correct minor errors. This rule is intended to clarify the existing rule.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek, Attorney-Advisor for Legislation and Rulemakings, Office of the Chief Counsel, FTA, 400 7th Street S.W., Washington, D.C. 20590. (202)366–4011. Information may also be obtained from Roy Field of the Office of Safety and Security (202) 366–2896. Electronic access to this and other rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1–800–231–2061 or through the FTA World Wide Web home page at http://www.fta.bt.gov; both services are available seven days a week.

SUPPLEMENTARY INFORMATION: FTA is making the following technical amendments to its State Safety Oversight rule.

I. System Safety Program Plans

Section 659.33(a) is amended by adding a dash after the word ''must,'' moving the phrase ''require the transit agency to'' to paragraph (a)(1), and removing the dash after the word ''to.'' Section 659.33(a) now reads ''[e]xcept as provided in § 659.33(b), the oversight agency must—(1)[r]equire the transit agency to implement, beginning on January 1, 1997, a system safety program plan conforming to the oversight agency's system safety program standard; and [2] [a]pprove in writing before January 1, 1997, the transit agency's system safety program plan.''

Section 659.33(b) is amended by adding a dash after the word ''must'' and moving the phrase ''require the transit agency to'' to paragraph (b)(1), and removing the dash after the word ''to.'' Section 659.33(b) now reads ''[t]he oversight agency must—(1) [r]equire the transit agency to implement beginning on January 1, 1998, the security portions of its system safety program plan; and (2) [a]pprove in writing before January 1, 1998, the security portions of the transit agency's system safety program plan.''

II. Annual Audits

Section 659.35(a) states that ''the oversight agency must require that the transit agency submit, annually, a copy of the annual safety audit report prepared by the transit agency as a result of the Internal Safety Audit Process (APTA [American Public Transit Association] Guidelines, checklist number 9) * * *.'' FTA has learned through public meetings with State and transit agency officials that there is much confusion concerning this requirement. Many have interpreted this provision to mean that a transit agency must conduct, annually, an audit that complies with checklist #9, which is a very detailed audit that generally is not conducted annually. This interpretation is incorrect. In this section, FTA is requiring the oversight agency to require the transit agency to audit itself, as check list #9 states, on an on-going basis. Of course, a transit agency will not conduct a complete audit every year; but, it would be appropriate to phase-in a complete audit during the three-year time-period between safety reviews. This section requires that reports be written annually to reflect the kind of audit the transit agency conducted for that year; those reports must be submitted to the oversight agency. In short, the oversight agency in conjunction with the transit agency should decide on the areas that should be audited in a given year and on the content of the audit report. In making these decisions, however, the oversight and transit agencies are required to use the American Public Transit Association's checklist # 9 process.

III. Annual Submissions

In this section FTA has changed the date the annual submissions are due from the oversight agency from January 1 of each year to March 15 of each year; this gives the oversight agency time to collect data and it corresponds to the date that MIS (Management Information Systems) forms are due from recipients, including States, under FTA's drug and alcohol rules.

IV. Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities; this rule merely corrects minor errors that occurred in the December 27, 1995, publication and is unlikely to significantly increase the costs for employers.

List of Subjects in 49 CFR Part 659

Grant programs—transportation, Incorporation by reference, Reporting and recordkeeping requirements, Safety, Security, and Transportation.

For the reasons set forth in the preamble, FTA amends title 49, Code of Federal Regulations, part 659 as follows:

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

1. The authority for part 659 continues to read as follows:

Authority: 49 U.S.C. 5330; 49 CFR 1.51.

2. § 659.33 (a) and (b) are revised to read as follows:

§ 659.33 Specimen system safety program plans.

(a) Except as provided in § 659.33(b), the oversight agency must—

(1) Require the transit agency to implement, beginning on January 1, 1997, a system safety program plan conforming to the oversight agency's system safety program standard; and

(2) Approve in writing before January 1, 1997, the transit agency's system safety program plan.

(b) The oversight agency must—

(1) Require the transit agency to implement beginning on January 1, 1998, the security portion of its system safety program plan; and

(2) Approve in writing before January 1, 1998, the security portions of the transit agency's system safety program plan.

* * * * *

§ 659.45(b) [Amended]

3. In § 659(b) the words ''March 15'' are substituted for the words ''January 1''.

Issued: December 16, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–32306 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Lesquerella Perforata (Spring Creek Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for Spring Creek bladderpod pursuant to the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only a limited area within Tennessee's Central Basin. It is threatened by habitat alteration; residential, commercial, or industrial development; livestock-grazing; conversion of its limited habitat to pasture; and habitat encroachment by woody vegetation and herbaceous perennials.

DATES: This rule is effective January 22, 1997.

ADDRESSES: The complete administrative file of this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/258–3939, Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella perforata (Spring Creek bladderpod), described by R. C. Rollins (Rollins 1952), occurs within a small area in Wilson County in the vicinity of Lebanon, Tennessee. This winter annual is 2 to 4 decimeters (8 to 16 inches) tall. Its auriculate leaves are oblong to ovate in shape. The flowers have petals that are 7 to 10 millimeters (0.3 to 0.4 inch) long and are white to lavender in color. It has a broadly ovoid-shaped fruit that is hairless on the outside and densely pubescent on the inside. An internal partition between the two halves of the fruit is ''perforated'' or missing.

Lesquerella perforata is a winter annual that germinates in early fall, over-winters as small rosettes of leaves, and flowers the following spring. Flowering usually occurs in March and April. Soon after the flowers wither, the fruits mature and the plants die. The fruits split open and the enclosed seeds fall to the ground and lay dormant until the fall, when the cycle starts over again. If conditions are not suitable for germination the following fall, the seeds can remain dormant (but viable) for several years (Kral 1983, Rollins 1952, Rollins 1955, Baskin and Baskin 1990).

This species is typically found growing on flood plains. It requires annual disturbance in order to complete its life cycle. Historically, this disturbance was probably provided by periodic flooding of the streams along which it occurs. This flooding is thought to have removed the perennial grasses and woody plants that quickly invade the flood plains without regular natural or artificial disturbance. Cultivation of annual crops, such as corn, provides an excellent means of artificially maintaining the habitat, provided there is no fall plowing and herbicide use is limited. No-till farming techniques are believed to adversely affect the species because of the extensive use of herbicides required to successfully implement the technique. Row-crop cultivation, which avoids the use of fall plowing and delays spring plowing until the majority of the plants have set fruit, does not seem to adversely affect the species (Somers *et al.* 1993; Somers, Massachusetts Natural Heritage and Endangered Species Program, personal communication, 1992).

Lesquerella perforata is known from four populations consisting of 13 extant sites in Wilson County, Tennessee. Three additional sites no longer support the species. One of the extant populations occurs along Spring Creek and consists of five groups of plants. Another, consisting of four groups of plants, is found along Lower Bartons Creek. Two sites are located farther upstream and are designated the Middle Bartons Creek population. The fourth population consists of two sites and is located along a tributary of Bartons Creek. All of the known sites for the species are found within a few miles of each other; with only one exception, sites are within the flood plains of Spring and Bartons Creeks or within the floodplain of a Bartons Creek tributary. The only non-floodplain location is within a gladey area slightly above the floodplain of Spring Creek (Somers *et al.* 1993). All of the known sites supporting *L. perforata* are privately owned, and none are protected through cooperative management agreements with the State or the Service.

The following site specific information is from Somers *et al.* (1993).

Spring Creek Population—Site 1 is the largest known site for the species and is also the *L. perforata* type locality. In 1992, the site supported over 100,000 individuals. Although this is a significant population, plants were much denser and the area supporting them was larger in 1980. Site 2 is a field that supported about 500 plants in 1992. Site 3 supported 25,000 to 50,000 plants in 1992. Site 4 is a small area, about 90 feet long and 43 feet wide, supporting between 1,000 and 5,000 plants in 1992. Site 5 is the only non-floodplain site for the species and was discovered during the 1992 field work to update the status of *L. perforata.* The area is a triangular-shaped glade that is about 150 feet long and about 100 feet wide at its widest point. The site was estimated to support between 500 and 1,000 plants in 1992.

Lower Bartons Creek Population—Site 6 is a small site that supported about 1,000 plants in 1992. Site 7 is a small site that supported two small clumps (30 feet by 5 feet) of the species in 1992. Site 8 is a small site that supported only a few plants in 1992. Site 9 is a medium-sized site that supported about 10,000 plants in 1992.

Middle Bartons Creek Population—Site 10 is a small tract in an industrialized area near Lebanon that supported about 600 plants in 1992. Site 11 is near Site 10 but supports a larger colony of about 5,000 plants.

Bartons Creek Tributary Population—Site 12 is located along 1,000 feet of the floodplain of an ephemeral tributary of Bartons Creek. In 1992, it supported about 450 plants. Site 13 is a small area located near Site 12; it contains only a few individuals. In 1992, the area was overgrown with dense herbaceous growth.

Previous Federal Action

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Lesquerella perforata* was included in the Smithsonian report and the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act; *L. perforata* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979, (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Lesquerella perforata* was included as a Candidate species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Candidate species are those for which the Service has sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list. This species was maintained as a Candidate when the notice of review for native plants was revised in 1983 (48 FR 53640) and again in 1985 (50 FR 39526), 1990 (55 FR 6184), and 1993 (58 FR 51144).

The Service funded a survey in 1992 to update the status information on *L. perforata.* A final report was received in February 1993. During the 1992 and 1993 field seasons, personnel with the Tennessee Department of Environment and Conservation conducted extensive inventories of all the known and

potential sites for this species. Based upon this final report, the Service developed a proposed rule to list the species as endangered. The proposal was published in the Federal Register on August 23, 1994 (59 FR 43322).

The processing of this final rule conforms with the Service's final listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6); and (2) the restoration of significant funding for listing through the passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions. In the development of this final rule, the Service has conducted an internal review of available Service-generated information. Based on this review, the Service has determined that there is no new information that would substantively affect this listing decision and that additional public comment is not warranted.

Summary of Comments and Recommendations

In the August 23, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice announcing the Federal Register publication of the proposed rule was published in the *Lebanon Democrat,* Lebanon, Tennessee, on September 12, 1994.

No written responses to the proposed rule were received during the comment period. The Tennessee Department of Environment and Conservation reiterated their support for the addition of Spring Creek bladderpod to the Federal list (Milo Pyne, Botanist, personal communication, 1994).

The Service also solicited the expert opinions of 21 appropriate and independent experts in this species or in rare plant conservation regarding the pertinent scientific or commercial data and assumptions relating to taxonomy, population status, and biological and ecological information on this species. No responses were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Spring Creek bladderpod should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Act and regulations (50 CFR Part 424) issued to implement these listing provisions were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella perforata* Rollins (Spring Creek bladderpod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the known locations for this species are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants. Active management is required to ensure that the species continues to survive at all sites. Direct destruction of habitat for commercial, residential, or industrial development is the most significant threat to the species at this time. *Lesquerella perforata* is threatened by the loss of habitat through conversion of land to uses other than cultivation of annual crops. Historically, its habitat was maintained by natural events, such as flooding. Annual crop production is apparently the primary mechanism by which essential habitat is now maintained. Residential, business, or industrial construction removes the species' preferred habitat directly or creates an environment where succession is allowed to proceed or more competitive plant species are intentionally established or are allowed to invade the area. Conversion of sites to pasture or other uses that maintain a perennial cover crop are a significant threat. In order for this annual plant to complete its life cycle each year, it is essential that the sites not be plowed or disked after the seeds have germinated in the fall and that spring plowing and planting be delayed until the plants have matured in the spring. This requirement is easily met through the production of crops such as corn, provided that traditional cultivation methods are used. Use of no-till cultivation techniques does not appear to maintain the species' habitat. This is probably because of the lack of physical disturbance of the soil and the dependence upon herbicides that characterize the technique (Somers *et al.* 1993).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is little or no commercial trade in *Lesquerella perforata* at this time. Many of the populations are very small and cannot support the collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a threat to the species.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Lesquerella perforata* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act. This law regulates the sale of endangered plants and prohibits anyone from knowingly taking an endangered plant without the permission of the landowner or land manager.

Federal listing will provide additional protection from taking when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade would also be provided.

E. *Other natural or manmade factors affecting its continued existence.* None are known at this time.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lesquerella perforata* as an endangered species. This species is faced with imminent threats from loss of habitat to development and other uses incompatible with the species' survival, and by competing vegetation that is no longer controlled by natural flood regimes. These threats are compounded due to the species' restricted range and limited number of populations. In accordance with the definitions for endangered and threatened species found in section 3(6) and (19) of the Act, endangered is the most appropriate classification for *L. perforata.*

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species, which is considered to be

critical habitat, at the time the species is determined to be endangered or threatened. Title 50, Part 424 of the Code of Federal Regulations, Section 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. Both situations apply to *L. perforata.*

Publication of critical habitat maps would increase public interest and possibly lead to additional threats for the species from collecting and vandalism. This species occurs at a limited number of sites, and most are fairly accessible. Publication of critical habitat descriptions and maps would make *Lesquerella perforata* more vulnerable and would increase enforcement problems.

Critical habitat also would not be beneficial in terms of adding additional protection for this species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a ''jeopardy'' standard and a ''destruction or adverse modification'' of critical habitat standard. Because of the highly limited distribution of this species, any Federal action that would destroy or have any significant adverse affect on its habitat would likely result in a jeopardy biological opinion under section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

The owners and managers of all the known populations of this species will be made aware of the plants' locations and of the importance of protecting the species and its habitat. Should Federal involvement occur, habitat protection will be addressed through the section 7 consultation process, utilizing the jeopardy standard. Protection of the species' habitat will also be addressed through the recovery process. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Lesquerella perforata.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All of the known *Lesquerella perforata* populations are on privately owned land where there is no known or anticipated Federal involvement at the present time.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All prohibitions of Section 9 (a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild.

It is the policy of the Service, published in the Federal Register on July 1, 1994, (59 FR 34272), to identify to the maximum extent practicable at the time of listing those activities that would constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities whithin a species' range. Prohibitions relating to Federal lands and to trade are not of concern at present, as none of the *Lesquerella perforata* populations are known to occur on Federal lands, and there is no known current trade in this species. Collection, damage or destruction on non-Federal lands is prohibited if in knowing violation of State law, or in violation of State criminal trespass law. In Tennessee, *L. perforata* is protected under the Rare Plant Protection and Conservation Act of 1985, which controls the removal of plants from State properties for scientific, educational, or propagative purposes, and the disturbance of the species on private lands without the landowner's consent. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Field Office (see ADDRESSES section). Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Regional Director, Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345 (404/679–7313).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

Baskin, J.M., and C.C. Baskin. 1990. Seed Germination Biology of the Narrowly Endemic Species *Lesquerella stonensis* (Brassicaceae). Plant Species Biol. 5:205–213.

Kral, R. 1983. A Report on Some Rare, Threatened, or Endangered Forest-related Vascular Plants of the South. USDA, Forest Service Tech. Pub. R8–TP2, Vol. 1. 718 pp.

Rollins, R. C. 1952. Some Crucifers of the Nashville Basin, Tennessee. Rhodora 54:182–192.

Rollins, R.C. 1955. The Auriculate-leaved Species of *Lesquerella* (Cruciferae). Rhodora 57:241–264.

Somers, P., A. Shea, and A. McKerrow. 1993. Status Survey Report on *Lesquerella perforata* Rollins (Spring Creek Bladderpod). Unpublished report to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC. 81 pp.

Author

The primary author of this document is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (704/258–3939, Ext. 224).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Lesquerella perforata	Spring Creek bladderpod.	U.S.A. (TN)	Brassicaceae	E	599	NA	NA
*	*	*	*	*	*	*	

Dated: November 12, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–32541 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 951116270–5308–02; I.D. 121396A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Adjustments to the 1996 Delaware State Quota

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

ACTION: Commercial quota adjustment.

SUMMARY: NMFS announces an adjustment to the commercial quota for the Delaware 1996 summer flounder fishery. This action complies with regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP), which require that annual quota overages landed in any state be deducted from that state's quota for the following year. The public is advised that a quota adjustment has been made and is informed of the revised quota for the State of Delaware.

EFFECTIVE DATE: December 18, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508–281–9226.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP are found at 50 CFR part 648 Subparts A and G. The regulations require annual specification of a coastwide commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. The commercial summer flounder quota for the 1996 calendar year, adopted to ensure achievement of the appropriate fishing mortality rate of 0.41 for 1996, was set equal to 11,111,298 lb (5.0 million kg) (January 4, 1996, 61 FR 291).

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other available information, NMFS published final landings for 1995 and associated commercial quota adjustments for 1996 on April 5, 1996 (61 FR 15199). At that time, available data indicated that Delaware had landings for 1995 that exceeded the 1995 quota by 458 lb (208 kg). Since that notification was published, 1,241 lb (563 kg) of additional 1995 landings have been reported for Delaware, meaning that Delaware now has an overage for 1995 of 1,699 lb (771 kg). These landings data for Delaware that were recently obtained by NMFS, necessitate this publication of an adjustment. This adjustment reduces the 1996 Delaware quota allocation from 1,977 lb (897 kg) to 278 lb (126 kg). Landings in Delaware's 1996 commercial fishery will be applied against the adjusted 278-lb (126-kg) state quota, and any overage will be subtracted from the state's 1997 initial quota. Estimated 1996 summer flounder landings for the State of Delaware are 7,153 lb (3,245 kg).

This action does not affect a notification concerning the commercial quota harvest that prohibited further landing of summer flounder by federally permitted vessels in Delaware made effective July 19, 1996 (61 FR 38403).

A proposed rule containing 1997 specifications for the summer flounder fishery was published in the Federal Register on December 18, 1996. This current action updates the information relevant to Delaware as published in Table 2 of that proposed rule (i.e., the 1996 quota for that state is now 278 lb (126 kg)). Final specifications for the 1997 Summer Flounder Fishery will reflect the following commercial quota adjustments for Delaware:

1995 quota		1995 landings		1995 coverage		1996 initial quota		1996 adjusted quota	
lb	kg	lb	kg	lb	kg	lb	kg	lb	kg
2,614	1,186	4,313	1,956	1,699	771	1,977	897	278	126

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 17, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–32508 Filed 12–18–96; 3:15 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 61, No. 247
Monday, December 23, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 980

[FV96–980–1 PR]

Vegetables; Import Regulations; Removal of Banana and Fingerling Types of Potatoes and Exemption of Potatoes for Potato Salad From the Potato Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove banana/fingerling potatoes from the provisions of the potato import regulation (import regulation). Such potatoes cannot now be imported because they are too small or misshapen to meet the minimum requirements under the import regulation. Removing banana/fingerling potatoes from the potato import regulation would allow such potatoes, which do not compete with potatoes currently regulated under Federal marketing orders, to be imported for specialized markets. This proposed rule also would reclassify potatoes used to make fresh potato salad as potatoes for processing. Such potatoes would then be exempt from the grade, size, quality, and maturity requirements of the potato import regulation.

DATES: Comments must be received by January 22, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax number (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Telephone: (202) 690–0464; Fax number: (202) 720–5698. Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Telephone: (202) 720–2491; Fax number: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal to change the potato import regulation (7 CFR 980.1; 61 FR 13051, March 26, 1996) is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 62 importers of potatoes who would be affected by this proposal. Small agricultural service firms, which include potato importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000. The majority of potato importers may be classified as small entities.

Import regulations issued under the Act are based on regulations established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this proposed rule should impact on both small and large business entities in a manner comparable to rules issued under marketing orders.

This rule proposes to remove banana/fingerling types of potatoes from the minimum grade, size, quality, and maturity provisions of the potato import regulation. These potatoes cannot now be imported because they cannot meet the minimum size or shape requirements under the import regulation. Removing banana/fingerling potatoes from the minimum requirements of the import regulation would allow such potatoes, which do not compete with potatoes currently regulated under Federal marketing orders, to be imported for specialized markets. Most importers of these potatoes are small business entities that would benefit from being able to import and sell such potatoes.

Reclassifying potatoes imported for use in the preparation of fresh potato salad as potatoes for processing will benefit importers, both large and small. The importers of such potatoes will be subject only to a form filing requirement necessary for the Department to determine that the potatoes are used for their intended purpose. The form filing requirement is specified in § 980.501 (OMB No. 0581–0167).

Therefore, the AMS has determined that this proposal would not have a significant economic impact on a substantial number of small entities.

Section 8e of the Act provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine with which area the imported commodity is in most direct competition and apply regulations based on that area to the imported commodity.

The Secretary has determined that imported potatoes are in most direct competition with potatoes grown in designated counties in Idaho and Oregon, the States of Washington, Colorado, and in designated counties in North Carolina and Virginia. Additionally, the Secretary has found that the minimum grade, size, quality, and maturity requirements for certain types of potatoes imported during specified periods should be the same as those established under the various marketing orders in effect.

Marketing Order No. 945 (7 CFR part 945) regulates the handling of potatoes grown in designated counties of Idaho and Eastern Oregon; all long types of potatoes imported into the U.S. must meet the minimum grade, size, quality, and maturity requirements established under this marketing order all year. Marketing Order No. 946 (7 CFR part 946) regulates the handling of potatoes grown in the State of Washington; imported round red potatoes must meet the requirements established under this order during the July through September period each year. Marketing Order No. 948 (7 CFR part 948) regulates the handling of potatoes grown in Colorado; imported round red potatoes must meet the requirements established under this order during the October through the following June period each season, and imported round white potatoes during the August through the following June 4 period each season. Marketing Order No. 953 (7 CFR part 953) regulates the handling of potatoes grown in designated counties in Virginia and North Carolina; imported round white potatoes must meet the requirements established under this order during the June 5 through July 31 period each year.

The Department has been asked by an importer to remove small white and non-white fleshed varieties of potatoes, known to the trade as banana or fingerling potatoes, from the requirements of the potato import regulation.

These potatoes are much smaller and different in appearance from the round red, round white, or long types of potatoes usually found in the marketplace, and are different varieties, not just round or long types that have not reached maturity. The Department had considered a requirement for maximum size for these potatoes. After examining samples of banana/fingerling potatoes provided by the importer and a domestic producer, the Department concluded that limiting banana/fingerling potatoes to a maximum size may not be an appropriate criterion. However, such potatoes are frequently misshapen compared to potato varieties produced commercially and have a significantly different appearance than the usual commercial varieties.

Recent trends in consumer preferences have resulted in an increasing demand for ''banana'' and ''fingerling'' type potatoes. These have a ''niche'' market as a ''gourmet'' item, and usually bring a much higher price than the potatoes usually found in the marketplace. Removing genetically different varieties of potatoes, such as ''banana'' and ''fingerling'' types, both white and non-white fleshed, from the potato import regulation would recognize that these potatoes do not compete directly with the major commercial varieties regulated under the various marketing orders.

Compliance procedures for banana/fingerling potatoes would be similar to those currently used for the importation of certified seed potatoes. Two alternatives to this proposed rule were considered. The first would have classified the banana/fingerling potatoes as tablestock potatoes, and the second alternative would have required importers to submit Exempt Commodity Form FV–6 to the U.S. Customs Service and to the Department, and receivers to complete the third part of the FV–6 and return it to the Department. Both of these alternatives were rejected with the proposed rule considered to be the most practicable and least burdensome alternative.

On March 26, 1996, the Department revised the potato import regulation (61 FR 13051; March 26, 1996). Among other things, the final rule stated that potatoes offered for importation for use in the preparation of fresh potato salad would be considered as a fresh use, and, therefore, not be exempt from the grade, size, quality, and maturity requirements of the potato import regulation.

Since publication of that rule, the Department has determined that the marketing orders for domestically produced potatoes Nos. 945 (Idaho-Eastern Oregon), 946 (Washington), 947 (Oregon-Northern California), 948 (Colorado), and 953 (Southeastern States), define ''other processing'' as the preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. In the preparation of fresh potato salad, the potatoes are boiled prior to being mixed with the other ingredients. Therefore, potatoes shipped under these orders for processing into fresh potato salad are exempt from minimum grade, size, quality, and maturity requirements established under the orders. Potatoes imported for that use also should be exempt from the grade, size, quality, and maturity requirements of the potato import regulation. Appropriate changes are proposed to exempt such potatoes from all such requirements. Importers of such potatoes would be subject to FV–6 form filing requirements to assure that any potatoes imported for use in the preparation of fresh potato salad were properly used. The form filing requirements are specified in section 980.501.

A minor editorial change is proposed to be made to recognize that the U.S. Bureau of Customs is now called the U.S. Customs Service.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 980

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

For the reasons set forth in the preamble, 7 CFR part 980 is proposed to be amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS

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

Authority: 7 U.S.C. 601–674.

2. In § 980.1, paragraph (b) introductory text is revised and paragraphs (h)(1) and (h)(2) are redesignated as paragraphs (i) and (j) and revised, to read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(b) *Grade, size, quality, and maturity requirements.* The importation of Irish potatoes, except banana/fingerling potatoes and certified seed potatoes, shall be prohibited unless they comply with the following requirements.

* * * * *

(i) *Definitions.* (1) For the purpose of this part, potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size as set forth in the U.S. Standards for Potatoes (§§ 51.1540 to 51.1566, inclusive of this title) may be used.

(2) *Importation* means release from custody of the U.S. Customs Service.

(3) *Banana/fingerling potatoes* means various varieties of potatoes which, when mature, have a significantly different shape from normal commercial varieties of potatoes to the extent that they may be seriously misshapen as set forth in the U.S.Standards for Grades of Potatoes, §§ 51.1540 through 51.1566.

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

Dated: December 17, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–32514 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM–61–3]

Heartland Operation To Protect the Environment: Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–61–3) submitted by the Heartland Operation to Protect the Environment. The petitioner requested that the NRC amend its regulations to adopt a rule regarding government ownership of a low-level radioactive waste (LLRW) or (LLW) disposal site that is consistent with petitioner's view of the applicable Federal statutes. The petition is being denied because the NRC believes there is no conflict between Section 151(b) of the Nuclear Waste Policy Act (NWPA) and its regulations requiring that LLW disposal facilities be sited on land owned by Federal or State government. The NRC has the authority to require Federal or State land ownership as a condition for licensing a LLW disposal facility and continues to believe the existing regulatory procedures are appropriate.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, E-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994 (59 FR 39485), prior to receipt of the petition (PRM–61–3), the NRC published an advance notice of proposed rulemaking (ANPRM) in the Federal Register regarding land ownership. The ANPRM announced that the NRC was considering amending its regulations in 10 CFR 61.59(a) to allow private ownership of the land used for a LLRW disposal facility site as an alternative to the current requirements for Federal or State ownership. On July 18, 1995 (60 FR 36744), the NRC published in the Federal Register a notice withdrawing the ANPRM because the rule change was not warranted or needed. The basis for this decision was the general indication from States and compacts that they do not need, nor would they allow, private ownership, and that the rule change under consideration could be potentially disruptive to the current LLW program.

The Petition

On January 9, 1996 (61 FR 633), the NRC published a notice of receipt of a petition for rulemaking filed by the Heartland Operation to Protect the Environment (HOPE). The petitioner states that the NRC's present regulation (10 CFR 61.59(a)), which permits disposal of LLW ''only on land owned in fee by the Federal or a State government,'' is in conflict with a provision in Section 151(b) of the Nuclear Waste Policy Act of 1982, as amended. The NWPA authorizes the U.S. Department of Energy (DOE) ''to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal * * *.'' Therefore, the petitioner proposes that the NRC regulations should conform to the NWPA provision and require private land ownership during operations and closure of the facility, then converting title to the site to the DOE.

The petitioner, who also commented on the ANPRM, further states that the notice withdrawing the ANPRM contains no documentation or statement of any issue of public health and safety as the basis for the regulation. Therefore, the petitioner believes that public health and safety cannot be an issue upon which the NRC regulation is based.

The notice of withdrawal contains the statement: ''The Commission believes that the potential negative impact of disrupting the current process far outweighs any potential benefits that might be derived from making a generic rule change at this time.'' In response, the petitioner asserts that the Commission's role is to regulate nuclear material in a manner that protects public health and safety and the environment, that its role is not to facilitate specific processes, i.e., the current LLRW disposal process.

The petitioner references the following quotation the NRC used in the withdrawal notice. This quotation came from one of the comments received on the ANPRM.

> For over three decades the public has been led to believe that all LLW disposal sites would necessarily be owned and controlled by either a Federal or State government. This, we believe, has been an important factor in convincing many proponent groups and State and local LLW advisory groups that LLW can and will be disposed of in a safe manner. To now try and convince these groups that Federal or State ownership of LLW disposal sites is not required, may be difficult and generate a significant credibility problem.

In response, the petitioner states that ''* * * credibility problems occur when misrepresentations—i.e. government ownership is necessary in order to assure proper LLRW management—are initially made, and that such credibility problems are exacerbated the longer such misrepresentations are allowed to continue.'' The petitioner asserts that there would appear to be a larger credibility problem for the Commission to maintain 10 CFR 61.59(a) that is, in the petitioners's view, in direct conflict with a statute (i.e., Section 151(b) of the NWPA). The petitioner offers that, ''The Commission might reflect on the Department of Energy's recent efforts to gain credibility by coming clean on past misrepresentations—i.e. secret radiation studies.''

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit written comments

concerning the petition. The NRC received six comment letters. Three comment letters were received from States, one from the DOE, one from the Nuclear Energy Institute (NEI), and one from an environmental organization. The comments generally focused on the main element of the petition, that the Commission amend its regulations to adopt a rule regarding government ownership of a LLW disposal facility that mirrors the NWPA or the resultant impact of this rule change. One commenter supported the petitioner and the other five believe the petition should be denied. The comments and responses were reviewed and considered in the development of NRC's decision on this petition. These comments are available in the NRC Public Document Room. A summary of the significant comments follows:

The commenter that supported this petition for rulemaking was the State of Nebraska. Nebraska had also commented on the ANPRM discussed above, and its position continues to support the petitioner's view that the current NRC rule conflicts with the NWPA. Its comment also states that, ''* * * there is very little connection between promulgating regulations deemed necessary or desirable to protect public health or to minimize danger to life and property and the current regulation which requires low-level waste disposal on land owned by the federal or state government before a facility can be licensed. While there may be a need for having the state or federal government involved in owning the property AFTER the operation and closure of a facility, this is not what the current rule does. Instead, it requires state or federal ownership prior to the license being issued'' (emphasis in the original).

The positions and specific comments from the five commenters who believe the petition should be denied are basically covered in the ''Reasons for Denial'' Section.

Reasons for Denial

The NRC is denying the petition for the following reasons: First, the NRC believes the petitioner is incorrect that the current regulations are inconsistent with Section 151(b) of the NWPA; second, the NRC has the authority to require Federal or State land ownership as a condition for licensing a LLW disposal facility and continues to believe the existing regulatory procedures are appropriate; and third, the NRC continues to believe that there would be a negative impact if the changes proposed by the petitioner were implemented.

1. The NRC agrees with those commenters who believe the petitioner has incorrectly interpreted the language and intent of the NWPA. Section 151(b) of the NWPA merely authorizes, but does not require, the DOE to take title to LLW disposal facility sites following termination of an NRC license for such disposal. This is demonstrated by the discretionary language of the statute. For example, under Section 151(b), as quoted by the petitioner, ''The Secretary (DOE) [sic] shall have the [sic] authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request by [sic] the owner of such waste and land and following termination of the license issued by the Commission (NRC) [sic] for such disposal * * *.'' The NRC believes that there is no conflict between Section 151(b) of the NWPA and 10 CFR 61.59(a). NRC's requirement under § 61.59(a), that facilities be sited on land owned by Federal or State government, does not prevent DOE from exercising its authority under Section 151(b) of the NWPA to assume title and custody after license termination. The DOE is a Federal entity and thus could satisfy the § 61.59(a) requirement for governmental land ownership. The NRC regulation in § 61.59(a) is broader than the statutory requirement. For example, assuming for purposes of argument, if DOE lacked the authority under Section 151(b) of the NWPA to own a disposal site prior to license termination, NRC's regulations would allow another Federal or State entity to own the land as required by § 61.59(a). The focus of § 61.59(a) is on Federal or State land ownership, whereas the focus of Section 151(b) is on DOE's authority to assume title and custody of a LLW disposal facility.

Further, under Section 151(b)(2), ''If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.'' The NWPA thus allows the DOE, if it so chooses, to assume title and custody of the waste and land after license termination. The discretionary nature of the statutory language indicates that the petitioner's conclusion is incorrect.

Finally, § 61.59(a), on its face does not impose any obligation on the States, rather it imposes a condition with respect to land disposal of low-level waste, namely that the Commission will permit disposal of low-level waste only on land owned by a Federal or State entity. Thus, we see no conflict with the holding in *New York* v. *United States*, 112 S. Ct. 2408 (1992) that Congress does not have the authority under the Constitution to compel the States to take affirmative action with regard to waste disposal. Similarly, NRC's regulation, § 61.59(a), does not direct or compel the States to take affirmative action with regard to waste disposal.

2. As stated in the notice of withdrawal of the ANPRM, the ''Commission believes there is adequate statutory authority for the NRC to require Federal or State land ownership.'' This authority comes from the Atomic Energy Act of 1954, as amended, in Section 161b which gives the Commission the authority to promulgate regulations deemed necessary or desirable to protect health or to minimize danger to life or property. The requirement for Federal or State government ownership of land for disposal of waste at a land disposal facility has been a requirement in the Commission's regulations since the inception of commercial disposal operations (NRC promulgated the land ownership requirement in 1961 (26 FR 352, January 18, 1961)). In exceptional cases an exemption from this requirement may be granted in the public interest if life or property is not endangered pursuant to 10 CFR 61.6. The granting of an exemption by the State of Utah from State land ownership regulations led the Commission to issue the ANPRM in order to solicit comments regarding the possible desirability of changing the rule, but the majority of comments received in response to that solicitation convinced the Commission that no change should be made. The NRC continues to believe that the requirement for governmental land ownership in § 61.59(a) will ensure control of the disposal site after closure, and thereby reduce the potential for inadvertent intrusion, better ensure integrity of the site, and facilitate monitoring of site performance. Further, the NRC staff believes that requiring government ownership prior to licensing is beneficial so that a potential licensing issue is settled prior to the facility beginning operation. The experience of the State of California in obtaining Federal land for the proposed Ward Valley disposal facility is a case in point that transfer of land is not automatic and should not be assumed at the time the license is granted. Therefore, requiring governmental land ownership prior to licensing is an appropriate regulatory requirement.

3. In addition, as discussed in the notice of withdrawal of the ANPRM and by several of the commenters, the proposed change in the requirements could have a de-stabilizing effect on the ongoing efforts by the States to license

LLW disposal facilities. The NRC believes that because there would be no health and safety benefit from the proposed change in requirements, it is inappropriate to take an action which could have an adverse impact on the timely development of safe LLW disposal facilities.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 9th day of December, 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–32486 Filed 12–20–96; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Regulations G, T, and U; Docket No. R–0944]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Board is extending the comment period on its proposal to amend its margin regulations, Regulations G, T, and U, to give the public additional time to comment on the proposal. The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period from December 26, 1996, to January 31, 1997, to give the public additional time to provide comments.

DATES: Comments should be received on or before January 31, 1997.

ADDRESSES: Comments should refer to Docket R–0944, and may be mailed to William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street N.W. (between Constitution Avenue and C Street N.W.) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.9 of the Board's Rules Regarding the Availability of Information.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202) 452–3625, Gregory Baer, Managing Senior Counsel (202) 452–3236, or Scott Holz, Senior Attorney (202) 452–2966, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: On November 26, 1996, the Board requested comment on amendments to its margin regulations, Regulations G, T, and U (61 FR 60168).

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, December 17, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32474 Filed 12–20–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–28–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

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 Bell Helicopter Textron, Inc. (BHTI) Model 214ST helicopters. This proposal would require creation of a component history card using a Retirement Index Number (RIN) system; would establish a system for tracking increases to the accumulated RIN; and would establish a maximum accumulated RIN for the pillow block bearing bolts (bearing bolts). This proposal is prompted by fatigue analyses and tests that show certain bearing bolts fail sooner than originally anticipated because of the unanticipated high number of takeoffs and external load lifts utilizing high-power settings in addition to the time-in-service (TIS) accrued under other operating conditions. The actions specified by the proposed AD are intended to prevent fatigue failure of the bearing bolts, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 Bell Helicopter Textron, Inc., Product Support Department, P.O. Box 482, Fort Worth, Texas, 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW28–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, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to BHTI Model 214ST helicopters. This proposal would require, within the next 25 hours TIS after the effective date of this AD, creation of a component history card using the RIN system for certain bearing bolts on the Model 214ST helicopters; a system for tracking increases to the accumulated RIN; and would establish a maximum accumulated RIN of 17,000 for the Model 214ST helicopter bearing bolts. Fatigue analyses and tests by the manufacturer show that certain bearing bolts fail sooner than originally anticipated because of the unanticipated high number of takeoffs and external load lifts utilizing high-power settings in addition to the TIS accrued under other operating conditions. This condition, if not corrected, could result in fatigue failure of the bearing bolts, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

The FAA has reviewed BHTI Alert Service Bulletin (ASB) No. 214ST–94–69, dated November 7, 1994, which describes procedures for creation of a component history card within the next 25 hours TIS for Model 214ST helicopters. The ASB also describes the retirement life as 17,000 RIN for the bearing bolts installed on the Model 214ST helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 214ST helicopters of the same type design, the proposed AD would require creation of a component history card using the RIN system; a system for tracking increases to the accumulated RIN; and would establish a maximum accumulated RIN of 17,000 for the Model 214ST helicopter bearing bolts.

The FAA estimates that 6 helicopters of U.S. registry would be affected by this proposed AD, and that it would take (1) 24 work hours per helicopter to replace the affected bearing bolts due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the first year is estimated to be $7,760 and each subsequent year to be $7,160. These costs assume replacement of the bearing bolts in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Inc.: Docket No. 94–SW–28–AD.

Applicability: All Model 214ST helicopters with pillow block bearing bolts (bearing bolts), part number (P/N) 20–057–12–48D or –50D, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the bearing bolts, which could result in failure of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the bearing bolts, P/N 20–057–12–48D or -50D.

(b) To determine the accumulated RIN to date on parts in service, multiply the factored flight hour total to date by 13.6 (round-off the result to the next higher whole number). Record on the component history card the accumulated Retirement Index Number (RIN).

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletin 214ST–94–69, dated November 7, 1994, pertains to this AD.

(c) After compliance with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of each takeoff and external load lift performed, and at the end of each day's operations, increase the accumulated RIN on the component history cards as follows:

(1) Increase the RIN by 2 for each takeoff.

(2) Increase the RIN by 2 for each external load lift or, increase the RIN by 4 for each external load lift operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(d) Remove the bearing bolts from service on or before attaining an accumulated RIN of 17,000. If any of the four bearing bolts are replaced based on condition, then all four bolts must be replaced at that time. The bolts are no longer retired based upon flight hours. This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the bearing bolts of 17,000 RIN.

(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, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) 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 helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 9, 1996.

Eric Bries,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–32434 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 airplanes. The proposed action would require checking the interior cabin door handle and the interior utility door handle for proper locking, and if the handles do not lock, re-installing the door handles correctly for the lock to engage. Reports of the interior utility and interior cabin door handles opening without depressing the lock release button prompted the proposed action. The actions specified by the proposed AD are intended to prevent unintentional opening of the interior cabin side door and the interior utility door while in flight, which if not detected and corrected, could result in injury to passengers.

DATES: Comments must be received on or before February 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 96–CE–34–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

Reports received from nine owners/operators of Raytheon Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 airplanes show that the interior side cabin door and utility door may open unintentionally because the door handle's lock release button may not catch due to improper installation. If this problem is not discovered and corrected, a passenger or crew member could lean his/her hand down on the supposedly locked door handle and the door would open without warning.

Related Service Information

Raytheon has issued Service Bulletin No. 2693, Issued May 1996 which specifies inspecting the airplane's interior side cabin door and utility door handles for locking and proper installation.

Explanation of the Provision of the Proposed Action

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent unintentional opening of the interior cabin side door and the interior utility door while in flight, which if not detected and corrected, could result in injury to passengers.

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 airplanes of the same type design, the proposed AD would require a certified pilot checking the interior side cabin door handle and the utility door handle for correct locking operation of the handle. If the handle opens the door without pushing the handle's lock release button, prior to further flight, the proposed AD would require a licensed airframe mechanic to correct the door lock by removing the handle, and installing the handle so that

the handle lock release button locks the door.

Cost Impact

The FAA estimates that 19,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,280,000. The FAA has no way to determine the number of owners/operators with affected airplanes who have not inspected or re-installed the door handles.

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 action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 96–CE–34–AD.

Applicability: Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95–55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 Airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 within the next 50 hours time-in-service (TIS) or at the door handle removal, whichever occurs first, after the effective date of this AD, unless already accomplished.

To prevent unintentional opening of the interior cabin side door and the interior utility door while in flight, which if not detected and corrected, could result in injury to passengers or loss of control of the airplane, accomplish the following:

(a) Check the interior side cabin door handle and the utility door handle for correct locking operation of the handle in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin (SB) No. 2693, Issued May, 1996.

(b) The check required in paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) If the door handle is locked and will only unlock by depressing the handle door lock release button, then no further action is necessary.

(d) If the handle opens the door without depressing the handle's lock release button, prior to further flight, correct the door lock by removing the handle, and installing the handle so that the handle lock release button locks the door in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon SB No. 2693, Issued May, 1996.

(e) The action required in paragraph (d) of this AD must be accomplished by a licensed airframe mechanic.

(f) 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.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 13, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 96–32437 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–96–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhardt Grob Luft-und Raumfahrt, GmbH Model G 103 Twin Astir Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Grob Luft-und Raumfahrt (Grob) Model G 103 Twin Astir sailplanes. The proposed action would require replacing the airbrake over-center lever and installing new inspection holes. Cracked airbrake over-center levers found during routine inspections prompted the proposed action. The actions specified by the proposed AD are intended to prevent an asymmetrical airbrake deployment causing an uncontrollable roll and possible loss of control of the sailplane.

DATES: Comments must be received on or before February 21, 1997.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal

Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Grob Luft-und Raumfahrt, GmbH., D–8939, Mattsies-am Flugplatz, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, FAA Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2165.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 95–CE–96–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob G 103 Twin Astir sailplanes. The LBA reports that cracks have been discovered in the airbrake over-center lever on three Grob G 103 Twin Astir sailplanes during the routine 3,000 hours time-in-service (TIS) inspections. This condition, if not detected and corrected, could result in an unexpected asymmetrical airbrake deployment resulting in an uncontrollable roll of the sailplane.

Grob has issued Service Bulletin TM 315–47/2, dated January 20, 1993 and Grob Repair Instructions No. 315–45/2, dated October 11, 1991, which specifies procedures for replacing the airbrake over-center lever and installing new inspection holes.

The LBA classified this service bulletin as mandatory and issued AD 92–309/2 Grob, dated February 26, 1993, in order to assure the continued airworthiness of these sailplanes in Germany.

FAA's Determination

This sailplane model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 103 Twin Astir sailplanes of the same type design registered in the United States, the proposed AD would require replacing the airbrake over-center lever (Grob part number (P/N) 103–4123 (left) and P/N 103–4124 (right)) with a new part of improved design (Grob P/N 103B–4123 (left) and 103B–4124 (right)) and installing new inspection holes.

Related Service Information

Accomplishment of the proposed action would be in accordance with Grob Service Bulletin TM 315–47/2, dated January 20, 1993, and Grob Repair Instructions No. 315–45/2, dated October 11, 1991.

Cost Impact

The FAA estimates that 60 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $650 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $82,200 or $1,370 per sailplane. The FAA has no way of determining how many owners/operators have accomplished the proposed action and therefore assumes that none of the owners/operators of the affected sailplanes have accomplished the proposed action.

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 action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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 a new airworthiness directive (AD) to read as follows:

Burkhardt Grob Luft-und Raumfahrt, GmbH. (Grob): Docket No. 95–CE–96–AD.

Applicability: Model G 103 Twin Astir Sailplane (serial numbers 3000 through 3291, with or without the suffix ''T''), certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes 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 within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent an asymmetrical airbrake deployment causing an uncontrollable roll and possible loss of control of the sailplane, accomplish the following:

(a) Replace the airbrake over-center lever (Grob part number (P/N) 103–4123, left, and 103–4124, right) with a new part of improved design (Grob P/N 103B–4123, left, and 103B–4124, right) in accordance with the Procedures section of Grob Service Bulletin (SB) TM 315–47/2, dated January 20, 1993, and Grob Repair Instructions No. 315–45/2, dated October 11, 1991.

(b) Install inspection holes in accordance with the Procedure section of Grob Repair Instructions No. 315–45/2, dated October 11, 1991.

(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 sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) All persons affected by this directive may obtain copies of these documents referred to herein upon request to Grob Luft- und Raumfahrt, GmbH., D–8939, Mattsies-am Flugplatz, Germany or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 13, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–32438 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–249819–96]

RIN 1545–AU67

Reorganizations; Receipt of Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the receipt, as part of a reorganization, of rights to acquire stock of a corporation that is a party to the reorganization. This document also provides notice of a public hearing on these regulations.

DATES: Written comments must be received by March 24, 1997. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for March 25, 1997, must be received by March 4, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG–249819–96], room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG–249819–96], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC., or, electronically, via the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax—regs/comments.html.

The public hearing will be held in the Commissioner's Conference Room, room 3313, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael J. Danbury, (202) 622–7750; concerning submissions and the public hearing, Evangelista Lee at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. General Information

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 354, 355, and 356 of the Internal Revenue Code of 1986 (Code), relating to exchanges of stock and securities in certain reorganizations. In particular, the proposed regulations address the receipt, as part of a reorganization, of rights to acquire stock of a corporation that is a party to the reorganization.

Section 354 generally provides for the nonrecognition of gain or loss from the exchange of stock or securities in a corporation that is a party to a reorganization for stock or securities in the same corporation or in another corporation that is a party to the reorganization. Gain realized on an exchange of securities is not recognized provided that the principal amount of the securities received does not exceed the principal amount of any securities surrendered pursuant to the plan of reorganization.

Section 355 provides for the nonrecognition of gain or loss upon a distribution by a corporation with respect to its stock of stock in a controlled corporation, or an exchange of securities in a controlled corporation for its securities. As in the case of a transaction described in section 354, gain realized on an exchange of securities is not recognized provided that the principal amount of the securities received does not exceed the principal amount of the securities surrendered pursuant to the plan of reorganization.

Section 356 provides rules for recognition of gain, but not loss, if a shareholder or security holder receives nonqualifying property (i.e., boot) as well as qualifying property in a transaction to which section 354 or 355 would otherwise apply. In particular, realized gain is recognized in an amount not in excess of the fair market value of the excess principal amount of the securities received over the principal amount of any securities surrendered as part of the plan of reorganization.

B. Existing Regulations

Existing regulations under sections 354 and 355 provide that stock rights and stock warrants are not included in the term ''stock or securities.'' Prior to the promulgation of these regulations in 1955, the treatment of such instruments was unclear. Although the Supreme Court had held that stock warrants do not constitute ''stock'' for purposes of determining whether a transaction is a reorganization, the Board of Tax Appeals had held that stock warrants did constitute ''securities'' for purposes of section 112(b)(3) of the 1932 Act (a predecessor to section 354 of the Code). Compare *Helvering* v. *Southwest Consolidated Corp.*, 315 U.S. 194 (1942), with *Raymond* v. *Commissioner,* 37 B.T.A. 423 (1938).

Since 1955, courts have avoided concluding whether stock rights or stock warrants constitute ''securities'' for purposes of sections 354 and 355. See, e.g., *Carlberg* v. *United States,* 281 F.2d 507, 509 n.3 (8th Cir. 1960); *Bateman* v. *Commissioner,* 40 T.C. 408 (1963); *Estate of Smith* v. *Commissioner,* 63 T.C. 722 (1975).

C. Reasons for Change

A purpose of the reorganization provisions of the Code is to defer the recognition of gain and loss in certain readjustments of corporate structure. Generally, the Code extends nonrecognition to an exchange of stock which effects only a readjustment of continuing interest in modified corporate form. Although a right to acquire stock is not stock, the IRS and Treasury believe that it may generally represent a form of investment in the capital structure of the corporation that justifies nonrecognition treatment as a security under sections 354 and 355. Other provisions of the Code expressly acknowledge the role that stock rights play in the capital structure of a corporation. See, e.g., sections 317 and 1032. Accordingly, the proposed regulations provide that for purposes of sections 354 and 355 the term securities includes ''rights to acquire stock'' issued by a corporation that is a party to a reorganization.

Explanation of Provisions

A. Scope of Proposed Rules

The proposed regulations treat rights to acquire stock issued by a corporation that is a party to a reorganization as securities of the corporation. For this purpose, the term ''rights to acquire stock'' of an issuing corporation has the same meaning as the term has in sections 305(d)(1) and 317(a). It does not include rights exercisable against persons other than the issuer of the stock, or rights that relate to property other than stock of the issuer of the rights. As under current law, a conversion privilege contained in a stock or debt instrument generally will not be considered a separate property right received as part of the reorganization. See Rev. Rul. 69–265 (1969–1 C.B. 109).

B. Consequences Upon Receipt of Stock Rights

For purposes of sections 354, 355 and 356, the proposed regulations treat rights to acquire stock as securities having no principal amount. As a result, a taxpayer will not be required to recognize any gain under section 356 upon the receipt of a stock right. This will generally be the case regardless of whether the taxpayer surrenders stock, stock rights, or debt securities.

C. Effect on Other Authorities

The proposed rules apply only for the purpose of determining the amount of gain to be recognized in connection with exchanges occurring pursuant to transactions otherwise qualifying under section 368 or 355. They do not address issues concerning the qualification of a transaction under section 368 or 355. For example, the proposed rules do not permit rights to acquire stock to be taken into account in determining continuity of shareholder interest. See *Southwest Consolidated Corp.* (stock options are not stock).

The proposed rules have no effect on other Code provisions governing the treatment of stock options or similar interests for other purposes. Thus, for example, the treatment of an instrument under these rules is not relevant in determining whether the holder of the instrument is treated as holding stock of the issuer for various purposes. See, e.g., sections 318(a)(4), 382(k)(6), and 1504(a)(5). Similarly, an instrument treated as a stock right under these rules may be subject to special rules under other provisions of the Code or regulations relating to compensation related stock options. See, e.g., sections 83 and 421–424 and the regulations thereunder. Nor is any inference intended as to the treatment of an exchange, substitution, or assumption of such options under current law.

D. Proposed Effective Dates

The proposed regulations change a long-standing regulatory position. To afford taxpayers the opportunity to plan for the change, these regulations are proposed to be effective 60 days after the Treasury decision adopting these rules as final regulations is filed with the Office of the Federal Register.

E. Comments Regarding Need for Further Guidance

Comments are requested as to whether additional guidance is needed with respect to the scope of these regulations and the general treatment of rights to acquire stock. For example, comments are invited with respect to: the need for additional guidance or special rules to address transactions involving exchanges, substitutions, or assumptions of compensation related stock options; the application of section 306 to the transfer of a right to acquire common stock if the right is received tax-free pursuant to section 305 or 354; whether section 302 should apply to the cash settlement or repurchase of a stock right, for example by treating the holder as having purchased the stock pursuant to the terms of the right and the issuer as having then redeemed that stock for cash; and any other administrative guidance which may be helpful in light of these proposed rules, including suggestions as to existing revenue rulings or revenue procedures that should be modified, reconsidered, or revoked. Note that comments outside of the scope of these regulations will be considered as suggestions for other future guidance.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments submitted timely (in the manner described under the ADDRESSES caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing is scheduled for March 25, 1997, at 10 a.m., in the Commissioner's Conference Room, room

3313. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed by March 4, 1997.

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

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

Drafting Information

The principal author of these regulations is David B. Friedel, formerly of the Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par 2. Section 1.354–1 is amended by revising paragraph (e) to read as follows:

§ 1.354–1 Exchanges of stock and securities in certain reorganizations.

* * * * *

(e) For purposes of section 354, the term securities includes rights issued by a party to the reorganization (the issuing corporation) to acquire its stock. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. This paragraph (e) applies to exchanges occurring on or after the day that is 60 days after the Treasury decision adopting these regulations is filed with the Federal Register.

Par 3. Section 1.355–1 is amended by removing the last sentence of paragraph (b) and adding paragraph (c) to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

* * * * *

(c) *Stock rights.* For purposes of section 355, the term *securities* includes rights to acquire the stock of the distributing corporation or the controlled corporation (the *issuing corporation*). For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. This paragraph (c) applies to distributions occurring on or after the day that is 60 days after the Treasury decision adopting these regulations is filed with the Federal Register.

Par 4. Section 1.356–3 is amended by:

1. Redesignating existing paragraph (b) as paragraph (c).

2. Adding a new paragraph (b) to read as follows:

§ 1.356–3 Rules for treatment of securities as ''other property''.

* * * * *

(b) For purposes of this section, a right to acquire stock of the issuing corporation is treated as a security with no principal amount. Thus, such right is not *other property* when received in a transaction to which section 356 applies (regardless of whether securities are surrendered in the exchange). This paragraph (b) applies to transactions occurring on or after the day that is 60 days after the Treasury decision adopting these regulations is filed with the Federal Register.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32040 Filed 12–20–96; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[REG–209828–96]

RIN 1545–AU28

Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. The proposed regulations would amend existing regulations to ease the burden on affected taxpayers by permitting them to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by March 24, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 13, 1997, at 10 a.m., must be received by April 22, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R [REG–209828–96], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG–209828–96], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. A public hearing will be held in the NYU Classroom, Second Floor, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Peter C. Friedman, (202) 622–3110 (not a toll-free number); concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 21, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information is in § 1.468A–3. This information is required by the IRS to ensure compliance with the provisions of section 468A relating to deductions for payments made to nuclear decommissioning reserve funds. This information will be used by the IRS to support the issuance to taxpayers of schedules of ruling amounts under section 468A. The collection of information is voluntary to obtain a benefit. The likely recordkeepers are businesses or other for-profit institutions. Estimated total annual recordkeeping burden: 100 hours. Estimated average annual burden per recordkeeper: 5 hours. Estimated number of recordkeepers: 20.

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

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

Background

This document contains proposed regulations under section 468A of the Internal Revenue Code. Section 468A was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98–369). Significant amendments were made to section 468A by section 1917 of the Energy Policy Act of 1992 (Public Law 102–486).

Section 468A(a) allows an electing taxpayer to deduct the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund. Section 468A(b) limits the amount of these payments for any taxable year to the lesser of the ruling amount or the amount of decommissioning costs included in the taxpayer's cost of service for ratemaking purposes for that taxable year.

Section 468A(d) provides that no deduction shall be allowed unless the taxpayer requests, and receives, a schedule of ruling amounts from the Secretary. A ruling amount is, with respect to any taxable year, the amount determined by the Secretary as necessary to (1) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of such nuclear power plant; and (2) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate. Section 468A(d)(3) provides that the Secretary shall, at least once during the useful life of the nuclear power plant (or more frequently, upon the request of the taxpayer), review and, if necessary, revise the schedule of ruling amounts.

Section 1.468A–3 sets forth the rules relating to the determination of ruling amounts. Section 1.468A–3(a)(4) permits the use of a formula or method for determining a schedule of ruling amounts (in lieu of a schedule of ruling amounts specifying a dollar amount for each taxable year), but only if the public utility commission establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking does not estimate the cost of decommissioning in future dollars.

Section 1.468A–3(i) contains provisions for the review and revision of schedules of ruling amounts. Section 1.468A–3(i)(1) sets forth circumstances under which a taxpayer must request a revision to its schedule of ruling amounts. In general, a schedule of ruling amounts must be reviewed at ten-year intervals. If the schedule is determined under a formula or method, however, the period between reviews may not exceed five years.

Section 1.468A–3(i)(2) provides that a taxpayer may request an elective review of its schedule of ruling amounts so long as such request is made in accordance with the rules of § 1.468A–3(h). A taxpayer seeking to maximize its deductions under section 468A generally needs to request an elective review of its schedule of ruling amounts each time a public utility commission changes previously established amounts of decommissioning costs. These proposed regulations amend § 1.468A–3(a)(4) by eliminating the restriction on the use of a formula or method for determining a schedule of ruling amounts. In addition, these proposed regulations revise the mandatory review requirements of § 1.468A–3(i)(1).

Explanation of Provisions

The proposed regulations provide that a taxpayer may request approval of a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of the rules relating to the determination of ruling amounts.

The proposed regulation would ease the filing burden on taxpayers by permitting them to adjust their ruling amounts under a formula or method (rather than by filing a request for a revised schedule of ruling amounts). Thus, under the proposed regulations, a taxpayer may maximize its deductions under section 468A without requesting a revised schedule of ruling amounts each time a public utility commission changes the amount of decommissioning costs included in the taxpayer's cost of service if, under the taxpayer's formula or method, the commission's action results in a corresponding change in ruling amounts.

In addition, the proposed regulations modify the mandatory review provisions applicable to schedules of ruling amounts determined under a formula or method. One modification eliminates the rule requiring review of those schedules after five years; the schedules will, however, be subject to the general rule requiring review at ten-year intervals. In addition, a taxpayer using a formula or method will be required to request a revised schedule of ruling amounts if, beginning with the second taxable year during which the most recently issued formula or method is in effect, the ruling amount for a taxable year (1) differs by more than 25 percent from the ruling amount for any preceding taxable year during which such formula or method was in effect; or (2) differs by more than 10 percent from the ruling amount for the immediately preceding taxable year. Under these circumstances a taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the next taxable year.

Proposed Effective Date

The regulations are proposed to be effective for requests for schedules of ruling amounts made on or after the date that the final regulations are filed with the Federal Register.

Special Analyses

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

Comments and Public Hearing

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

A public hearing has been scheduled for May 13, 1997, in room 2615. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit comments by March 24, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 22, 1997.

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

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

Drafting Information

The principal author of these regulations is Peter C. Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.468A–2 is amended as follows:

1. The text of paragraph (f)(3) is redesignated as paragraph (f)(3)(i).

2. Paragraph (f)(3)(ii) is added.

The addition reads as follows:

§ 1.468A–2 Treatment of electing taxpayer.

* * * * *

(f) * * *

(3) * * * (i) * * *

(ii) The requirement of this paragraph (f)(3) does not apply if the taxpayer determines its schedule of ruling amounts under a formula or method obtained under § 1.468A–3(a)(4) and the cost of service amount is a variable element of that formula or method.

* * * * *

Par. 3. Section 1.468A–3 is amended as follows:

1. Paragraph (a)(4) is revised.

2. Paragraph (e)(5) is added.

3. Paragraphs (i)(1)(ii)(A), (i)(1)(iii)(A)(*3*), and (i)(1)(iii)(B) are revised.

4. Paragraph (i)(1)(iii)(C) is added.

The revisions and additions read as follows:

§ 1.468A–3 Ruling amount.

(a) * * *

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

* * * * *

(e) * * *

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph (e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the request for approval of a formula or method.

* * * * *

(i) * * *

(1) * * *

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for a taxable year if the period for which the most recently issued formula or method has been in effect (the ruling period) began at least two taxable years before such year and—

(*1*) The ruling amount for the preceding taxable year and the ruling amount for any earlier taxable year in the ruling period differ by more than 25 percent of the smaller amount; or

(*2*) The ruling amounts for the two most recent taxable years differ by more than 10 percent of the smaller amount.

* * * * *

(iii) * * *

(A) * * *

(*3*) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32122 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–01–U

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26 CFR Part 1

[REG–252231–96]

RIN 1545–AU72

Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations providing that the continuity of shareholder interest requirement for corporate reorganizations is satisfied if the

acquiring corporation furnishes consideration which represents a proprietary interest in the affairs of the acquiring corporation and such consideration represents a substantial part of the value of the stock or properties transferred. Dispositions of stock of the acquiring corporation by a former target shareholder generally are not taken into account in determining whether continuity of shareholder interest has been satisfied. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by March 24, 1997. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, May 7, 1997 must be received by Wednesday, April 16, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252231–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–252231–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Phoebe Bennett, (202) 622–7750; concerning submissions and the hearing, Christina Vasquez, (202) 622–6808 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 368. The proposed regulations provide that the continuity of shareholder interest (COSI) requirement is satisfied if the acquiring corporation furnishes consideration which represents a proprietary interest in the affairs of the acquiring corporation and such consideration represents a substantial part of the value of the stock or properties transferred.

Background

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations specifically described in section 368 of the Code. Literal compliance with the statutory requirements is not sufficient for nonrecognition. For example, to qualify as a reorganization the COSI requirement must also be satisfied.

The early statutory definitions of reorganizations did not specify the type of consideration required for a transaction to qualify as a reorganization. As a result, a transaction may have satisfied the literal definition of a reorganization even if the transaction resembled a sale. To prevent such transactions from qualifying as reorganizations, the COSI requirement was established by the courts to ensure that the consideration furnished by the acquiring corporation represented a proprietary interest in the affairs of the acquiring corporation and that such consideration represented a substantial part of the value of the stock or properties transferred. See *Helvering* v. *Minnesota Tea Co.*, 296 U.S. 378 (1935); *Pinellas Ice & Cold Storage Co.* v. *Commissioner*, 287 U.S. 462 (1933); *Cortland Specialty Co.* v. *Commissioner*, 60 F.2d 937 (2d Cir. 1932), cert. denied 288 U.S. 599 (1933). ''Reorganization, merger and consolidation are words indicating corporate readjustments of existing interests. They all differ fundamentally from a sale where the vendor corporation parts with its interest for cash and receives nothing more.'' *Cortland*, 60 F.2d at 939.

The cases that gave rise to the COSI requirement did not involve situations in which shareholders of the target corporation disposed of stock consideration from the acquiring corporation after having received it. In those cases, the relevant inquiry was whether the acquiring corporation furnished the proper type of consideration in the reorganization. Over the years, issues have arisen regarding whether the COSI requirement is satisfied if the target shareholders, as contemplated at the time of the reorganization, subsequently dispose of the stock received from the acquiring corporation. Compare *McDonald's Restaurants of Illinois, Inc.* v. *Commissioner*, 688 F.2d 520 (7th Cir. 1982), rev'g *McDonald's of Zion* v. *Commissioner*, 76 T.C. 972 (1981), with *Penrod* v. *Commissioner*, 88 T.C. 1415 (1987). Various bar associations have asked the Treasury Department and the IRS to provide guidance to clarify existing law and reduce uncertainty in applying COSI principles in the context of postreorganization sales. See New York State Bar Association Tax Section, Postreorganization Continuity of Interest, reprinted in 73 Tax Notes 481 (1996); Committee on Taxation of Corporations of the Association of the Bar of the City of New York, Postreorganization Transactions and Continuity of Shareholder Interest, reprinted in 72 Tax Notes 1401 (1996).

Explanation of Proposed Regulations

The proposed regulations provide that the COSI requirement is satisfied if the acquiring corporation furnishes consideration in the reorganization that represents a proprietary interest in the affairs of the acquiring corporation and such consideration represents a substantial part of the value of the stock or properties transferred. Dispositions of stock of the acquiring corporation by a former target shareholder generally are not taken into account in determining whether COSI has been satisfied. However, the proposed regulations emphasize that all facts and circumstances must be considered in determining whether the acquiring corporation has in substance furnished the required consideration. For example, if the acquiring corporation or a related party (within the meaning of section 707(b)(1) or section 267(b) (without regard to section 267(e))) purchases the acquiring corporation stock shortly after the reorganization, all of the facts and circumstances may indicate that the transaction should be properly recast to treat the acquiring corporation as furnishing cash in the reorganization, in which case the reorganization would not satisfy the COSI requirement. This approach refocuses the COSI requirement on its initial purpose of ensuring that the acquiring corporation furnishes the proper type of consideration and also promotes simplicity and administrability in applying the COSI requirement.

Effect on Other Authorities

The proposed regulations do not specifically address the effect on COSI of dispositions of target stock before a transaction potentially qualifying as a reorganization. See, e.g., *King Enterprises, Inc.* v. *United States*, 418 F.2d 511 (Ct. Cl. 1969); *J.E. Seagram Corp.* v. *Commissioner*, 104 T.C. 75 (1995); *Superior Coach of Florida, Inc.* v. *Commissioner*, 80 T.C. 895 (1983); *Yoc Heating Corp.* v. *Commissioner*, 61 T.C. 168 (1973). The Treasury Department and IRS are studying this question and also the role of the COSI requirement in section 368(a)(1)(D) reorganizations and section 355 transactions. See § 1.355–2(c). The Treasury Department and IRS solicit comments on these issues.

Effect on Other Documents

The IRS will modify or obsolete publications as necessary to conform with this regulation as of the date of publication in the Federal Register of the final regulations. See, e.g., Rev. Proc. 86–42 (1986–2 C.B. 722); Rev. Proc. 77–37 (1977–2 C.B. 568). The IRS solicits comments as to whether other publications should be modified or obsoleted.

Proposed Effective Date

The revisions and additions in the proposed regulations apply to transactions occurring after these regulations are published as final regulations in the Federal Register, except that they shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.

Special Analyses

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

Comments and Public Hearing

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

A public hearing has been scheduled at 10 a.m. on Wednesday, May 7, 1997, in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must request to speak by Wednesday, April 16, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic by Wednesday, April 16, 1997.

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

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

Drafting Information

The principal author of these regulations is Phoebe Bennett of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.368–1 is amended by:

1. Revising the third sentence of paragraph (b).

2. Adding two sentences between the fourth and fifth sentences of paragraph (b).

3. Adding paragraph (e).

The revisions and additions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(b) * * * Requisite to a reorganization under the Code are a continuity of the business enterprise under the modified corporate form, and (except as provided in section 368(a)(1)(D)) a continuity of shareholder interest. * * * The continuity of shareholder interest requirement is described in paragraph (e) of this section. The third and fifth sentences of this paragraph apply to transactions occurring after these regulations are published as final regulations in the Federal Register, except that they shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register. * * *

* * * * *

(e) *Continuity of shareholder interest*—(1) *General rule.* The purpose of the continuity of shareholder interest requirement is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. Continuity of shareholder interest requires that the acquiring corporation furnish consideration representing a proprietary interest in the affairs of the acquiring corporation and that such consideration represents a substantial part of the value of the stock or properties transferred. In determining whether the acquiring corporation has furnished such consideration, all facts and circumstances must be considered, including any plan or arrangement for the acquiring corporation or its successor corporation (or a person related to the acquiring corporation or its successor corporation within the meaning of section 707(b)(1) or section 267(b) (without regard to section 267(e))) to redeem or acquire the consideration provided in the reorganization. Thus, for example, if based on all the facts and circumstances the acquiring corporation has furnished solely cash, the continuity of shareholder interest requirement is not satisfied.

(2) *Triangular reorganizations.* For purposes of this paragraph (e), in the case of a triangular reorganization described in § 1.358–6(b), the continuity of shareholder interest requirement will be applied with reference to the stock of the corporation which is in control of the acquiring corporation (in a forward triangular merger) or in control of the merged corporation (in a reverse triangular merger).

(3) *Examples.* The following examples illustrate the application of this paragraph (e):

Example 1. A owns all of the stock of T. T merges into P. In the merger, A receives stock of P having a fair market value of $50x and cash of $50x. Immediately after the merger, and pursuant to a preexisting binding contract negotiated by A, A sells all of the stock of P received by A in the merger to B, a party not related to P. The transaction satisfies the continuity of shareholder interest requirement because A received stock of P representing a substantial part of the value of the total consideration transferred in the acquisition.

Example 2. A owns 80 percent of the stock of T and none of the stock of P, which is widely held. T merges into P. In the merger, A receives stock of P. In addition, A obtains registration rights pursuant to an agreement with P to register the P stock and sells such stock shortly after the acquisition in the open market. The transaction satisfies the continuity of shareholder interest requirement.

Example 3. A owns 80 percent of the stock of T and none of the stock of P. T merges into P. In the merger, A receives stock of P. In addition, A arranges with an independent investment banker to hedge the risk of loss on the P stock received in the merger. Neither P nor a party related to P enters directly or indirectly into the hedging transaction. The transaction satisfies the continuity of shareholder interest requirement.

Example 4. A owns 80 percent of the stock of T and none of the stock of P. T merges into P. In the merger, A receives stock of P but with an agreement that it will be redeemed shortly by P. Pursuant to the agreement, shortly after the merger P redeems all of the stock of P received by A in the merger for cash. Under all of the facts and circumstances, the cash is treated as furnished by P in the merger, so that the merger does not satisfy the continuity of shareholder interest requirement. The result is the same if S, P's wholly owned subsidiary, buys all of the stock of P received by A in the merger for cash. The result is also the same if pursuant to a plan between P, its investment banker, and A, P's investment banker buys all of the stock of P received by A in the merger for cash and, shortly thereafter, P redeems the stock held by the investment banker for cash.

(4) *Effective date.* Paragraph (e) applies to transactions occurring after these regulations are published as final regulations in the Federal Register, except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.

Par. 3. In § 1.368–2, paragraph (a) is amended by removing the second sentence and adding two new sentences in its place to read as follows:

§ 1.368–2 Definition of terms.

(a) * * * The term does not embrace the mere purchase by one corporation of the properties of another corporation. The preceding sentence applies to transactions occurring after these regulations are published as final regulations in the Federal Register, except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register. * * *

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32120 Filed 12–20–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 290

RIN 1010–AC21

Administrative Appeals Process

AGENCY: Mineral Management Service (MMS), Interior.

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

SUMMARY: MMS hereby gives notice that it is extending the public comment period on a Notice of proposed rule which was published in the Federal Register on October 28, 1996 (61 FR 55607). The proposed rule would amend the regulations governing MMS' administrative appeals process. In response to a request for additional time from the Subcommittee on Appeals and Alternative Dispute Resolution of the Royalty Policy Committee, MMS will extend the comment period from December 27, 1996, to March 27, 1997. This extension should provide sufficient time for the Subcommittee to submit to the full Royalty Policy Committee its report on improving the appeals process, and for the Royalty Policy Committee to provide advice to the Department of the Interior within the comment period.

DATES: Comments must be submitted on or before March 27, 1997.

ADDRESSES: Comments should be sent to: Bettine Montgomery, Office of Policy and Management Improvement, Minerals Management Service, 1848 C Street, N.W., MS 4230, Washington, D.C. 20240; courier delivery to Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240; telephone (202) 208–3976; fax (202) 208–3118; e-Mail Elizabeth.Montgomery@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Hugh Hilliard, Office of Policy and Management Improvement, Minerals Management Service, 1849 C Street, N.W., MS 4230, Washington, D.C. 20240; telephone (202) 208–3398; fax (202) 208–4891; e-Mail Hugh.Hilliard@smtp.mms.gov.

Dated: December 17, 1996.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 96–32516 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO24–1–5701b, CO25–1–5700b, CO26–1–5702b; FRL–5664–2]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; 1990 Base Year Carbon Monoxide Emission Inventories for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the 1990 base year carbon monoxide (CO) emission inventories for Colorado Springs, Denver/Longmont, and Fort Collins that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990. In the Final Rules Section of this Federal Register, EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 22, 1997.

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 ph. (303) 312–6479.

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

Dated: November 12, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–32221 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL144–1b; FRL–5648–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on January 10, 1996, which grants a variance from certain volatile organic material (VOM) reasonably available control technology (RACT) requirements for certain flexographic printing presses operated by Rexam Medical Packaging Inc., located in Mundelein, Lake County, Illinois. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before January 22, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: September 27, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–32372 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 799

[OPPTS–42187D; FRL–5580–6]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on proposed test rule.

SUMMARY: EPA is extending the public comment period from January 31, 1997 to March 31, 1997 on the proposed rule to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. This proposed rule was published in the Federal Register on June 26, 1996 (61 FR 33178) (FRL–4869–1). On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996 to January 31, 1997 (61 FR 54383) (FRL–5571–3).

DATES: Written comments on the proposed rule must be received by EPA on or before March 31, 1997.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by document control number (OPPTS–42187A; FRL–4869–1) to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

A public version of the official rulemaking record supporting this action, excluding confidential business information (CBI), is available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except on legal holidays.

All comments that contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information that they believe is entitled to treatment as CBI must assert a business confidentiality claim in accordance with 40 CFR part 2. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter.

Comments and data may also be submitted in electronic form by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Such comments and data must be submitted in 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 (OPPTS–42187A) (FRL–4869–1). No information claimed as CBI should be submitted through e-mail. Comments in electronic form may be filed online at many federal depository libraries.

The official record of this action, as well as the public version, will be maintained in paper form. EPA will transfer all comments received electronically into paper form and will place the paper copies in the official record. The official record is the paper record maintained at the address listed at the beginning of the ''ADDRESSES'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

For technical information contact: Robert A. Reiley, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1105; fax: (202) 260–1096; e-mail: reiley.robert@epamail.epa.gov.; or Gary Timm, Senior Technical Advisor, Chemical Control Division (7405), Office of Pollution Prevention and

Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1105; fax: (202) 260–8168; e-mail: timm.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The HAPs rule proposed testing, under section 4(a) of the Toxic Substances Control Act (TSCA), of: 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA solicited proposals for enforceable consent agreements (ECAs) regarding the performance of pharmacokinetics studies which would permit extrapolation from data developed from oral exposure studies to predict effects from inhalation exposure.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996 to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was to allow more time for the submission of proposals for ECAs and adequate time for comments on the proposed rule to be submitted after the Agency has considered the ECA proposals. EPA has received several proposals for ECAs. Due to the complexity of the issues raised by these proposals, it will take the Agency more time than anticipated to consider the ECAs and respond to the submitters.

In the HAPs proposed rule, published on June 26, 1996 (61 FR 33178) (FRL–4869–1), testing would be conducted using the OPPTS harmonized guidelines that were proposed on June 20, 1996 (61 FR 31522) (FRL–5367–7). The process of developing these guidelines is proceeding at the same time as the development of the HAPs test rule. As stated in the original proposal, the OPPTS harmonization process may result in the finalization of the guidelines prior to the end of the comment period for the proposed rule. If so, EPA will announce the availability of any of the 11 guidelines used in the HAPs rule that have been finalized in order to allow for public comment on the applicability of the finalized guidelines to the HAPs rule.

There has been a delay in finalizing the guidelines. The Agency has decided to extend the comment period on the HAPs test rule to allow some or all of the 11 guidelines to be finalized.

Accordingly, for both of the reasons discussed above, EPA is extending the comment period on the proposed rule to March 31, 1997. If the guideline harmonization process is further delayed, EPA may, at a future time, extend the comment period on the guidelines as they apply to the HAPs chemicals, or may decide to issue the corresponding HAPs-specific guidelines independent of the OPPTS harmonization process, using appropriate notice-and-comment procedures.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 16, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–32529 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1810

[WO–420–1050–00–24–1A]

RIN 1004–AC 81

Public Land Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove in its entirety Subpart 1813 of Title 43 of the Code of Federal Regulations. This subpart contains only general information about public land records and BLM practices. BLM will provide the public with this information through informational brochures and its manual system.

DATES: Submit comments by February 21, 1997. BLM may, but need not, consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, DC;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240; or

(c) Transmit comments electronically via the Internet to: WOComment@wo.blm.gov. Please include ''Attn: AC 81'' in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

You will be able to review comments at the L Street address during regular business hours from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Frank Bruno, (202) 452–0352 or Wendy Spencer, (303) 236–6642.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed rule should be specific, focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. BLM will not necessarily consider or include in the Administrative Record for the final rule comments received or postmarked after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (see **ADDRESSES**).

II. Discussion of Proposed Rule

In an effort to reduce unnecessary volume in its regulations, the BLM is removing from the CFR material that provides general information about public land records or that explains BLM practices. Removing this material will not deprive the public of any notice, right, administrative process or information required by law. Material of this sort is more properly addressed in public information releases and the BLM Manual, both of which are available to the public, are more detailed, and can be more easily updated.

The regulations in the current 43 CFR Subpart 1813 do not implement, interpret or prescribe law or policy, or any procedure or practice of the BLM required by law, or that is of such material importance to the public as to require its publication in the Federal Register and codification in the Code of Federal Regulations.

III. Procedural Matters

National Environmental Policy Act of 1969

The BLM has prepared a draft environmental assessment (EA), and has made a tentative finding that the final rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the BLM's procedures under NEPA. The BLM has placed the EA on file in the BLM Administrative Record at the address specified previously. The BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts before promulgating the final rule.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

BLM has determined that the proposed 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.*).

Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in expenditures of $100 million in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order 12612

BLM has analyzed this rule under the principles and criteria in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

BLM certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12866

The proposed rule does not meet the criteria for significant regulatory action requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

Executive Order 12988

The Department has determined that this rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Author

The principal authors of this rule are Frank Bruno, Regulatory Management Group, (202) 452–0352, and Wendy Spencer, Bureau Records Administrator, (303) 236–6642, assisted by Frances Watson, Regulatory Management Group, (202) 452–5006.

List of Subjects in 43 CFR Part 1810

Administrative practice and procedure, Archives and records.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, Part 1810 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

1. The authority for part 1810 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 1813—[Removed]

2. Subpart 1813 is removed in its entirety.

Dated: December 17, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–32410 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 96–115; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

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

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a petition filed by Lotus Cars Ltd. (Lotus) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1994, 1995, 1997, and 1998, and that, for Lotus, lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted to Lotus and that alternative standards of 24.2 mpg be established for MY 1994, 23.3 mpg for MY 1995, and 21.2 mpg for MYs 1997 and 1998.

DATES: Comments on this proposed decision must be received on or before February 21, 1997.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this document and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility

(2) Economic practicability

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel

economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on Lotus

Lotus was founded in England by Colin Chapman in 1955 and owned by Mr. Chapman until his death in 1982. After Mr. Chapman's death, the company was owned by several joint companies until 1986. In 1986, General Motors (GM) acquired total ownership of Lotus. Although GM owned it, Lotus continued to operate on an independent basis. For MYs 1987–1993, Lotus' U.S. sales were incorporated into the GM import fleet for corporate average fuel economy (CAFE) purposes. In August 1993, Bugatti International SAH, a holding company with a controlling interest in Bugatti Automobili SpA., acquired ownership of Lotus from GM. Although under common ownership with Bugatti Automobili, Lotus continued to operate independently.

Lotus has always provided high performance and efficiency through technology and weight reduction. For example, the first Lotus street production vehicle weighed 1,500 pounds (lbs.) and had a 1.6 liter engine of 100 horsepower (hp) (15 lbs./hp). For more than 30 years, Lotus four-cylinder engines were based on the fuel efficient four-valve-per-cylinder design. Lotus pioneered and developed this technology for its own and other automotive companies worldwide. Lotus has exported vehicles to the United States (U.S.) for almost 30 years. However, the number of Lotus vehicles entering the U.S. is usually quite small. Lotus traditionally produces fewer than 2000 vehicles each year.

For the 1994, 1995, 1997, and 1998 model years, Lotus'' product-line for the U.S. market consists of the Lotus Esprit, a two-seat sports car. Lotus imported 137 Esprit cars into the U.S. in the 1994 model year and 241 in the 1995 model year. Lotus does not anticipate importing any vehicles into the U.S. in 1996 and projects sales volumes for 1997 and 1998 that are consistent with its status as a low volume importer.

The Lotus Petition

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are submitted ''not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown.'' (49 CFR 525.6(b).)

NHTSA received a joint petition from Bugatti Automobili S.p.A. and Lotus Cars Ltd. (Bugatti/Lotus) on July 18, 1994, seeking exemption from the passenger automobile fuel economy standards for MYs 1994–1996. This joint petition was filed less than 24 months before the beginning of MYs 1994 and 1995 and was therefore untimely under 49 C.F.R. 526.6(b). The agency notes that Lotus was not sold by GM until August 1993, when it was acquired by Bugatti International SAH. As both Lotus and Bugatti were under the common control of Bugatti International, they were required to file a joint petition for exemption. NHTSA observes that the two companies requested the agency's opinion concerning submitting a petition within three months of the sale of Lotus by GM. The agency responded to the Bugatti/Lotus request by a letter dated May 9, 1994 in which NHTSA indicated it would accept a joint Bugatti/Lotus petition. Bugatti and Lotus submitted their joint petition approximately two months later. Under the circumstances, NHTSA concludes that Bugatti and Lotus took reasonable measures to submit a petition in as timely a manner as possible. Therefore, the agency has determined that good cause exists for the late submission of the petition.

In October 1994, NHTSA received an additional joint petition from Bugatti/Lotus seeking exemption from the passenger automobile fuel economy standard for MY 1997. In October 1995, NHTSA received another petition from Lotus seeking exemption from the passenger automobile fuel economy standard for MY 1998. These petitions are timely, as required by NHTSA's regulations at 49 C.F.R. 525.6(b).

On September 22, 1995, Bugatti entered receivership in Italy. Because of Bugatti's financial instability, Lotus requested by a letter dated October 31, 1995, that NHTSA remove Bugatti from the pending MYs 1994–1997 joint petitions filed previously by Bugatti and Lotus. Lotus also indicated that there were no Bugatti imports for MYs 1994–1995 and that Lotus itself would not import any vehicles into the U.S. for MY 1996. Lotus requested that NHTSA revise its petitions for MYs 1994, 1995, and 1997 to reflect alternative standards equal only to Lotus' fuel economy values.

Methodology Used To Project Maximum Feasible Average Fuel Economy Level for Lotus

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Lotus in the 1994, 1995, 1997, and 1998 model years, NHTSA considered whether there were technical or other improvements that would be feasible for these vehicles, and whether the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets ''technological feasibility'' as meaning that technology which would be available to Lotus for use on its 1994, 1995, 1997, and 1998 model year automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets ''economic practicability'' as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 1994, 1995, 1997, and 1998 model year automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Lotus automobiles. Since NHTSA assumes that Lotus will continue to build high performance cars, design changes that would remove items traditionally offered on these cars were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Technology for Fuel Economy Improvement

The nature of Lotus vehicles generally do not result in high fuel economy values. Also, Lotus lags in having the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers.

Lotus states that the requested alternative fuel economy values represent the best possible CAFE that Lotus can achieve for the 1994, 1995, 1997, and 1998 model years. However, the alternative fuel economy values decrease from 24.2 mpg in MY 1994 to 23.3 mpg in MY 1995 (a decrease of 0.9 mpg). For MYs 1997 and 1998, Lotus stated that the fuel economy value of 21.2 mpg represents the best possible CAFE that it can achieve. The shift from 23.3 mpg in MY 1995 to 21.2 mpg in MYs 1997–1998 represents a decrease of 2.1 mpg. The fuel economy values will decrease over the course of these model years because Lotus has increased the Esprit's horsepower, and will replace the engine with a V–8 after MY 1995 for higher performance. Lotus' decision to use a V–8 in the Esprit after MY 1995 is a response to market demand for more powerful engines. Lotus has produced small lightweight innovative sports vehicles for more than 40 years. Performance is achieved through obtaining maximum output from a small engine displacement, the use of glass fiber body panels, and reliance on a backbone chassis design. The vehicle's compact dimensions provide efficient performance coupled with a strong and relatively light-weight aerodynamic body construction.

The body and chassis have been continuously improved to satisfy legal and customer requirements, and the MYs 1994–1995 vehicles have an equivalent test weight of 3,250 pounds and a weight-to-horsepower ratio of 12.31 lbs./hp and 11.36 lbs./hp respectively.

The current Lotus' engine family series, the 900, has been in production for over 20 years. This engine is an in-line four-cylinder unit of 2.2 liters with intercooled turbocharging to maximize air density. The engine provides a high power/torque package that is a very efficient balance of fuel economy versus engine power. In MYs 1997–1998, Lotus will employ a new turbocharged 3.5 liter V–8 engine with four valves per cylinder, high tumble combustion, and a high compression ratio. This engine will also be highly efficient. Because of Lotus' financial constraints and its decreased research and development budget, the manufacturer must use an engine that fits the existing Esprit chassis/body configuration and uses the present gearbox while maintaining Lotus' performance image. Other vehicle specifications for the MYs 1994, 1995, 1997, and 1998 Lotus' models remain relatively constant, with a slight increase in vehicle weight due to powertrain and regulatory requirements.

Model Mix

Lotus is a small vehicle manufacturer that produces a modest range of high performance exotic sport vehicles. The current Lotus 900 engine series has been successful in complying with world-wide emission standards; however, in MY 1997, Lotus will alter its engine design to increase performance and to comply with increasingly stringent U.S. emission requirements. There is little opportunity to improve fuel economy by changing model mix since Lotus will make only one basic model in each model year.

Effect of Other Federal Motor Vehicle Standards

The new, stringent California emission standards and the similarly stringent Federal Clean Air Act Amendments will apply to Lotus in MYs 1995, 1997, and 1998. Lotus will likely achieve lower fuel economy due to compliance with these standards. In addition, a portion of its limited engineering resources will have to be expended to comply with these more stringent emissions standards including, but not limited to, evaporative emission standards.

Federal motor vehicle safety standards (FMVSS) and regulations also have an adverse effect on the fuel economy of Lotus vehicles. These standards include 49 CFR Part 581 (energy absorbing bumpers), FMVSS 202 (head restraints), FMVSS 207 (seating systems), FMVSS 208 (occupant crash protection), FMVSS 214 (side door strength), and FMVSS 216 (roof crush resistance). These standards tend to reduce achievable fuel economy values, since they result in increased vehicle weight.

Lotus is a small company and engineering resources are limited. Priority must be given to meeting mandatory standards to remain in the marketplace.

The Need of the United States to Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Lotus to achieve an average fuel economy in MYs 1994 through 1998 above the levels set forth in this proposed decision. Granting an exemption to Lotus and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the United States to conserve energy. In fact, there would not be any increase since Lotus cannot attain those generally applicable standards. Nevertheless, the agency estimates that the additional fuel consumed by operating the MYs 1994, 1995, 1997, and 1998 fleets of Lotus vehicles at the CAFE of 24.2 mpg for MY 1994, CAFE of 23.3 mpg for MY 1995, projected CAFE of 21.2 mpg for MYs 1997 and 1998 (compared to a hypothetical 27.5 mpg fleet) is 21,159 barrels of fuel. This averages about 3 barrels of fuel per day over the 20-year period that these vehicles will be an active part of the fleet. Obviously, this is insignificant compared to the fuel used daily by the entire motor vehicle fleet which amounts to 4.81 million barrels per day for passenger cars in the United States in 1994.

Maximum Feasible Average Fuel Economy for Lotus

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for Lotus to improve the fuel economies of its MYs 1994, 1995, 1997, and 1998 fleets above an average of 24.2 mpg for MY 1994, 23.3 mpg for MY 1995 and 21.2 mpg for MYs 1997 and 1998. Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Lotus' projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Lotus is 24.2 mpg for MY 1994, 23.3 mpg for MY 1995, and 21.2 mpg for MYs 1997 and 1998.

NHTSA tentatively concludes that it would be appropriate to establish a separate standard for Lotus for the following reasons. The agency has already granted petitions submitted by Rolls Royce for alternative standards of 14.6 mpg for MYs 1995–96 and 15.1 mpg for MY 1997. NHTSA has also granted a petition from Mednet, Inc. (successor company to Dutcher Motors) for an alternative standard of 17.0 mpg for MYs 1996–98. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MYs 1995, 1996, 1997, and 1998.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive

Order 12866, the proposal would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' The proposed exemption is not generally applicable, since it would apply only to Lotus Cars Ltd., as discussed in this document. Under DOT regulatory policies and procedures, the proposed exemption would not be a ''significant regulation.'' If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be the maximum feasible levels for Lotus for MYs 1994, 1995, 1997, and 1998, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on ''The Need of the United States to Conserve Energy'' that because of the small size of the Lotus fleet, that incremental usage of gasoline by Lotus—s customers would not affect the United States's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the Environmental Policy Act and determined that this proposed exemption if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

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

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

All comments received before the close of business on the comment closing 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 under the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is proposed to be amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would be revised to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(6) would be added to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(6) Lotus Cars Ltd.

Model year	Average fuel economy standard (miles per gallon)
1994	24.2
1995	23.3
1997	21.2
1998	21.2

* * * * *

Issued on: December 18, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–32545 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 951208293–6351–01; I.D. 110796F]

RIN 0648–AF01

Fisheries of the Northeastern United States; Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries; Resubmitted Measures.

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement three provisions of Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) that were initially disapproved but have been revised and resubmitted by the Mid-Atlantic Fishery Management Council (Council). These measures would: Revise the overfishing definition for Atlantic mackerel, establish criteria for a moratorium vessel permit for *Illex* squid, and establish a 5,000–lb (2.27–mt) incidental catch permit for *Illex* squid. The intent of these measures is to prevent

overfishing and to avoid overcapitalization of the domestic fleet in these fisheries.

DATES: Public comments must be received on or before February 3, 1997.

ADDRESSES: Comments on the proposed rule and its supporting documents should be sent to: Dr. Andrew A. Rosenberg, Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope, ''Comments on Resubmitted Amendment 5 Atlantic Mackerel, Squid, and Butterfish.''

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to Dr. Andrew A. Rosenberg at the address above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Copies of the resubmitted portion of Amendment 5 and its supporting documents, including its environmental assessment and regulatory impact review (RIR) that contain an initial regulatory flexibility analysis are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 5 was developed in response to concerns regarding overcapitalization expressed by industry representatives at several meetings of the Council and its Squid, Mackerel, and Butterfish (SMB) Committee in the early 1990's. Details concerning the development of Amendment 5 are provided in the proposed rule which was published in the Federal Register on December 20, 1995 (60 FR 65618).

Amendment 5, as adopted by the Council, contained moratoria on entry into the *Illex* and the *Loligo* squid and butterfish fisheries based on specified criteria. It also proposed a minimum mesh size for the *Loligo* fishery with an exemption for the sea herring fishery and the summer *Illex* fishery beyond the 50–fathom curve, and a modification of the formula for arriving at the allowable biological catch (ABC) for Atlantic mackerel.

The proposed rule identified specific concerns about the following proposed measures: (1) The moratoria entry criteria, (2) the proposal to constrain the ABC specified for Atlantic mackerel by the long-term potential catch (LTPC) estimate, and (3) the proposed exemptions from the *Loligo* minimum mesh requirement. The proposed rule requested the public to comment on all proposed measures but to focus on these in particular.

NMFS, on behalf of the Secretary of Commerce, reviewed Amendment 5 in light of the administrative record and the public comments received relative to the amendment and the proposed rule. Based upon this review, several provisions of Amendment 5 were found to be inconsistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Therefore, the following measures were disapproved: (1) The *Illex* moratorium permit, (2) the use of LTPC to cap ABC for Atlantic mackerel, and (3) the exemption from the minimum mesh requirement for the *Loligo* fishery for a vessel fishing for sea herring whose catch is comprised of 75 percent or more of sea herring. Details concerning the disapprovals were provided in the final rule implementing Amendment 5, which was published on April 2, 1996 (61 FR 14465), and are not repeated here.

At its June 1996 meeting, the Council revised several of the disapproved measures for resubmission. Management measures for an *Illex* moratorium and a cap on the ABC for Atlantic mackerel were resubmitted. The Council did not resubmit a measure to exempt sea herring vessels from the minimum mesh size for *Loligo* squid.

Proposed Revised Management Measures

A revised moratorium vessel permit for *Illex* squid is proposed in the resubmitted portion of Amendment 5. A vessel would qualify for the permit if it landed five trips of at least 5,000 lb (2.27 mt) between August 13, 1981, and August 13, 1993. Additionally, a vessel that was under construction for, or was being rerigged for, use in the directed fishery for *Illex* on August 13, 1993, would qualify for the moratorium permit provided it landed five trips of at least 5,000 lb (2.27 mt) prior to December 31, 1994. A vessel would also be issued a moratorium permit if it is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Illex* fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. If the *Illex* moratorium permit is approved, it would terminate at the end of the fifth year following implementation, unless extended by an amendment to the FMP.

An open-access incidental catch permit for *Illex* squid is proposed that would allow the harvest of up to 5,000 lb (2.27 mt) of *Illex* per trip. This represents an increase of 2,500 lb (1.13 mt) more than the 2,500 lb (1.13 mt) incidental catch limit that was originally proposed in Amendment 5. The incidental allowance for butterfish and *Loligo* squid would not be affected and remains at 2,500 lb (1.13 mt) per trip.

The Council also submitted a revised definition of overfishing for Atlantic mackerel. Overfishing would be defined to occur when the annual catch of Atlantic mackerel exceeds the ABC for that species. In addition, for overfishing to be avoided, the fishing mortality rate associated with the expected total catch of Atlantic mackerel (defined as the ABC in U.S. waters plus the expected catch in Canadian waters for the fishing year), could not exceed $F_{0.1}$, as determined by the most recent stock assessment conducted by the NMFS Northeast Fisheries Science Center. The catch or extraction rate associated with a fishing mortality rate of $F_{0.1}$ is a fishing mortality rate determined annually in the specification process; the use of $F_{0.1}$ as a measure of overfishing would allow the ABC to vary annually, depending on variations in stock size. $F_{0.1}$ is generally considered a conservative, or biologically safe level of exploitation and has been used as a biological reference point in fisheries throughout the world. A spawning stock of no less than 900,000 mt of Atlantic mackerel would be required to be maintained at the end of each fishing year.

Classification

NMFS has determined that this proposed rule which would implement the resubmitted portion of Amendment 5 is consistent with the resubmitted portion. However, at this time NMFS has not determined whether the resubmitted portion of Amendment 5 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule, if adopted, would have on small entities. The Council's analysis indicates that this proposed

rule, if implemented, could have a significant economic impact on a substantial number of small entities. This analysis examined the impact of the proposed moratorium for *Illex* squid on revenues earned by a ''reference fleet.'' This term is defined as 26 vessels that landed *Illex* in 1993 in excess of the proposed 5,000–lb (2.27 mt) incidental catch allowance. The Council identified a total of 52 vessels that would qualify for the moratorium permit and then performed a sensitivity analysis to examine the impact on the revenues of the reference fleet if various levels of catch were achieved by the additional 26 vessels. This analysis concluded that, depending on the catch levels assigned to the new participating vessels, reference fleet revenues could increase by as much as 5.3 percent or decrease by as much as 10.4 percent. A copy of the RIR is available from the Council (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This requirement has been approved by the OMB under Control Number 0648–0202. Public reporting burden for the collection of information is estimated to average 30 minutes for an initial vessel permit application and 15 minutes for a vessel permit renewal request. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information to NMFS or OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 16, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648, Subpart B, is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraphs (a)(5)(ii) through (a)(5)(iv) are redesignated as (a)(5)(iii) through (a)(5)(iv), a new paragraph (a)(5)(ii) is added, introductory text for paragraphs (a)(5) and (a)(5)(i)(A), and newly redesignated paragraphs (a)(5)(iii) and (a)(5)(iv) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) *Mackerel, squid, and butterfish vessels.* Beginning on January 1, 1997, any vessel of the United States, including party or charter vessels, that fishes for, possesses, or lands Atlantic mackerel, squid, or butterfish in or from the exclusive economic zone (EEZ), must have been issued and carry on board a valid *Loligo* squid and butterfish moratorium permit, *Loligo*/butterfish incidental catch permit, *Illex* squid and Atlantic mackerel permit, or a valid party or charterboat permit issued under this section. This requirement does not apply to recreational fishing vessels. Until January 1, 1997, vessels that have been issued 1996 Federal squid, mackerel, and butterfish permits and are not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land, Atlantic mackerel, squid, or butterfish in or from the EEZ. As of June 1, 1997, a vessel that fishes for, possesses, or lands *Illex* squid in or from the EEZ must have on board a valid *Illex* moratorium permit or squid/butterfish incidental catch permit, and a vessel that fishes for, possesses, or lands Atlantic mackerel in or from the EEZ must have on board a valid Atlantic mackerel permit.

(i) *Loligo squid and butterfish moratorium permit*—(A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (a)(5)(iii) of this section, if it meets any of the following criteria:

* * * * *

(ii) *Illex squid moratorium permit (Applicable for 5 years from the effective date of the moratorium)*—(A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Illex* squid in excess of the incidental catch allowance specified in paragraph (a)(5)(iii) of this section, if it meets any of the following criteria:

(*1*) The vessel landed and sold at least 5,000 lb (2.27 mt) of *Illex* squid on five separate trips between August 13, 1981, and August 13, 1993;

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section; or

(*3*) The vessel was under construction for, or was being rerigged for, use in the directed fishery for *Illex* squid on August 13, 1993 and the vessel landed and sold at least 5,000 lb (2.27 mt) of *Illex* squid on five separate trips prior to December 31, 1994.

(B) *Application/renewal restrictions.* No one may apply for an initial Illex squid moratorium permit for a vessel after:

(*1*) One year following the effective date of the final rule implementing the moratorium permit; or

(*2*) The owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* See paragraph (a)(3)(i)(D) of this section.

(iii) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish, or up to 5,000 lb (2.26 mt) of *Illex* squid as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Director based upon a recommendation by the Council following the procedure set forth in § 648.21.

(iv) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ.

* * * * *

3. In § 648.13, paragraph (a) is revised to read as follows:

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued an Atlantic mackerel or squid/butterfish incidental catch permit and authorized in writing by the Regional Director to do so, may transfer or attempt to transfer *Loligo*, *Illex*, or butterfish from one vessel to another vessel.

* * * * *

4. In § 648.14, paragraphs (p)(2) through (p)(8) are redesignated as (p)(3) through (p)(9), a new paragraph (p)(2) is added, and paragraphs (a)(75) and newly redesignated paragraph (p)(6) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(75) Transfer *Loligo*, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessels are permitted or have a valid squid/butterfish incidental catch permit

and a letter of authorization from the Regional Director.

* * * * *

(p) * * *

(2) Possess more than the incidental catch allowance of *Illex* squid unless issued an *Illex* squid moratorium permit.

* * * * *

(6) Transfer squid or butterfish at sea to another vessel unless that other vessel has been issued a valid *Loligo* and butterfish or *Illex* moratorium permit or a valid squid/butterfish incidental catch permit and a letter of authorization by the Regional Director for the species being transferred.

* * * * *

[FR Doc. 96–32389 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961119321–6321–01; I.D. 110796G]

RIN 0648–AI68

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing revisions to several sections of regulations that pertain to permits, recordkeeping, and reporting for fisheries of the Exclusive Economic Zone (EEZ) off Alaska. The proposed changes are necessary to clarify existing text, facilitate management of the fisheries, promote compliance with regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the fishery management plans (FMPs) for the fisheries of the EEZ off Alaska.

DATES: Comments must be received by January 22, 1997.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or deliver to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK. Comments on the collection-of-information requirements may be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the EEZ off Alaska under authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS is proposing revisions to regulations implementing permit and recordkeeping and reporting requirements for the Alaska groundfish fisheries. The proposed changes are expected to clarify existing regulatory text, facilitate management of the groundfish fisheries, promote compliance with regulations, and facilitate enforcement efforts.

The following is a brief description of the regulatory provisions proposed:

Permits

• *Renewal period extended.* NMFS proposes to issue the Federal fisheries permits and Federal processor permits on a 3-year cycle instead of an annual cycle. This proposed change is in response to a Presidential Directive in 1995 that Federal agencies decrease the paperwork burden hours required of the public.

• *Federal processor permit.* When the North Pacific Research Plan was in place (59 FR 46126, September 6, 1994), all processors were required to obtain a Federal processor permit for purposes of fee assessment. With the removal of the Research Plan (61 FR 56425, November 1, 1996), the fee assessment requirements were removed. However, the Federal processor permit serves to identify the vessels that operate solely as a mothership in Alaska State waters and shoreside processors that participate in groundfish fisheries in the same way that the Federal fisheries permit identifies the vessel participants. Therefore, NMFS proposes that regulatory text be modified to require a Federal processor permit only for shoreside processors and vessels operating solely as a mothership in Alaska State waters.

Additions

• *Sablefish/Pacific halibut Individual Fishing Quota (IFQ) information.* NMFS proposes that certain IFQ information currently authorized under OMB clearance No. 0648–0272 be recorded on the catcher vessel DFL or the catcher/processor DCPL. During the comment period on the 1996 recordkeeping and reporting proposed rule, the U.S. Coast Guard (USCG) requested that the DFL and catcher/processor DCPL be modified to include information that identifies all IFQ permit numbers and persons with IFQ on board a vessel and the date of IFQ landing, the IFQ registered buyer, and unloading port of the IFQ landing. This recordkeeping requirement has been requested by the USCG to facilitate the monitoring and enforcement of the IFQ program.

• *DFL* NMFS proposes that the Federal fisheries permit number be recorded on each DFL page, to be consistent with other reporting requirements and to assist NMFS Enforcement and USCG during audits of logbook data once logbook sheets have been submitted to NMFS.

• *DFL and catcher/processor DCPL.* NMFS proposes to add a requirement to record the fishing trip number on each page of the DFL and catcher/processor DCPL to assist the observer with recordkeeping and to assist NMFS Enforcement and USCG during audits on board vessels.

• *Text.* Introductory paragraphs are added and text is added to clarify requirements at paragraphs 679.5(c)(3), (d)(2)(i), (e)(2)(i), and (f)(2).

• *Definition of fishing trip.* A subparagraph is added to specify the appropriate definition of fishing trip with respect to recordkeeping and reporting.

Revisions

• *Metric tons to the nearest 0.001 mt.* NMFS is concerned about the status of several groundfish species, particularly rockfish. Even small amounts of these species must be accounted for. NMFS proposes that, when recording or reporting landings or products in metric tons, the requirement be changed from 0.01 metric ton to require quantities be recorded to at least the nearest 0.001 metric ton.

• *Definition of fish product weight.* The definition for fish product weight is revised to accommodate the new wording for recording and reporting of products to the nearest 0.001 metric ton and also to clarify this term relative to fresh fish.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB approval for the majority of this information has been obtained under OMB control numbers 0648–0206 and –0213; additions and revisions to the collection have been submitted to OMB for approval.

a. *Approved under 0648–0206—Alaska permits*: No new forms or revisions to forms; renewal cycle for Federal fisheries permit and Federal processor permit extended from 1 to 3 years. The information collection requirements for the Federal processor permit are repeated in this rule and have an estimated response time of 0.33 hour per response.

b. *Approved under 0648–0213—Alaska Region Logbook Family of Forms*: Revisions to existing forms have the following effects: Estimated time for operator of a catcher vessel with fixed gear to complete a DFL increases from 0.25 hour per response to 0.33 hour per response; estimated time for operator of a catcher/processor with fixed gear to complete a catcher/processor DCPL increases from 0.45 hour per response to 0.53 hour per response; estimated time for operator of a catcher vessel with gear other than fixed gear to complete a DFL increases from 0.25 hour per response to 0.28 hour per response; estimated time for operator of a catcher/processor with gear other than fixed gear to complete a catcher/processor DCPL increases from 0.45 hour per response to 0.48 hour per response. The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection-of-information.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection-of-information displays a currently valid OMB control number.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would improve the efficiency of data collection and accuracy of the resultant data required under existing recordkeeping and reporting regulations and would include those recommendations received from industry, enforcement, and management. The revisions will decrease the reporting burden for industry, and the reduction in burden will benefit both large and small entities.

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 16, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 679 is proposed to be amended as follows:

PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.2, the definition for ''fish product weight'' is revised and the definition of ''fishing trip'' is amended by adding paragraph (4) to read as follows:

§ 679.2 Definitions.

* * * * *

Fish product weight means the weight of the fish product in pounds or to at least the nearest thousandth of a metric ton (0.001 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individual fresh or frozen fish. The weight of a production unit is the average weight of representative samples of the product, and, for fish other than fresh fish, may include additives or water, but not packaging. Any allowance for water added cannot exceed 5 percent of the gross product weight (fish, additives, and water).

* * * * *

Fishing trip * * *

(4) With respect to recordkeeping and reporting, one of the following:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver groundfish to other than a mothership, the time period during which one or more fishing days occur, that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

* * * * *

3. In § 679.4, paragraphs (b)(4)(i) and (f) are revised to read as follows:

§ 679.4 *Permits*.

* * * * *

(b) * * *

(4) *Duration*—(i) A Federal fisheries permit is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, or modified under §§ 600.735 or 600.740 of this chapter.

* * * * *

(f) *Federal processor permit*—(1) *Requirement*. No shoreside processor of the United States or vessel of the United States operating solely as a mothership in Alaska States waters may receive or process groundfish harvested in the GOA or BSAI unless the owner first obtains a Federal processor permit, issued under this part. A Federal processor permit is issued without charge. (2) *Application*. A complete application for a Federal processor permit must include the following:

(i) If the application is for an amended permit, the current Federal processor permit number and an update of the permit information that has changed.

(ii) The shoreside processor's name, business street address, telephone number, and fax number.

(iii) The shoreside processor owner's name or names, business mailing address, managing company, if any, telephone number, ADF&G Processor Code, and fax number.

(iv) Indication of the fishery or fisheries for which the permit is requested.

(v) Indication of the shoreside processor operations category.

(vi) The owner of the shoreside processor must sign and date the application.

(3) *Issuance*—(i) Upon receipt of a properly completed permit application, the Regional Director will issue a Federal processor permit required by this paragraph (f).

(ii) The Regional Director will send the Federal processor permit to the applicant with the shoreside processor logbook, as provided under § 679.5.

(4) *Duration*—(i) A Federal processor permit is issued for a 3-year period and remains in full force and effect from the

date of issuance through the end of the current NMFS 3-year renewal cycle, unless it is revoked, suspended, or modified under §§ 600.735 or 600.740 of this chapter.

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Chief, RAM Division, NMFS.

(5) *Transfer.* A Federal processor permit issued under this paragraph (f) is not transferable or assignable and is valid only for the processor for which it is issued.

(6) *Inspection*—(i) An original Federal processor permit issued under this paragraph (f) must be on site at the shoreside processor at all times. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (f) must be presented for inspection upon the request of any authorized officer.

4. Section 679.5 is amended as follows:

a. In each of the following paragraphs in § 679.5, the reference to ''0.01 mt'' is revised to read ''0.001 mt'': (a)(6)(iii)(H), (a)(8)(ii)(A), (a)(9)(ii), (a)(10)(i)(A), (f)(2)(ii)(E), (g)(3)(iii)(E), (g)(3)(iv), (h)(3)(iv), and (k)(2)(ii)(C).

b. Paragraphs (a)(5)(iii) and (iv), (c)(3)(i) introductory text, (c)(3)(i)(B) through (D); paragraphs (c)(3)(ii)(A), the introductory text of paragraphs (d)(2)(i), (e)(2)(i), and (f)(2)(i); and paragraph headings for (c)(3)(iv) and (c)(3)(v) are revised; and paragraphs (c)(3)(iii)(A) and (B) and (c)(3)(vi) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(5) * * *

(iii) If a shoreside processor, the Federal processor permit number and ADF&G processor number.

(iv) If a buying station, the name and ADF&G vessel number (if a vessel) of the buying station; the name, ADF&G processor code, and Federal processor permit number of associated shoreside processor or the Federal fisheries permit number of the associated mothership.

* * * * *

(c) * * *

(3) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or catcher/processor must record on each page:

* * * * *

(B) The start date, end date, and trip number of the fishing trip.

(C) If a catcher vessel, the vessel name, ADF&G vessel registration number, and Federal fisheries permit number.

(D) If a catcher/processor, the vessel name, ADF&G processor code, and Federal fisheries permit number.

* * * * *

(ii) * * *

(A) If a catcher vessel, date (month-day-year).

* * * * *

(iii) * * *

(A) *Catcher vessels*—(*1*) If deliveries to a mothership or shoreside processor are unsorted codends, the operator must check the appropriate box.

(*2*) If deliveries to a mothership or shoreside processor are presorted at sea, the operator must check the appropriate box and must record discard/donation information as described in paragraph (a)(10) of this section.

(B) *Catcher/processors.* The operator must record discard/donation information as described in paragraph (a)(10) of this section.

(iv) *Catcher vessel delivery information.* * * *

(v) *Catcher/processor product information.* * * * (vi) *IFQ data.* The operator of a catcher vessel or catcher/processor must record IFQ information as follows:

(A) Check YES or NO to indicate if persons aboard have authorized IFQ permits.

(B) If YES, record the following:

(*1*) Vessel operator's (captain's) name and IFQ permit number, if any.

(*2*) The name of each IFQ holder aboard the vessel and each holder's IFQ permit number.

(*3*) Month and day of landing.

(*4*) Name of registered buyer.

(*5*) Name of unloading port.

(d) * * *

(2) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a buying station must record on each page:

* * * * *

(e) * * *

(2) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must record on each page:

* * * * *

(f) * * *

(2) *Information required*—(i) *Part IA.* In addition to requirements described in paragraphs (a) and (b) of this section, the manager of a shoreside processor must record on each page:

* * * * *

[FR Doc. 96–32388 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 247
Monday, December 23, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Extension of a Currently Approved Information Collection

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces an extension, by the Economic Research Service (ERS), of a currently approved information collection in support of the annual ERS report on agricultural real estate taxes.

DATES: Comments on this notice must be received on or before February 26, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Fred Hoff, Associate Director, Information Services Division, Economic Research Service, U.S. Department of Agriculture, 1301 New York Avenue, NW., Washington, DC 20005–4788, (202) 219–0511.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Real Estate Taxes.

OMB Number: 0536–0002.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of currently approved annual information collection.

Abstract: Information on agricultural real estate taxes levied has been collected annually by the United States Department of Agriculture (USDA) since before 1938, when the Agricultural Adjustment Act of 1938 officially directed that USDA collect such information. The information is collected annually via a mail questionnaire. The 1997 questionnaire is scheduled to be mailed in July. This information is used to calculate parity price indexes; estimate the changes in taxes; compare property taxes paid by farmers and ranchers among the States; and study farm and ranch costs, prices, and income. It is also the basis for the USDA's annual farm and ranch real estate tax series, which summarize agricultural real estate taxes in terms of total taxes, taxes per acre, and taxes per $100 of market value for each State. All requested information is collected annually from tax assessors on a simple one-page questionnaire enclosed with a postage-paid return envelope and a summary of the previous years results.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 50 minutes per response.

Respondents: Tax assessors in each of approximately 4,200 jurisdictions with agricultural land, usually counties.

Estimated Number of Respondents: 2,500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,083 hours.

Copies of this information collection can be obtained from Kenneth Krupa, Natural Resources and Environment Division, ERS, (202) 219–0853.

COMMENTS: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Fred Hoff, Associate Director, Information Services Division, Rm 224C, Economic Research Service, U.S. Department of Agriculture, 1301 New York Avenue, NW, Washington, DC 20005–4788, (202) 219–0511.

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, December 16, 1996.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 96–32452 Filed 12–20–96; 8:45 am]
BILLING CODE 3410–18–M

Forest Service

Tansy Ragwort Control Project, Tally Lake Ranger District, Flathead National Forest, Flathead and Lincoln Counties, State of Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Forest Service will prepare an environmental analysis to disclose the environmental effects of a variety of actions to control tansy ragwort, a non-native noxious weed, by preventing existing populations from producing seed in 1997 and beyond. These actions include aerial application and hand-spraying of herbicides, hand-pulling of individual plants, restriction of motorized travel on some sections of Forest Service roads, introduction of biological control agents, and intensive monitoring to determine the effectiveness of these actions and to provide up-to-date information on the status of the infestation.

An EIS is planned because aerial application of chemicals is classified as an action requiring the preparation of an EIS by Forest Service Handbook 1909.15 Chapter 20.6 (*Classes of Actions Requiring Environmental Impact Statements).* Considering the emergency situation of the current tansy ragwort infestation and the need to take action by early summer of 1997, the Flathead National Forest is exploring alternatives to what is outlined in the Forest Service Handbook, such as classifying aerial spraying as an emergency under 40 CFR 1506.11. We anticipate that tansy ragwort will spread and cause significant environmental effects if not action is taken beginning in early summer of 1997.

The project area is located in and near the Little Wolf Fire area approximately 21 air miles southwest of Whitefish, Montana.

The need for this proposal stems from a large infestation (approximately 1,500 acres) of tansy ragwort that was identified on the Tally Lake Ranger

District in the summer of 1996. If action is not taken in 1997, tansy ragwort is likely to spread to adjacent national forest and private lands and would have severe implications for livestock, agricultural activities, and native vegetation in northwestern Montana and possibly beyond. Tansy ragwort is poisonous to livestock and outcompetes native vegetation, which would adversely affect wildlife habitat. Tansy ragwort also has the potential to delay the establishment and/or reduce the growth of conifer seedlings within harvest units.

The purpose of this project is to control tansy ragwort by preventing tansy ragwort plants on the Tally Lake Ranger District from producing seed in 1997 and for as many years beyond 1997 as high number of tansy ragwort plants are detected on the district. These efforts will help prevent the spread of tansy ragwort to currently uninfested national forest and private lands and may eventually lead to long-term eradication of tansy ragwort on the Tally Lake Ranger District.

The Proposed Action consists of the following: aerial application of herbicide from a helicopter, application of herbicides with ground-based equipment, hand-pulling of tansy ragwort plants, introduction of biological control agents, restriction of motorized vehicles on some Forest Service roads, and continuation of intensive monitoring of tansy ragwort populations.

This Notice of Intent to prepare an EIS initiates the public scoping process. The Forest Service is seeking information and comments from federal, state, and local agencies and other individuals or organizations who may now be interested in or affected by the Proposed Action. These comments will be used in preparing the Draft EIS.

DATES: At this time, it is anticipated that a Draft EIS will be available by March, 1997.

ADDRESSES: Submit written comments and suggestions or a request to be placed on the project mailing list to Jane Kollmeyer, District Ranger, Tally Lake Ranger District, 1335 Highway 93 West Whitefish, MT 59937.

FOR FURTHER INFORMATION CONTACT: Jane Kollmeyer, Tally Lake District Ranger, (406) 862–2508.

SUPPLEMENTARY INFORMATION: .

Summary of the Current Infestation

The need for this proposal results from an infestation of tansy ragwort within and near the Little Wolf Fire area on the Tally Lake Ranger District of the Flathead National Forest, Flathead County, Montana. Tansy ragwort is an aggressive non-native plant new to Montana that Flathead County will soon list as a noxious weed. The only other tansy ragwort infestation in Montana is less than 20 acres on private land in Mineral County near St. Regis. Small numbers of tansy ragwort plants were discovered on the Tally Lake Ranger District in 1993, and some of these plants were removed by hand pulling. However, tansy ragwort seeds remain viable in the soil for 15–30 years, so that species was not eradicated from the area.

The Little Wolf Fire of 1994 (approximately 15,000 acres) created ideal seedbed conditions for tansy ragwort, and human activity in the area may have contributed to its spread. Intensive field surveys for tansy ragwort began in the summer of 1996 and indicate that tansy ragwort currently occurs on approximately 1,500 acres in and near the Little Wolf Fire area on the Tally Lake Ranger District and in small ''spot infestation sites'' as far as seven miles from the fire perimeter. Tansy ragwort has not yet been found on nearby private agricultural lands in Star Meadows or the Flathead Valley.

Action is needed to prevent tansy ragwort from producing seed in 1997 and beyond. This would reduce the possibility that tansy ragwort will spread to private agricultural lands and would contribute towards the long-term goal of complete eradication of tansy ragwort from the Tally Lake Ranger District.

Potential Effects if the Infestation Spreads

Unless action is taken in 1997, noxious weed experts for both the Flathead National Forest, Flathead County, and the State of Montana expect that the acres infested by tansy ragwort will increase dramatically. Each tansy ragwort plant produces up to 150,000 seeds that may remain viable in the soil for 15–30 years. The plant would likely spread to adjacent national forest and private lands and would have severe implications for livestock, agricultural activities, and native vegetation in northwestern Montana—and possibly beyond.

If tansy ragwort spreads to private lands, it would likely infest pastureland for cattle, horses, and pigs, which are susceptible to tansy ragwort poisoning. These animals can die of liver failure after cumulatively ingesting tansy ragwort in amounts between 3–7 percent of their body weight. If tansy ragwort spreads to nearby private agricultural lands such as the Flathead Valley, it could contaminate hay fields, which could lead to restrictions on hay exports. Also, this extremely aggressive plant could displace native vegetation important for wildlife forage as well as reduce the diversity of native vegetation. Tansy ragwort also has the potential to delay the establishment and/or reduce the growth of conifer seedlings within harvest units.

Proposed Actions for the Tansy Ragwort Control Project

The Proposed Action involves a variety of management activities designed to control tansy ragwort on the Tally Lake Ranger District by preventing existing populations from producing seed in 1997 and for as many years as high numbers of this plant are detected on the district. After initial evaluation of their effectiveness, the Interdisciplinary Planning Team considers these actions to be most likely to prevent tansy ragwort within currently infested areas from producing seed in 1997 and beyond. If seed production is prevented, tansy ragwort is not likely to spread to uninfested areas. The components of the Proposed Action have been designed to comply with applicable laws and regulations.

Aerial Spraying of 2,4-D (amine formulation) or Clopyralid Herbicide on Areas with Large, Continuous Populations

The Proposed Action involves applications of the herbicide 2,4-D (amine formulation) or clopyralid from a helicopter by a pilot licensed to apply herbicides. Approximately 1,450 acres would be sprayed with 2,4-D or clopyralid within the Little Wolf Fire area perimeter that are heavily infested with continuous populations of tansy ragwort. Either herbicide would be applied in 1997 and 1998 in both the early summer (between June 1 and July 15) and the fall (after mid-August). If monitoring in 1998 reveals that an unacceptably high number of tansy ragwort plants remain, aerial spraying may be used in 1999 and possibly in the year 2000. However, expectations are that aerial spraying in 1997 and 1998 would dramatically decrease the numbers of tansy ragwort, and aerial spraying beyond 1998 would not likely be needed.

The herbicides 2,4-D and clopyralid were chosen for aerial application because they meet EPA guidelines for application on the specific lands infested, considering such factors as soil types and location of streams and wetlands. Research on 2,4-D and clopyralid outlines acceptable application rates and expected environmental effects. The application

rate and specific lands proposed for treatment with 2,4-D or clopyralid are within guidelines outlined by the EPA.

Hand-Spraying of Herbicides Within Spot Infestation Sites

Many ''spot infestation sites'' exist outside large continuous areas of tansy ragwort within the fire perimeter. These spots total approximately 50 acres. Field crews licensed to apply herbicides would spray individual tansy ragwort plants within these spot areas with the appropriate herbicide for the site, meeting EPA label restrictions for applying these herbicides. Backpack spray units and pumps mounted on all-terrain vehicles would be used within these spot infestation sites.

The generic names of the four herbicides that would be considered for use in the spot infestation sites are (1) clopyralid, (2) picloram, (3) 2,4-D (amine formulation), and (4) a mixture of dicamba and 2,4-D (amine formulation). One of these four herbicides would be chosen based on an evaluation of site factors such as soil type, depth of water table, proximity to streams, and amount of organic matter.

Hand-Pulling of Tansy Ragwort Plants

If tansy ragwort occurs on sites where aerial or hand-spraying of herbicides would violate EPA restrictions for those herbicides and cause unacceptable environmental risk, tansy ragwort plants would be hand-pulled to prevent them from producing seed.

Introduction of Biological Control Agents

The Proposed Action involves introduction on the Tally Lake Ranger District of three insect species that have been previously used in Oregon to reduce tansy ragwort infestations. These species do not occur naturally in northwestern Montana, but they have been approved for use in northwestern Montana as possible biological control agents of tansy ragwort. They are the cinnabar moth [*Tyria jacobaeae* (L)], the tansy ragwort flea beetle [*Longitarsus jacobaeae* (Waterhouse)], and the ragwort seed fly [*Botanophila seneciella* (Meade)].

The currently available ecotypes of these three insect species performed well in the coastal climate of western Oregon where they were used in the 1980s to control large tansy ragwort infestations in the Wilamette Valley. The available ecotypes are not expected to perform as well in the colder continental climate of northwestern Montana. However, introduction of these three species is proposed because they are approved for use as biological control agents, are readily available, and are relatively low-cost.

Road Management Actions

Motorized vehicular travel would be restricted on some Forest Service roads to prevent the spread of tansy ragwort seeds to currently uninfested areas.

Intensive Monitoring

Field crews would be deployed in the snow-free seasons of 1997 through approximately 2005 to determine the status of the tansy ragwort infestation and the success of control measures taken.

Decision to be Made

The decision to be made is what, if anything, should be done in the vicinity of the Little Wolf Fire area to prevent tansy ragwort plants from producing seed in 1997 and for as many years as high numbers of tansy ragwort plants are identified on the Tally Lake Ranger District.

Preliminary Issues as Identified by Internal Scoping

This Notice to Prepare an EIS is the first step in the public scoping process; to date, virtually all scoping has occurred only within the Forest Services. Based on internal scoping, the following preliminary issues have been identified:

(1) Effects of herbicides on aquatic organisms.

(2) Effects of herbicides on non-target plants such as conifers, deciduous trees and shrubs, broadleaf forbs, and rare plants.

(3) Effects of restrictions on motorized use of Forest Service roads by both the public and Forest Service personnel.

(4) Monitoring in early 1997 may reveal a dramatic increase in the acres infested with tansy ragwort, and our site-specific proposal may not encompass enough of these infested acres to be an effective control action.

No alternatives responding to these preliminary issues have been developed at this time.

The EIS and Its Comment Period

The EIS will document the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and reasonably foreseeable actions on both private and national forest lands will be considered. The EIS will disclose the site-specific features that reduce or eliminate potential environmental impacts.

The draft EIS is expected to be filed with the Environmental Protection Agency and be available for public review in March, 1997. At that time, the EPA will publish a notice of availability of the Draft EIS in the Federal Register. The public comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDA*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritage, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D.* Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Following this comment period, the comments received will be analyzed, considered, and responded to by the Forest Service in the final environmental impact statements (FEIS). The FEIS is scheduled to be completed by June, 1997. Jane Kollmeyer, Tally Lake District Ranger, 1335 Highway 93 West, Whitefish, MT 59937 is the responsible official for the preparation of the EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences

discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations. Notice is hereby given that we are requesting from the Chief of the Forest Service that the proposed 1997 aerial application of herbicides be considered a response to an emergency situation and this component of the Proposed Action should not be subject to a stay as described in 36 CFR 215.10(d).

Dated: December 17, 1996.

Jane Kollmeyer,

District Ranger, Tally Lake Ranger District, Flathead National Forest.

[FR Doc. 96–32480 Filed 12–20–96; 8:45 am]

BILLING CODE 0870–00–M

Canal Hoya Timber Sale; Stikine Area Tongass National Forest Petersburg, Alaska; Notice of Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) for the proposed Canal Hoya Timber Sale on the Wrangell Ranger District.

The proposed action would harvest approximately 20 MMBF of timber on about 1000 acres in both the Canal and Hoya Creek drainages using a variety of harvest methods that leave various densities of trees in harvested areas. Two log transfer sites would be constructed, one near Canal Creek and another east of Hoya Creek. The log transfer sites could utilize a floating, removable structure. Both helicopter and cable log yarding systems would be utilized and depend on approximately 12 miles of road to be constructed in both drainages.

The purpose and need for this project is to provide approximately 20 MMBF of timber from suitable timber lands to assist in providing a continuous wood supply to meet society's needs. Based on Forest Plan direction, a preliminary analysis suggests that timber could be harvested in the project area on up to 1000 acres to provide approximately 20 million board feet using a variety of harvest methods and silvicultural techniques across the landscape that promote industrial wood production and minimize the visibility of harvest units.

The desired landscape condition for this area is a multi-aged, multi-structured forest landscape which meets some of the requirements of wildlife and provides for long-term timber production and scenery. This is consistent with the Tongass Land Management Plan direction for lands within the project area. Since it is anticipated that a new revision of the Tongass Land Management Plan will be signed during this planning process, we will strive to be consistent with the goals and objectives for the existing plan and the revised plan in the Environmental Impact Statement for the Canal Hoya timber sale.

A range of alternatives to the proposed action will be considered, which will respond in various ways to environmental issues. One of these alternatives will not harvest the area. Other alternatives will consider various levels of harvest in Hoya Creek, Canal Creek or both, along with alternative road locations and mitigation measures.

The decision required to be made is: (1) if, where and how much timber harvest should occur in the Canal Hoya area, and if so, (2) where should road and log transfer facility development occur to facilitate harvest and, (3) what mitigation measures and monitoring will be implemented.

Federal, State, and local agencies, potential contractors, and other individuals or organizations who may be interested in, or affected by, the decision are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibility.
4. Examination of various alternatives.

The Forest Supervisor will hold public meetings during the planning process but these meetings have not been scheduled at this time. There will be frequent correspondence with individual persons who indicate an interest in this project by responding to initial scoping letters and/or the Stikine Area Project Schedule which is published quarterly.

The analysis is expected to take approximately 5 months. The Draft Environmental Impact Statement should be available for public review by April of 1997. The Final Environmental Impact Statement is scheduled to be completed by September 1997.

Abigail R. Kimbell, Forest Supervisor, Stikine Area, Tongass National Forest, is the responsible official.

Written comments, suggestions or questions concerning the analysis and Environmental Impact Statement should be sent to Scott Posner/John Stevens, ID Team Leaders, Wrangell Ranger District, Stikine Area, Tongass National Forest, P.O. Box 51 Wrangell, Alaska, 99929, phone (907) 874–2323.

Dated: December 9, 1996.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 96–32453 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 1996–97

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in the final rule under 7 CFR subpart B of part 4279, effective on December 23, 1996, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent and/or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent and/or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in subpart B of part 4279 will allow for the targeting of projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, and other related criteria.

Not more than 7 percent of the Agency guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee and/or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business Programs

Processing Division, Rural Business-Cooperative Service, USDA, Stop 3221, Washington, DC 20250–3221, telephone (202) 690–3809.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: December 13, 1996.

Wilbur T. Peer,

Acting Administrator.

[FR Doc. 96–32171 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency; Notice

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice; solicitation of business development center applications for Baltimore.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Baltimore, Maryland Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

In accordance with the Interim Final Policy published in the Federal Register on May 31, 1996, the cost-share requirement for the MBDC in this notice has been increased to 40%. The Department of Commerce will fund up to 60% of the total cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 40% of the total project cost (the ''cost-share requirement''). Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate the center. For administrative purposes, one organization must be designated as the recipient organization.

The MBDC will provide service in the Baltimore, Maryland Metropolitan Area. The award number of the MBDC will be 03–10–97004–01.

DATES: The closing date for applications is February 18, 1997. Applications MUST be received in the MBDA Headquarters' Executive Secretariat on or before February 18, 1997.

PRE-APPLICATION CONFERENCE: A pre-application conference will be held. For the exact date, time and location, contact the New York Regional Office at (212) 264–3262. PROPER IDENTIFICATION IS REQUIRED FOR ENTRANCE INTO ANY FEDERAL BUILDING.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, Telephone Number: (202) 482–3763.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, PLEASE CONTACT: Heyward Davenport, Regional Director at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from May 1, 1997 to May 31, 1998, is estimated at $403,200. The total Federal amount is $241,920 and is composed of $236,160 plus the Audit Fee amount of $5,760. The application must include a minimum cost share of 40%, $161,280 in non-federal (cost-sharing) contributions for a total project cost of $403,200.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). In accordance with Interim Final Policy published in the Federal Register on May 31, 1996, the scoring system will be revised to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic service area for fewer than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation. An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 40% of the total project cost through non-Federal contributions. To assist in this effort, the

MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 150 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development Center)

Dated: December 16, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–32433 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

The Environmental Protection Agency

Coastal Nonpoint Pollution Control Program: Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and The U.S. Environmental Protection Agency.

ACTION: Notice of availability of proposed findings documents, environmental assessments, and findings of no significant impact on approval of coastal nonpoint pollution control programs for Pennsylvania, Guam, and American Samoa.

SUMMARY: Notice is hereby given of the availability of the Proposed Findings Documents, Environmental Assessments (EA's), and Findings of No Significant Impact for Pennsylvania, Guam, and American Samoa. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric

Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. The Findings documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint pollution control program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs. The EA's were prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321 *et seq.*, to assess the environmental impacts associated with the approval of the coastal nonpoint pollution control programs submitted to NOAA and EPA by Pennsylvania, Guam, and American Samoa.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control programs submitted by Pennsylvania, Guam, and American Samoa. The requirements of 40 CFR Parts 1500–1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of the Environmental Assessments. Specifically, 40 CFR section 1506.6 requires agencies to provide public notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Copies of the Proposed Findings documents, Environmental Assessments, and Findings of No Significant Impact may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3121, x201.

DATES: Individuals or organizations wishing to submit comments on the proposed Findings or Environmental Assessments should do so by January 21, 1997.

ADDRESSES: Comments should be made to: Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, Tel. (301) 713–3155, x195. (Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 17, 1996.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

[FR Doc. 96–32457 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

December 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Uruguay Round Agreements Act.

The current limits for Categories 301 and 448 are being increased for swing, reducing the limits for Category 227 and the Fabric Group.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62401, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on December 23, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	89,709,296 square meters.
Sublevel within Fabric Group 227	20,063,789 square meters.
Level not in a group 300/301	8,420,461 kilograms of which not more than 2,799,410 kilograms shall be in Category 301.
448	20,851 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32517 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

December 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 350 is being increased for special shift, pursuant to a Memorandum of Understanding (MOU) dated July 19, 1995 between the Governments of the United States and Turkey. The limit for Category 335 is being reduced to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 57576, published on November 16, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 23, 1996, you are directed to adjust the limits for the following categories, as provided for in the Memorandum of Understanding dated July 19, 1995 between the Governments of the United States and Turkey, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Limits not in a group	
335	284,003 dozen.
350	535,236 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32518 Filed 12–20–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Notice to Add a Record System

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice to add a record system.

SUMMARY: The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective on January 22, 1997, unless co,mments are received that would result in a contrary determination.

ADDRESSES: Send comments to Administrative Policy and Support, Defense Finance and Accounting Service, Room 416, Arlington, VA 22240-5291

FOR FURTHER INFORMATION CONTACT: Ms. Genevieve Turney at (703) 607–5165.

SUPPLEMENTARY INFORMATION:

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on December 10, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 16, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE FINANCE AND ACCOUNTING SERVICE

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

BLANKET ROUTINE USES

Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

LAW ENFORCEMENT ROUTINE USE

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the

letting of a contract, or the issuance of a license, grant or other benefit.

DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

CONGRESSIONAL INQUIRIES ROUTINE USE

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

PRIVATE RELIEF LEGISLATION ROUTINE USE

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES ROUTINE USE

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

DISCLOSURE TO MILITARY BANKING FACILITIES OVERSEAS ROUTINE USE

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

DISCLOSURE OF INFORMATION TO THE GENERAL SERVICES ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DOD investigation, and such other functions, promulgated in 5 U.S.C 1205 and 1206, or as may be authorized by law.

COUNTERINTELLIGENCE PURPOSES ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use outside the DOD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

T7332

SYSTEM NAME:

Defense Debt Management System.

SYSTEM LOCATION:

Primary location: Defense Finance and Accounting Service-Denver Center, 6760 East Irvington Place, Denver, CO 80279–8000.

Defense Finance and Accounting Service-Indianapolis Center, 8899 East 56th Street, Indianapolis, IN 46249–1460;

Defense Finance and Accounting Service-Columbus Center, 4280 East 5th Avenue, Building 3, Columbus, OH 43218–2317;

Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2056;

Defense Finance and Accounting Service-Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001;

Defense Accounting Offices at military bases and at National Guard activities, and Reserve units of all the military services. Official mailing address can be obtained from the Chief, Debt Management Systems Division, Directorate of Debt and Claims Management, Defense Finance and Accounting Service-Denver Center, 6760 East Irvington Place, Denver, CO 80279–8000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractors, former members of the Armed Forces (separated and retired members), former civilian employees (separated), and any other individuals who are indebted to a Department of Defense (DoD) agency that has transferred debts to the Defense Debt Management System serviced by the Defense Finance and Accounting Service. *EXCLUSION: This system does not include current and retired DoD civilian employees or active duty and reserve military personnel.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the debtor and the related history of debt collection activity. Normally, the name, taxpayer identification number, address, amount of debt or delinquent amount, basis of the debt, date debt arose, office referring debt, collection efforts, credit reports, debt collection letters, and correspondence to or from the debtor relating to the debt.

Correspondence with employing agencies of debtors requesting that action begin to collect the delinquent debt through voluntary or involuntary offset procedures against the employees' salary or compensation due a retiree.

Correspondence with other agencies requesting offset from payments due the debtor. These records may include individuals name, rank, date of birth, Social Security Number, debt amount documentation establishing overpayment status, military pay records, financial status affidavits, credit references, and substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts, records of travel payments, financial record data folders, miscellaneous vouchers, debtor financial records, credit reports, promissory notes, and debtor financial statements.

Information on U. S. Treasury Department, Internal Revenue Service (IRS) and General Accounting Office (GAO) inquiries, judicial proceedings regarding bankruptcy, pay account histories, and token payment information.

Applications for waiver of erroneous payment or for remission of indebtedness with supporting documents including statements of financial status (personal income and expenses), statements of commanders or Defense Accounting Officers, correspondence with members and employees, or overpayments of Survivor Benefit Plan (SBP) benefits.

Delinquent accounts receivable from field Defense Accounting Officers including returned checks, medical services billings, collection records, and summaries of military investigations.

Reports from probate courts regarding estates of deceased members.

Reports from bankruptcy courts regarding claims of the U.S. Government against debtors.

Correspondence between contracting officer, administrative contracting officer, or a DFAS center and contractor, that terminates a contract, demands payment, and establishes debt, and any other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5512, 5513, 5514, and 5584; 10 U.S.C. 1442, 1453, 2774, 2775, 9835; 31 U.S.C. 3325, 3342, 3526, 3702, 3711, 3716–3718; 32 U.S.C. 710, 716; 37 U.S.C. 1007(c); 40 U.S.C. 721, 723, 725, 726, 727, 728, 729; 49 U.S.C. 3101 Chapter 1 et. seq.; Pub.L. 97–365, as amended by Pub.L. 104–134; Pub.L. 89–508; E.O. 9397; and DoD 7000.14-R, Department of Defense Financial Management Regulation, Volume 5, Part Two.

PURPOSE(S):

For the administrative management and collection of all delinquent debts, including past due loan payments, overpayments, fines, interest, penalties, fees, damages, leases, sales of real or personal property, etc., due to the DoD and debts due to other Federal departments and agencies of the U.S. Government that may be referred to the DoD for collection.

To provide for the implementation of the salary offset (SOL is 10 years) provisions of 5 U.S.C. 5514, the administrative offset provisions of 31 U.S.C. 3711 and 3716–3718 and the provisions of the Federal Claims Collection Standards (FCCS), which applies to personal debts.

To permit collection of delinquent claims and debts owed to the U.S. Government under any program or service administered by any creditor DoD operating administration or component thereof.

To maintain and distribute a list of contractors indebted to the U.S. Government, and to initiate collection against a contractor which is indebted to the U.S. Government, and to determine whether judicial proceedings should be initiated against the contractor. Guidance regarding contract debts is contained in the Federal Acquisition Regulation, and the Financial Management Regulation (DoD 7000.14–R), volume 10.

To determine the validity of waivers or to make referrals to the Government Accounting Office (GAO).

To maintain records of investigations conducted for the purpose of confirmation, cancellation, and remission of debt, waivers, and other determinations regarding the accuracy and validity of a debt.

All records in this system are subject to use in authorized computer matching programs within DoD and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974 (5 U.S.C. 552a) as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. General Accounting Office (GAO), the Department of Justice, and the United States Attorney General, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

To commercial credit reporting agencies for the purpose of either adding to a credit history file on an individual or business entity for use in the administration of debt collection. Delinquent debt information may be furnished for purposes of providing an inducement for debtors to pay their obligations to the Federal government.

To any Federal agency where the debtor is employed or receiving some type of payment for the purpose of enabling that agency to collect a debt owed the U.S. Government on behalf of the agency by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub.L. 97–365, as amended by Pub.L. 104–134).

To any other Federal agency including, but not limited to the Internal

Revenue service (IRS) pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor for a delinquent debt owed the U.S. Government by the debtor.

To the Department of Veteran Affairs for administration of laws pertaining to veterans' benefits.

To any other Federal agency for the purpose of administrative offset of a debt, including but not limited to the Office of Personnel Management for personnel management functions, or the IRS to obtain a mailing address of a taxpayer for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer pursuant to 26 U.S.C. 1603(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718; to obtain locator status for delinquent accounts receivable; to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age; and to provide for offset of tax refunds.

To any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed the DoD or one of its components.

To commercial collection agencies for the purpose of collection services to recover moneys owed to the U.S. Government.

To publish or otherwise publicly disseminate information regarding the identity of the debtor and the existence of the nontax debt, subject to review by the Secretary of the Treasury.

The 'Blanket Routine Uses' published at the beginning of the DFAS compilation of record system notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer disks, magnetic tape, microfiche, and paper file folders. Computer disks, magnetic tape, microfiche, and paper file folders.

RETRIEVABILITY:

Retrieved by name, Taxpayer Identification Number, other identification number or system identifier, or name of accountable disbursing office in whose custody the public funds were entrusted when the debt arose.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by personnel responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms, or in guarded buildings.

RETENTION AND DISPOSAL:

All cases will remain active until settled by full payment, waiver or write-off. The system contains records requiring a retention period of up to 10 years after final action. Records are retired to National Records Centers. Destruction is accomplished by tearing, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service - Indianapolis Center, 8899 East 56th Street, Indianapolis, IN 46249–1460;

Defense Finance and Accounting Service - Columbus Center, 4280 East 5th Avenue, Building 3, Columbus, OH 43218–2317;

Defense Finance and Accounting Service - Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2056;

Defense Finance and Accounting Service - Denver Center, 6760 East Irvington Place, Denver, CO 80279–8000;

Defense Finance and Accounting Service - Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center identified under '*System manager*'.

Individual should furnish name, taxpayer identification number (Social Security Number), or other identifying information verifiable from the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center identified under '*System manager*'.

Individual should furnish name, taxpayer identification number (Social Security Number), or other information verifiable from the records itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

Records are obtained from the debtor, DFAS centers, other DoD organizations, and agencies of Federal state, and local governments, as applicable or appropriate for processing the case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–32332 Filed 12–19–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 96–66–NG, 96–65–NG, 96–68–NG, 96–71–NG, 96–69–NG, 96–57–NG, 96–72–NG, 96–64–NG, 96–77–NG, 96–76–NG, 96–67–NG, 96–75–NG, 96–74–NG, 96–78–NG, 96–79–NG, and 96–73–NG]

Numac Energy (U.S.) Inc., Progas U.S.A., Inc., Amoco Energy Trading Corporation, Midcon Gas Services Corp., Transcanada Gas Services Inc., Interenergy Corporation and Interenergy Resources Corporation, Channel Gas Marketing Company, Maritimes & Northeast Pipeline, L.L.C., Gaz Metropolitain and Company, Limited Partnership, Union Gas Limited, Panenergy Trading and Market Services, L.L.C., Amerada Hess Corporation, The Montana Power Company, North Canadian Marketing Corporation, Koch Energy Trading, Inc., and United States Gypsum Company; Orders Granting Authorization to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3–F056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 11, 1996.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

Appendix

Import/Export Authorizations Granted

DOE/FE AUTHORITY

Order no.	Date issued	Importer/exporter FE docket no.	Import volume	Export volume	Comments
1205	10/10/96	NUMAC Energy (U.S.) Inc. (96–66–NG).	50 Bcf/term		Blanket for 2 years from Canada.
1206	10/16/96	ProGas U.S.A., Inc. (96–65–NG)	116,402 Mcf/per day		Long-term for 10 years from Canada.
1207	10/16/96	AMOCO Energy Trading Corporation (96–68–NG).	300 Bcf/term		Blanket for 2 years from Canada.
1208	10/25/96	MidCon Gas Services Corp. (96–71–NG).	1 Tcf/term		Blanket for 2 years from Canada.
1209	10/25/96	Transcanada Gas Services Inc. (96–69–NG).	700 Bcf/term (Combined Countries).	300 Bcf/term (Combined Countries).	Blanket for 2 years from and to Canada and Mexico.
1210	10/28/96	Interenergy Corporation and Interenergy Resources Corporation (96–57–NG).	73 Bcf/term	73 Bcf/term	Blanket for 2 years from and to Canada and Mexico.
1211	10/29/96	Channel Gas Marketing Company (96–72–NG).		200 Bcf/term	Blanket for 2 years to Mexico.
1212	10/31/96	Maritimes & Northeast Pipeline, L.L.C. (96–64–NG).	626 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Canada.
1213	10/31/96	Gaz Metropolitain and Company, Limited Partnership (96–77–NG).	12 Bcf/term		Blanket for 2 years from Canada.
1214	10/31/96	Union Gas Limited (96–76–NG)	200 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Canada.
1215	10/31/96	PanEnergy Trading and Market Services, L.L.C. (96–67–NG).	200 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Canada and Mexico.
1216	10/31/96	Amerada Hess Corporation (96–75–NG).	50 Bcf/term		Blanket for 2 years from Canada.
1217	10/31/96	The Montana Power Company (96–74–NG).	10 Bcf/term		Blanket for 2 years from Canada.
1218	10/31/96	North Canadian Marketing Corporation (96–78–NG).	146 Bcf/term	40 Bcf/term	Blanket for 2 years from and to Canada.
1219	10/31/96	Koch Energy Trading, Inc. (96–79–NG).	73 Bcf/term		Blanket for 2 years from Canada.
1220	10/31/96	United States Gypsum Company (96–73–NG).	13,500 MMBtu/per day.		Long-term November 1, 1997, through November 1, 2007.

[FR Doc. 96–32491 Filed 12–20–96; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket Nos. 96–83–NG, 96–86–NG, 96–85–NG, and 96–80–NG]

Rochester Gas and Electric Corporation, BC Gas Utility Ltd., Power City Partners, L.P., and Eastern Energy Marketing, Inc.; Orders Granting Authorization to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleumm Import and Export Activities, Docket Room, 3–F056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 11, 1996.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

Appendix

Import/Export Authorizations Granted

DOE/FE AUTHORITY

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1221	11/29/96	Rochester Gas and Electric Corporation (96–83–NG).	20 Bcf/term	.....	Blanket for 2 years from Canada.
1222	11/29/96	BC Gas Utility Ltd. (96–86–NG)	25 Bcf/term	25 Bcf/term	Blanket for 2 years from and to Canada.
1223	11/29/96	Power City Partners, L.P. (96–85–NG).	500,000 Mcf/term	.....	Blanket for 2 years from Canada.
1224	11/29/96	Eastern Energy Marketing, Inc. (96–80–NG).	110 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Canada.

[FR Doc. 96–32490 Filed 12–20–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Energy Outreach; Electric and Magnetic Field Effects Research and Public Information Dissemination Program; Solicitation for Non-Federal Financial Contributions for Fiscal Year 1997

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy today solicits financial contributions from non-Federal sources to at least match $4,000,000 in Federal funding, in support of the national, comprehensive Electric and Magnetic Field Effects Research and Public Information Dissemination Program, described in the Notice of Intent to Solicit Non-Federal Contributions, published November 9, 1993 (58 FR 59461). Section 2118 of the Energy Policy Act of 1992 (42 U.S.C. 13475) requires the Department of Energy to solicit funds from non-Federal sources to offset at least 50 percent of the total funding for all activities under this program. Section 2118 also precludes the Department of Energy from obligating funds for program activities in any fiscal year unless funds received from non-Federal sources are available in an amount at least equal to 50 percent of the amount appropriated by Congress. Appropriations for expenditure under section 2118 have been enacted under the Energy and Water Development Appropriation Act, 1997 (Pub. Law 104–206) in the amount of $4,000,000 for fiscal year 1997.

DATES: Non-Federal contributions are requested as soon as possible in order to implement the fiscal year 1997 program in a timely manner. No portion of the $4,000,000 in appropriated funds may be expended for fiscal year 1997 program activities until DOE has received from non-Federal sources at least an aggregate sum of $2,000,000.

ADDRESSES: Contributions should be made in the form of a check payable to ''U.S. Department of Energy'' and should include the following annotation: ''For EPAct 2118, EMF Program''. Contributions are to be mailed to: U.S. Department of Energy; Office of Headquarters Accounting Operations; Fiscal Operations Division, CR–54; P.O. Box 500; Germantown, MD 20875–0500.

CONTACT FOR FURTHER INFORMATION:

For additional Information contact Lynne Gillette, Office of Energy Outreach, EE–14, U.S. Department of Energy, Washington, DC 20585 (202) 586–1495.

Issued in Washington, DC, on November 29, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–32328 Filed 12–20–96; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP97–187–000]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1996.

Take notice that on December 11, 1996, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the pro forma listed on the Appendix to the filing, to become effective June 1, 1997.

AWP states that the filing sets forth the revisions to AWP's tariff sheets that are necessary to comply with Order No. 587 in Docket No. RM96–1–000.

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, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such petitions or protests must be filed on or before January 2, 1997. 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32465 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–52–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

December 17, 1996.

Take notice that on December 12, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective December 1, 1996.

Substitute First Revised Sheet No. 015

On October 31, 1996, Columbia Gulf filed revised tariff sheets consistent with Article I, Section E(1) of the Stipulation and Agreement in Columbia Gulf's last Natural Gas Act (NGA) Section 4 general rate proceeding in Docket No. RP94–219. This instant filing is being made in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's (Commission) order issued on November 27, 1996, in Docket No. RP97–52–000. See Columbia Gulf Transmission Co., 77 FERC ¶ 61,255 (1996) (Order).

The Order required Columbia Gulf to revise the text in its Preliminary Statement (Sheet No. 015) to indicate that Columbia Gulf will offer, award, and render its transportation services in a non-discriminatory manner and otherwise in accordance with Commission regulations and policies. The substitute sheet filed herein reflects this change in text.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions, as well as to all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32464 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–153–000]

Florida Gas Transmission Company, Notice of Request Under Blanket Authorization

December 17, 1996.

Take notice that on December 13, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, 1400 Smith Street, Houston, Texas 77251–1188, filed in Docket No. CP97–153–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to abandon an existing meter station and to reactivate an existing delivery tap and lateral, both located in Putnam County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon by sale to Gainesville Regional Utilities (GRU) its Cyprus Mines Hawthorne Meter Station. FGT states that the meter station has been inactive since 1974 when Cyprus Mines ceased operations at its Hawthorne Plant. It is stated that GRU will bear the cost of removing the inactive facilities. It is stated that GRU will upgrade the meter station which it will own and operate. FGT proposes to reactivate the inactive tap and lateral line formerly utilized by Cyprus Mines. FGT proposes to construct electronic flow measurement equipment and appurtenances (EFM) in order to accommodate deliveries of 600 MMBtu equivalent of natural gas on an average day and 219,000 MMBtu equivalent on an annual basis by GRU to Georgia Pacific Corporation (Georgia Pacific) at its Hawthorne plant. It is estimated that the cost of FGT's EFM equipment is $33,500, for which FGT will be reimbursed by GRU. GRU proposes to construct 2.7 miles of non-jurisdictional 4-inch pipeline downstream of the meter station to connect it to Georgia Pacific's plant. It is asserted that the reactivation will not increase FGT's currently certificated level of service under its FTS–1 service agreement and will not have any impact on FGT's peak day or annual deliveries. It is further asserted that FGT has sufficient capacity to render the service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the addition of delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor the prospect activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc 96–32459 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–190–000]

Jupiter Energy Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1996.

Take notice that on December 13, 1996, Jupiter Energy Corporation (Jupiter) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 1
Fourth Revised Sheet No. 4
Eleventh Revised Sheet No. 4A
Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6

Jupiter states that the purpose of three of the tariff sheets is to comply with some of the requirements of Order Nos. 582 and 582–A. Jupiter proposes an effective date of December 31, 1996 for those tariff sheets. Jupiter requests waiver of the remaining requirements of Order Nos. 582 and 582–A applicable to the composition of Jupiter's tariff. According to Jupiter, the other two tendered tariff sheets are to eliminate tariff pages that were applicable to former Jupiter shippers. Jupiter proposes an effective date of January 13, 1997 for those tariff sheets. Finally, Jupiter requests waiver of any Commission rule or regulation required so that the Commission can make effective all of Jupiter's tariff sheets as requested.

Jupiter states that it has posted the filing per Section 154.2(d) of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32467 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–188–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1996.

Take notice that on December 12, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of January 1, 1997:

Fourth Revised Sheet No. 147
Fourth Revised Sheet No. 170

MRT states that the purpose of this filing is to make minor changes to the administration of its calculation of cashout penalties and its handling of capacity releases, and to correct a tariff reference.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32466 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–40–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 17, 1996.

Take notice that on December 11, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 278, Substitute Original Sheet No. 278A and Original Sheet No. 278B, to be effective December 1, 1996.

Natural states that the purpose of this filing is to comply with the Commission's letter order issued November 26, 1996, in Docket No. RP97–40–000.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective on December 1, 1996.

Natural states that copies of the filing are being mailed to all parties on the official service list in Docket No. RP97–40–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–32463 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–145–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

December 17, 1996.

Take notice that on December 10, 1996, NorAm Gas Transmission Company (NGT), 525 Milan Street, Shreveport, Louisiana 71151 filed in Docket No. CP97–145–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval and permission to abandon in place certain facilities in Ouachita County, Arkansas, under the blanket certificate issued in Docket No. CP82–384–000, as amended in Docket No. CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon in place 7,321 feet of two-inch pipeline on Line EM–12 and three inactive one-inch taps. NGT indicates that Line EM–12, composed of 25,251 feet of two-inch pipeline was constructed in 1958 and certificated in Docket No. G–13328 to deliver natural gas to various oil producing companies for use as fuel for their field operations. NGT further indicates that two of the taps for which NGT now seeks abandonment authority were certificated in Docket No. G–10887. NGT also indicates that the third tap was certificated in Docket No. CP66–138. NGT asserts that the oil companies served by these taps have elected to use alternative fuel and have subsequently left NGT's system.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32460 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–151–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

December 17, 1996.

Take notice that on December 12, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in the above docket a request pursuant to Sections 157.205, 157.211 and 157.216 of the Regulations (18 CFR Sections 157.205, 157.211 and 157.216) to amend previously granted authorization in Docket No. CP95–655–000 to modify its North Seattle Meter Station; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that on September 26, 1995, it received prior notice approval to remove the two 8-inch regulators and appurtenances at the North Seattle Meter Station and install appurtenant station piping and valves in order to comply with a request by Washington Natural Gas Company (Washington Natural) for a higher delivery pressure and additional delivery capacity at the North Seattle delivery point.

Northwest states that after further analysis, it has determined that to reduce the scope of the project, Northwest now proposes to remove only one of the two 8-inch regulators and install miscellaneous appurtenant facilities. Northwest states that to increase operational efficiency, it will install a new 6-inch valve which will allow the remaining 8-inch regulator to be by-passed automatically, instead of manually, when additional delivery pressure and capacity is requested by Washington Natural.

Northwest states that the revised total cost for the currently proposed modifications of the North Seattle Meter Station is estimated to be approximately $17,000, which will be reimbursed by Washington Natural.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32461 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–28–001]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1996.

Take notice that on December 11, 1996, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, revised tariff sheet, Substitute Original Sheet No. 84, to be effective November 15, 1996.

WIC states that the instant tariff sheet is filed in compliance with the Federal Energy Regulatory Commission's Order issued November 13, 1996 in Docket No. RP97–28–000. This tariff sheet specifies that the highest rate the shipper must match for right of first refusal purposes is the maximum rate set forth in the tariff.

WIC states that copies of the filing were served upon all parties of Docket No. RP97–28–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 3285.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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. 96–32462 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–7–000, et al.]

CMS Ensenada S.A., et al.; Electric Rate and Corporate Regulation Filings

December 16, 1996.

Take notice that the following filings have been made with the Commission:

1. CMS Ensenada S.A.

[Docket No. EG97–7–000]

On October 30, 1996, CMS Ensenada S.A., Alsina 495, piso 5 (1087), Capital Federal, Buenos Aires, Argentina, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. On December 12, 1996, CMS Ensenada S.A. filed an amendment to this application. CMS Ensenada S.A. requests the deletion of the word ''directly'' from the first line of Section VI(2)(a) of its application. CMS Ensenada S.A. believes the deletion of this word, which created unnecessary ambiguity, should have no material impact on its application for determination of exempt wholesale generator status.

CMS Ensenada S.A. is a subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Ensenada S.A. is currently constructing a 128 megawatt natural gas-fired electric co-generation facility on the grounds of a refinery owned by YPF S.A. in Ensenada, province of Buenos Aires, Argentina.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Pacific Gas & Electric Company

[Docket No. ER97–463–000]

Take notice that on November 27, 1996, Pacific Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Company

[Docket No. ER97–627–000]

Take notice that on November 27, 1996, United Illuminating Company, (UI) tendered for filing an amendment to its informational filing submitted on November 21, 1996, containing all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff,

Original Volume No. 2, during the six-month period May 1, 1996 through October 31, 1996.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER97–666–000]

Take notice that on December 2, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement with itself at the request of Staff.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER97–667–000]

Take notice that on December 2, 1996, UtiliCorp United Inc. (UtiliCorp), tendered for filing amendments to the full requirements contracts between UtiliCorp's WestPlains Energy-Kansas division and the Cities of Cawker City, Cimarron, Glasco, Glen Elder, Holyrood, Isabel, Lucas, Mankato, and Montezuma, Kansas. The amendments would reduce the demand charges under the contracts and modify the termination provisions (by reducing the notice period and extending the earliest date of termination). UtiliCorp requests waiver of the Commission's Regulations to permit the amendments to become effective on January 1, 1997.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER97–668–000]

Take notice that on December 2, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement between itself and The Power Company of America, LP (PCA). The agreement establishes PCA as a customer under Wisconsin Electric's Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric requests an effective date sixty days after filing.

Copies of the filing have been served on PCA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER97–669–000]

Take notice that on December 2, 1996, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement, dated November 15, 1996, establishing PanEnergy Power Services, Inc. (PanEnergy) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of October 24, 1996. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PanEnergy and the South Carolina Public Service Commission.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER97–670–000]

Take notice that on December 2, 1996, Maine Public Service Company (MPS), submitted for filing an executed service agreement under its open access transmission tariff. This service agreement provides for MPS's merchant functions to take umbrella non-firm point-to-point transmission service under MPS's open access transmission tariff.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Atlantic City Electric Company

[Docket No. ER97–671–000]

Take notice that on December 2, 1996, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which it will provide capacity and energy to The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. (collectively the Cinergy Companies), and Coastal Electric Services Company (Coastal) under the Atlantic Electric wholesale power sales tariff.

Atlantic Electric states that a copy of the filing has been served on the Cinergy Companies and Coastal.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–672–000]

Take notice that on December 3, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with New York Power Authority, under the NU System companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the New York Power Authority.

NUSCO requests that the Service Agreement become effective November 12, 1996.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER97–673–000]

Take notice that on December 3, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Ashbumham Municipal Light Plant (Ashbumham) under the NU System Companies' System Power Sales/Exchange Tariff No. 6. NUSCO requested deferral of Commission action on the filing until NUSCO made its filing for functional unbundling of services under the tariff pursuant to the Commission's Order No. 888.

NUSCO states that a copy of this filing has been mailed to Ashbumham.

NUSCO requests that the Service Agreement become effective January 1, 1996.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER97–674–000]

Take notice that on December 3, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Blanding City under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 6.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER97–675–000]

Take notice that on December 3, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated October 1, 1996 between Cinergy, CG&E, PSI and Coral Power, L.L.C. (Coral).

The Interchange Agreement provides for the following service between Cinergy and Coral.

1. Exhibit A—Confirmation Letter
2. Exhibit B—Power Sales by Coral
3. Exhibit C—Power Sales by Cinergy

Cinergy and Coral have requested an effective date of December 1, 1996.

Copies of the filing were served on Coral Power, L.L.C., Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Cambridge Electric Light Company

[Docket No. ES97–15–000]

Take notice that on December 9, 1996, Cambridge Electric Light Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term notes, from time to time, in an aggregate principal amount of not more than $20 million outstanding at any one time, during two-year period commencing on the effective date of the authorization with a final maturity date of not more than one year from the date of issuance.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Electric Company

[Docket No. ES97–16–000]

Take notice that on December 9, 1996, Commonwealth Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term notes, from time to time, in an aggregate principal amount of not more than $60 million outstanding at any one time, during two-year period commencing on the effective date of the authorization with a final maturity date of not more than one year from the date of issuance.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Northwest Generating Cooperative

[Docket No. ES97–17–000]

Take notice that on December 10, 1996, Pacific Northwest Generating Cooperative (PNGC) filed an application, under § 204 of the Federal Power Act, seeking authorization to enter into a 12-month revolving line of credit agreement with the National Rural Utilities Cooperative Finance Corporation (CFC) under which PNGC would borrow funds under a revolving facility in the maximum aggregate principal amount of $5 million.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32498 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: December 16, 1996, 61 FR 66033.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 18, 1996, 10:00 a.m.

CHANGE IN THE MEETING: The following Project numbers and company have been added to the Agenda scheduled for the December 18, 1996 meeting.

Item No., Docket No. and Company

CAH–3

P–7115–013, 019, 022, 023 and 026, Municipal Electric Authority of Georgia

Lois D. Cashell,

Secretary.

[FR Doc. 96–32636 Filed 12–20–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5669–2]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, January 28, 1997 from 9:00 a.m. to 5:00 p.m., and Wednesday, January 29, 1997 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Madison Hotel, 15th & M Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by January 24, 1997, will be considered by the Task Force at or subsequent to the meeting.

Dated: December 13, 1996.

Beverly Randolph,

Designated Federal Official.

[FR Doc. 96–32525 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

[PF–683; FRL–5577–1]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a regulation for residues of cyclanilide in or on cottonseed, cotton gin byproducts, milk, fat, meat, meat by-products, and kidney of cattle, goats, horses, hogs and sheep. The summary was prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket number [PF–683], must be received on or before, January 22, 1997.

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. In person, bring comments to Rm. 1132, CM #2. 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically be 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 in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–683]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip V. Errico, Acting Product Manager (PM 22), Rm., 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., 703–305–5540, e-mail: errico.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4643 from Rhone-Poulenc AG Company, P.O. Box 12014, Research Triangle Park, NC 27709 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the plant growth regulator, cyclanilide [1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid] determined as 2,4-dichloroaniline (calculated as cyclanilide) in or on the raw agricultural commodities cottonseed at 0.6 parts per million (ppm); cotton gin byproducts at 25 ppm; milk at 0.04 ppm; fat of cattle, goats, horses, hogs and sheep at 0.10 ppm; meat of cattle, goats, horses, hogs and sheep at 0.02 ppm; meat by-products (except kidney) of cattle, goats, horses, hogs and sheep at 0.2 ppm; and kidney of cattle, goats, horses, hogs and sheep at 2.0 ppm. The proposed analytical method is gas chromatography.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Rhone-Poulenc AG Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Rhone-Poulenc AG Company and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

A. Toxicology Profile

1. *Acute toxicity*. The acute oral toxicity study resulted in a LD_{50} of 315 mg/kg for males and 208 mg/kg for females. The acute dermal toxicity in rabbits resulted in an LD_{50} in either sex of greater than 2000 mg/kg. The acute inhalation study in rats resulted in a LC_{50} greater than 2.6 mg/l. Cyclanilide was not irritating to the skin of rabbits in the primary dermal irritation study. In the primary eye irritation study in rabbits, cyclanilide caused severe irritation that cleared in 14 days. The dermal sensitization study in guinea pigs indicated that cyclanilide is not a sensitizer. Based on the results of the eye irritation study only, cyclanilide technical is placed in toxicity Category I.

2. *Mutagenicity*. The compound was found to be devoid of mutagenic activity in the Ames assay and also in the HGPRT assay using Chinese hamster ovary cells. Positive findings (clastogenicity) were seen in the in vitro chromosomal aberrations study with Chinese hamster ovary cells at doses that caused significant cytotoxicity. However, no evidence of clastogenic activity was observed in an in vivo mouse micronucleus test at doses that produced significant toxicity. A second group of mutagenicity studies was performed on a cyclanilide technical product that was produced by a different manufacturing process. Results of these tests were generally equivalent to the above studies. The weight-of-evidence from the two mutagenicity study batteries suggest that this material is non-genotoxic.

3. *Rat metabolism*. The rat metabolism study consisted of a single oral low dose group at 5 mg/kg, a single oral high dose group at 50 mg/kg and a repeat oral low dose group at 5 mg/kg/day for 14 days. The results indicated that males and females did not differ in absorption following both single oral and repeated oral dosing. A difference was observed between the single oral high dose group and the single oral low dose group in that the percentage of the absorbed dose was lower for the high group. The distribution of cyclanilide 7 days after single oral high dosing was limited since only the skin and fur, kidney, liver and the plasma exhibited any significant amounts of radioactivity. The distribution of cyclanilide 7 days after single oral low dosing and repeated dosing was even more limited. Cyclanilide was eliminated rapidly with the majority of the dose being excreted in the first 48 hours after dosing for the single oral high dose group and in the first 24 hours after dosing for the single low dose and repeated dose groups. The percentage of radioactivity eliminated via the urine was greater than that eliminated in the feces for the single low dose and repeated dose groups, while the converse was observed for the single high dose group. The major radioactive component in the urine and feces was identified as the parent material. However, up to 31 radioactive components were observed in the urine and up to 37 components were observed in the feces. The second most abundant radioactive component in the urine samples was identified as the methyl ester of cyclanilide. The remaining metabolites were conjugates of cyclanilide.

4. *Chronic effects*. a. Cyclanilide was admixed in the diet to 60 Sprague-Dawley rats/sex/group at doses of 0, 50, 150, 450, and 1000 ppm. For each dose, 10 rats/sex/group were designated to be sacrificed at one year. Nine of 60 high dose males and 4 of 60 high dose females died during the first 12 months

of the study versus 4 of 60 control males and 1 of 60 control females. By study termination at 24 months, survival in treated males and females was comparable to controls. The study was terminated after 23 months based on survival rates. During the first week of the study, 17 of 60 males and 23 of 60 females in the high dose were reported to have slightly increased muscle tone which was detected upon handling. Body weights were statistically significantly lower for males treated with 450 and 1000 ppm for the first month of the study. Body weights for females at 450 and 1000 ppm were lower than controls throughout the first 12 month period and were 9–14% lower than controls at week 53. During the second year of treatment, mean body weights of females given 450 or 1000 ppm were approximately 10–20% lower than controls. An initial, transient decrease in food consumption was evident in animals receiving the 1000 ppm concentration in the diet. Clinical chemistry studies performed at 6, 12, 18, and 23 months revealed possible hepatic toxicity which consisted of decreases in serum cholesterol and globulin levels if females treated with 450 and 1000 ppm and in males treated at 1000 ppm. No effect of cyclanilide administration was evident from hematology or urinalysis evaluations at any time point. Macroscopic and microscopic postmortem evaluations of animals which died during the study or were sacrificed after 12 or 23 months of treatment revealed no effect at any dose level. No oncogenic effect was evident. Based on the decreased body weight gains in females and decreases in serum cholesterol and globulin levels at 450 ppm, the No Observed Effect Level (NOEL) for dietary administration is 150 ppm (7.5 mg/kg/day).

b. Cyclanilide was administered to pure-bred Beagle dogs (5 dogs/sex/group) via dietary admixture at dose levels of 0, 40, 160, and 640 ppm for 52 weeks. These doses were selected using a 6-week study in which doses of 800 ppm or higher resulted in inappetence, decreased body weight gain and elevated SGOT and SGPT. In the one-year study, body weight gains for high dose male and female dogs were lower than controls throughout the study. The mean body weight change for high dose males from week 0 to 52 was 0.0 kg as compared to a 2.6 kg gain for the control males. The mean body weight change for high dose females from week 0 to 52 was 0.0 kg versus 2.0 kg gain for the female controls. There were no treatment-related deaths during the study and clinical signs were unremarkable. Mean serum alkaline phosphatase values for the high dose males were elevated at months 3, 6 and 12 and were slightly elevated at month 12 for the high dose females. Elevations in mean serum aspartate aminotransferase and alkaline phosphatase values for high dose males, resulting from 2 of the five animals, were also seen at month 12. No effects of cyclanilide were evident in hematology, urinalysis or organ weight data. Microscopic findings in the liver which were only seen in high dose dogs consisted of minimal to moderate hepatocellular degeneration and necrosis, subacute/chronic inflammation, post-necrotic scarring, regenerative hepatocellular hypertrophy, hyperplasia of bile ducts, vascular hemorrhages, and brown pigment in hepatocellular and reticulendothelial cytoplasm. In the kidneys, brown pigment in the cytoplasm of the epithelium lining the convoluted tubules, seen in almost all dogs on test was most severe in the high dose animals. The NOEL for this study was determined to be 160 ppm (4 mg/kg/day).

5. *Carcinogenicity* a. Cyclanilide was administered for two years admixed in the diet to 60 Sprague-Dawley rats/sex/group at doses of 0, 50, 150, 450, and 1000 ppm. Macroscopic and microscopic postmortem evaluations of animals which died during the study or were sacrificed after 12 or 23 months of treatment revealed no effect at any dose level. No oncogenic effect was evident. Based on the decreased body weight gains in females and decreases in serum cholesterol and globulin levels at 450 ppm, the NOEL for dietary administration is 150 ppm (7.5 mg/kg/day).

b. Cyclanilide was administered chronically via dietary administration to 60 CD 1 mice/sex/group for 18 months at dose levels of 0, 50, 250, and 1000 ppm. There were no effects of cyclanilide on survival, and survival rates were between 65 and 80% overall. Body weights for high dose males and females were consistently lower than controls throughout the study. In female mice, statistically significantly decreased body weight gains were seen throughout week 37 and in males, body weight gain decreases were seen through week 21. At study termination, body weight differences from controls were 6% for males and 2% for females. Physical observations throughout the study were unremarkable. No toxic or oncogenic effects were evident from hematology data. Mean liver weights and liver/body weight ratios for high dose males and females were slightly higher than control values at study termination. Macroscopic and microscopic postmortem examinations revealed no toxic or oncogenic effects of cyclanilide administration.

6. *Teratology*. a. In rats, cyclanilide was administered by gavage at doses of 0, 3, 10, or 30 mg/kg for gestation days 6–18. Doses were selected based on a range-finding study. In the full study, maternal toxicity was evident at the dosage level of 30 mg/kg and consisted of significantly reduced body weight gain (25% less than controls for gestation days 6–16) and decreased food consumption during the treatment period. There was no evidence of maternal toxicity at lower doses. The administration of cyclanilide during the critical phase of organogenesis did not affect intrauterine survival, fetal sex ratio, or fetal weight. No treatment-related malformations or developmental variations were noted in the study. The NOEL for maternal toxicity was 10 mg/kg/day and the NOEL for developmental toxicity was 30 mg/kg/day.

b. In rabbits, cyclanilide was administered by gavage at doses of 0, 3, 10, and 30 mg/kg for gestation days 6–19. Doses were selected based on a range finding study. In the full study, there were 20 animals per group. Maternal toxicity in the high dose animals was characterized by decreased food consumption, decreased body weight gains (90% less than controls for gestation days 6–19), wobbly gait, apparent hind limb paralysis, decreased activity, salivation, emaciation and decreased defecation at 30 mg/kg. Mean body weight gains during gestation days 6–19 were 22 grams for the 30 mg/kg group and 209 grams for the controls. Two females administered 30 mg/kg and one female in the control group aborted on gestation days 18, 20, and 28, respectively. At 30 mg/kg, a slight increase in embryo-lethality in association with maternal toxicity was seen due to two animals that had total litter resorption. However, this post-implantation loss was well within historical control ranges for the laboratory. All other Cesarean section parameters evaluated, including the mean number of corpora lutea, implantation sites, viable fetuses, early and late resorptions, fetal sex ratio, gravid uterus weight and fetal body weights were generally comparable between the control and treatment groups. No treatment-related malformations or developmental variations were noted in the study. The NOEL for maternal toxicity was 10 mg/kg/day and the NOEL for developmental toxicity was 30 mg/kg/day.

7. *Reproductive effects*. Cyclanilide was administered to Sprague-Dawley rats in the feed at 0, 30, 300, and 1000 ppm to examine reproductive performance. The pre-mating period was 10 weeks. Animals were randomly mated within treatment groups for a three week mating period to produce the F1 offspring. The F1 litters were culled to 8 pups on postnatal day 4 and weaned on postnatal day 21. At weaning, 10 weanlings/sex/group were necropsied, and 30/sex/group were selected as F1 parents to produce the F2 generation. The F0 females were necropsied with histopathology of reproductive and selected organs for high dose and control animals. After an 11 week pre-breed period the F1 rats were mated for 3 weeks to produce the F2 generation. At weaning of the F2 litters, 10 weanlings/sex/group were necropsied. After weaning of the F2 litters, parental F1 animals were necropsied for histopathology of reproductive and selected organs. Adult toxicity was observed in both generations in both sexes at 300 and 1000 ppm with respect to body weight and food consumption. Transient isolated cases of decreased food consumption were seen also at 30 ppm. One male and one female in the F1 post-weaning group died at 1000 ppm. The mortality of the F1 animals was considered a consequence of their small size due to reduced body weights at 1000 ppm during the lactation period, and therefore, treatment related. No treatment-related clinical signs were seen in F0, F1 or F2 animals. Slight mineralization was seen in the kidneys of the F1 males at 300 and 1000 ppm and in the females at 30, 300 and 1000 ppm. Administration of cyclanilide had no effect on reproductive parameters including fertility, litter size, prenatal death, stillbirth or sex ratios. There was no NOEL for adult toxicity in this study due to isolated transient effects on adult food consumption and renal histopathology in F1 females at the low dose. The adult toxicity Lowest-Observed Effect Level (LOEL) for F1 females was 30 ppm (1.5 mg/kg/day). The adult toxicity NOEL for F1 males was 30 ppm. The NOEL for reproductive toxicity was at least 1000 ppm and the NOEL for postnatal toxicity (reduced pup body weights) was 30 ppm.

8. *Neurotoxicity*. a. In acute neurobehavioral and motor activity studies, 3 of 5 males and 1 of 5 females administered 150 mg/kg exhibited a transient increase in body tone and a slight overall gait incapacity on the day of dosing. The slight gait effects were characterized by a knuckling of the forelimbs and exaggerated/slow abducted movements. In motor activity tests, the total activity counts for males and females in the 150 mg/kg group were decreased at approximately 7 hours after dosing (peak effect time) when compared to the controls. None of these signs were seen at day 7 or 14 or at any time for animals receiving the next lower dose, 50 mg/kg. In addition, there were no gross or histopathological findings in the nervous system at any dose level. The NOEL for neurobehavioral effects following acute oral exposure is 50 mg/kg. The temporary nature of the changes seen and the absence of any neuropathology findings indicate that there is no persistent neurotoxic effect of cyclanilide.

b. A 90–day study in rats was performed to examine the potential effects of cyclanilide on behavior and neuromorphology. The doses were 0, 50, 450, and 1200 ppm in the diet and there were 12 animals/sex/group. A functional observation battery (FOB) and motor activity test were performed prestudy and on weeks 4, 8, and 13. At the completion of the study, 6 rats/sex/.group were perfused for neuropathological evaluation. Lower body weights were seen on day 7 for the males at 1200 ppm. For females treated at 1200 ppm, significantly lower body weights were seen on days 21, 42, 52, and 70. Qualitative FOB evaluations revealed no effects of cyclanilide. Significantly lower hind-limb splay values were seen for females in the high dose group at week 13. In the absence of any other differences in behavioral measures for these animals, this finding was not considered to be of neurotoxicological significance. Quantitative evaluations of grip strength and body temperature were unaffected. There were no gross or histopathological findings in the nervous system considered to be related to treatment. The NOEL for neurotoxicity is 1200 ppm (60 mg/kg/day).

B. Aggregate Exposure

Cyclanilide is intended for use only on cotton and as a result, the dietary exposure will be very low. Based on the results from these studies, the nature and magnitude of the residues in cotton, meat and milk are considered to be adequately understood. Rhone-Poulenc sponsored a raw agricultural commodity (RAC) study at ten locations in 1993 and at twelve trial locations (representing the major cotton production areas of picker and stripper cotton varieties) in 1994. In 1993, residues of cyclanilide in treated samples ranged from 0.06 to 0.44 ppm. In 1994, cyclanilide residues ranged from 0.06 to 0.55 ppm in/on cotton seed and from 1.41 to 22.9 ppm in/on gin trash. The cow feeding study determined the magnitude of cyclanilide residues in the meat and milk of lactating dairy cattle following a 28–day oral exposure to cyclanilide. When cyclanilide residues plateaued, average concentrations in the milk were approximately 0.013, 0.044, and 0.19 ppm for the 1X, 3X, and 10X groups, respectively. The maximum cyclanilide residues found in milk, kidney, liver, fat and muscle from the 1X group were 0.040, 1.4, 0.14, 0.021, and 0.019 ppm respectively. Rhone-Poulenc proposes the following tolerances for cyclanilide:

Commodity	Part per million (ppm)
Cotton	
Cottonseed	0.6 ppm
Gin byproduct	25 ppm
Dairy Cow	
Milk	0.04 ppm
Cattle, goats, horses, hogs and sheep	
Fat	0.10 ppm
Meat	0.02 ppm
Meat byproducts	
Except kidney	0.20 ppm
Kidney	2.0 ppm

These tolerances are based on the primary metabolite of cyclanilide, 2,4-dichloroaniline, since the enforcement methods for cyclanilide in either cotton or processed fractions or animal substrates are ''common moiety'' methods, which hydrolyze cyclanilide to 2,4-dichloroaniline with subsequent conversion to *N*-(2,4-dichlorophenyl)-2-chloropropylamide.

Two methods have been developed for establishing and enforcing tolerances for cyclanilide residues in cotton (RAC and Processed Fractions) and animal substrates. In both the plant and animal methods, cyclanilide residues are hydrolyzed with hot aqueous base to 2,4-dichloroaniline, which is distilled from the reaction mixture, partitioned into dichloromethane, and ultimately, reacted with 2-chloropropionyl chloride to yield *N*-(2,4-dichlorophenyl)-2-chloropropylamide. After cleanup on a Florisil column, residues are quantified as *N*-(2,4-dichlorophenyl)-2-chloropropylamide using gas chromatography equipped with a Supelco wide-bore Sup-Herb open tubular column and electron capture detection.

In a cotton processing study, raw agricultural and processed commodity samples were analyzed for cyclanilide residues. Total cyclanilide residue levels in cotton raw agricultural and processed commodity samples ranged from 0.85 - 0.91 ppm in cottonseed and 0.06 - 0.13 ppm in cottonseed hulls. There were no residues above the level of quantification (LOQ) in any of the other processed commodities (meal, crude oil, refined oils and soapstocks).

The Food Quality Protection Act of 1996 lists three other potential sources of exposure to the general population that must be addressed. These are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action. Based on the available studies and the use pattern, Rhone-Poulenc does not anticipate residues of cyclanilide in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for cyclanilide under the Safe Drinking Water Act.

The potential for non-occupational exposure to the general public is also insignificant. There are no residential lawn or garden uses anticipated for cyclanilide products where the general population may be exposed via inhalation or dermal routes. Rhone-Poulenc concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no significant toxicity observed for cyclanilide even at high doses, cyclanilide is the only known pesticide member of its class of chemistry, and that there is no reliable data to indicate that the effects noted would be cumulative with those of any other class of compounds. Based on these points, Rhone-Poulenc has considered only the potential risks of cyclanilide in its exposure assessment.

C. Safety Determination

The NOEL's for cyclanilide are 7.5 mg/kg/day for the chronic rat study, 35 mg/kg/day for the mouse oncogenicity study, and 4 mg/kg/day for the dog 1 year chronic study. In the rat 2 generation reproduction study, the LOEL was 1.5 mg/kg/day due to kidney effects (slight mineralization) that was not seen in other rat studies. Using the LOEL of 1.5 mg/kg/day and a safety factor of 300, the Reference Dose (RfD) is estimated to be 0.005 mg/kg/day. The safety factor was chosen based on the minimal severity of the finding which did not appear to affect the overall health of the animal and would not be expected to significantly affect the function of the organ.

1. *DRES-U.S. Population, Infants, Children (1–6 years old)* a. *General U.S. population.* A chronic dietary risk assessment was conducted using two approaches: (1) an absolute worst case scenario using the proposed tolerances, and (2) a conservatively realistic assessment using data from actual residue studies (anticipated residues). These assessments incorporated either tolerance values or anticipated residue concentrations for cyclanilide in cottonseed meal, cottonseed oil, meat and milk. In the worst case scenario, exposure to cyclanilide was 0.000311 mg/kg/day for the U.S. population (48 states, all seasons). This exposure correlates to 6.2% of the calculated RfD. The highest exposure was observed in the children sub-population (aged 1–6 years), followed by the non-nursing infants subgroup. The exposures for these two groups were found to be 0.000995 (19.9% of the RfD) and 0.000597 mg/kg/day (11.9% of the RfD), respectively. The commodities which were found to be significant contributors to exposure were dairy products. The reasonably conservative analysis yielded exposure values of 0.000022 mg/kg/day for the U.S. population (48 states, all seasons). This correlates to 0.4% of the RfD. The highest exposure was observed in the children sub-population (aged 1–6 years), followed by the non-nursing infants subgroup. The exposures for these two groups were found to be 0.000072 (1.4% of the RfD) and 0.000045 mg/kg/day (0.9% of the RfD), respectively. Again, the commodities which were found to be significant contributors to exposure were dairy products.

b. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cyclanilide, the available developmental toxicity and reproductive toxicity studies and the potential for endocrine modulation by cyclanilide were considered. Developmental toxicity studies in two species indicate that cyclanilide is not a teratogen. The 2-generation reproduction study in rats demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development. Maternal and developmental NOELs and LOELs were comparable, indicating no increased susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore concluded that cyclanilide poses no additional risk for infants and children and no additional uncertainty factor is warranted.

2. *Adequate margin of safety for infants and children.* FFDCA section 408 provides that an additional safety factor for infants and children may be applied in the case of threshold effects. Since, as discussed in the previous section, the toxicology studies do not indicate that young animals are any more susceptible than adult animals and the fact that the proposed RfD calculated from the LOEL from the 2 generation reproduction study already incorporates an additional uncertainty factor, Rhone-Poulenc believes that an adequate margin of safety is therefore provided by the proposed RfD. Additionally, this LOEL is also 5X lower than the next lowest NOEL (chronic rat study, NOEL = 7.5 mg/kg/day) in the cyclanilide toxicology data base.

3. *Endocrine effects.* Cyclanilide has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies.

D. Other Considerations

There is an extensive residue and toxicology database to support the registration of cyclanilide. All studies performed satisfy the current appropriate FIFRA guidelines. Included in the data submitted are studies which showed the nature and magnitude of cyclanilide in cotton, wheat, ruminants and hen. The metabolism of ^{14}C-cyclanilide in cotton was investigated and the findings indicated that ^{14}C-

cyclanilide undergoes negligible metabolism in mature cotton. Following application to mature cotton, foliage contained approximately 27 ppm cyclanilide equivalents, while the concentration in the lint ranged from 1.0 to 4.0 ppm, depending on whether the boll was open at the time of foliar application. The seed, in contrast, did not contain any detectable residue. Greater than 97% of the extractable radioactive residues in the foliage was identified as 14^{C}-cyclanilide. The radioactive residues present in the lint were identified solely as the parent material, 14^{C}-cyclanilide.

14^{C}-cyclanilide has been shown to be rapidly absorbed and metabolized to a limited extent by methylation or conjugation reactions in the rat, but is apparently unchanged in the goat and hen. The main product eliminated in both urine and feces in the rat and goat and in the excreta of the chicken was 14^{C}-cyclanilide. Elimination was observed to be rapid in all three species with very low levels of radioactive residues being found in the tissues at the time of sacrifice. The blood/plasma half-life (t1/2) was approximately 90 hours in the rat. No significant sex differences were observed in the behavior of cyclanilide in the rat.

There are no Codex tolerances for cyclanilide. There are no minor crop uses for cyclanilide.

E. Conclusion

The request of a tolerance for cyclanilide on cotton meets the criteria in the Food Quality Protection Act of 1996 that ''there is reasonable certainty that no harm will result from aggregate exposure to the chemical residue including all anticipated dietary exposures and all other exposures for which there is reliable information.'' The toxicology data base clearly indicates that: cyclanilide does not pose any acute dietary risks; cyclanilide is not genotoxic; cyclanilide's metabolism does not result in metabolites that present any chronic dietary risk; cyclanilide is neither an oncogen, neurotoxicant, developmental or reproductive toxicant.

An RfD of 0.005 mg/kg/day is proposed based on the LOEL in the 2 generation reproduction study. The percent of the RfD that will be utilized by aggregate exposure to residues is extremely low under the reasonably conservative analysis (0.4% for adults and 1.4% for children under 6 years of age). No additional uncertainty factor for infants and children is warranted based on the completeness and reliability of the database, the demonstrated lack of increased risk to developing organisms, and the lack of endocrine-modulating effects.

II. Administrative Matters

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the document control number, [PF–683]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–683] 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 8:30 a.m. to 4 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 ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, 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 rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 12, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–32359 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection and Change in Filing Requirements

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request to extend the existing collection of information, State and Local Government Information Report (EEO–4), with the following change in reporting requirements. Government jurisdictions with fewer than 1,000 full-time employees will report their employment on a summary report. Separate functional reports will be required only for those functions, with 100 or more full-time employees. Employment in functions with fewer than 100 full-time employees will be combined in one report. Previously all jurisdictions with 250 or more employees had to file separate reports for all functions regardless of employment size. The reporting requirements for all other jurisdictions with more than 1,000 employees remain unchanged. This proposed change will reduce the number of forms filed by state and local governments by 50%.

The Commission is seeking public comments on the proposed extension and change in reporting requirements.

DATES: Written comments on this notice must be submitted on or before February 21, 1997.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, N.W., Washington, D.C. 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll free number). Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary

to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078 (voice) or (202) 663–4077 (TDD). (These are not toll free numbers). Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, N.W., Washington, D.C. 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507, at (202) 663–4958 (voice) or (202) 663–7063 (TDD). A copy of EEOC Form 164, with instructions, may be obtained by contacting Mr. Neckere.

SUPPLEMENTARY INFORMATION:

Collection Title: State and Local Government Information Report EEO–4.

OMB Control Number: 3046–0008.

Form Number: EEOC Form 164.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees and a rotating probability sample of jurisdictions with from 15 to 99 full-time employees.

Standard Industrial Classification (SIC) Codes: 911–965.

Description of Affected Public: State and local governments.

Responses: 10,000.

Reporting Hours: 40,000.

Federal Cost: $47,150.

Number of forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the Commission. Pursuant to 29 C.F.R. § 1602.32, state and local governments have been required to submit EEO–4 reports to the Commission since 1973 (biennially in odd-numbered years since 1993). Currently all state and local governments with 250 or more full-time employees submit a separate report for each function, up to a maximum of 15 functions, which the government performs. All other governments in the EEO–4 survey file one report, covering all functional activities. On October 5, 1995, the Commission voted to require governments with from 250 to 999 full-time employees to submit a separate EEO–4 report only for those functions with 100 or more full-time employees and one summary report that includes all the remaining functions with fewer than 100 full-time employees. All other state and local governments will continue to file their EEO–4 reports as they have in the past. This change does not affect subparts I, J, and K of 29 C.F.R. § 1602 which pertain to the recordkeeping and reporting requirements for state and local governments but do not address the issue of records or reports by functional activity.

This change is being taken in the interest of streamlining the EEO–4 survey process and reducing the burden on state and local governments, while maintaining sufficient data to meet the program needs of the Commission and other agencies that use these data. The change will become effective beginning with the 1997 EEO–4 survey.

EEO–4 data are used by the Commission to investigate charges of employment discrimination against state and local governments and in Commission systemic program decisions. The data are shared with several Federal government agencies. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with approximately 83 State and Local Fair Employment Practices agencies. Aggregate data are used by researchers and the general public.

Burden Statement: The estimated burden hours will be reduced to approximately 40,000 hours. The estimated number of respondents included in the EEO–4 survey will remain at about 5,000 state and local governments. It is estimated that on an annual basis the total number of responses in this data collection will be 10,000 responses. This change will result in a reduced expense and reporting burden for state and local governments as required under the Paperwork Reduction Act of 1995, 44 U.S.C. § 3502(i).

The reporting burden for this collection is based upon an average estimate per response and takes into consideration the large number of state and local governments that submit their reports on diskettes or magnetic tapes. Burden hours for any particular government may differ from this average estimate depending on the accessibility of information and the degree of automation. The burden estimate includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information. Public comments on the accuracy of the burden estimates as well as suggestions for further reducing the burden are welcome. The Commission has encouraged and will continue to encourage the use of magnetic media (diskettes, computer tapes, etc.) as a means of submitting information on the EEO–4 report.

Pursuant to 5 C.F.R. § 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Regulatory Flexibility Act: The Commission certifies pursuant to 5 U.S.C. § 605(b), enacted by the Regulatory Flexibility Act, Pub. L. No. 96–354, that this change will not result in significant impact on small employers or other entities because the change involves elimination of reporting requirements, and that a regulatory flexibility analysis therefore is not required.

Dated: December 18, 1996.

For the Commission,

Maria Borrero,

Executive Director.

[FR Doc. 96–32478 Filed 12–20–96; 8:45 am]

BILLING CODE 6750–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, January 7, 1997, at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

Litigation: General Counsel Recommendations and Report

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

This Notice Issued, December 19, 1996.

Frances M. Hart,

Executive Officer Executive Secretariat.

[FR Doc. 96–32706 Filed 12–19–96; 2:52 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

December 17, 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 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: Persons wishing to comment on this information collection should submit comments on or before February 21, 1997.

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 Approval No.: None.

Title: Universal Service Worksheet.

Form No.: FCC 457.

Type of Review: New collection.

Respondents: Businesses or others for profit, including small businesses.

Number of Respondents: 5,000.

Estimate Hour Per Response: 19.6 hours (avg.).

Total Annual Burden: 98,125.

Estimated Costs To Respondents: $3,824,750.

Needs and Uses: Section 254(d) of the Communications Act of 1934, as amended, requires all telecommunications carriers that provide interstate telecommunications services to make equitable and nondiscriminatory contributions towards the preservation and advancement of universal service. The Worksheet requires all carriers to submit information relating to their gross interstate and intrastate revenues derived from telecommunications services and their payments to other telecommunications carriers for telecommunications services to the administrator of the support mechanism. Carriers may be required to submit the gross combined interstate and intrastate information or information related to their gross interstate telecommunications revenues only, and their payments to other carriers for combined interstate and intrastate telecommunications services and for interstate telecommunications services only. The information will be used by the Commission to calculate carriers' contributions to the universal service support mechanism. Without such information the Commission could not determine carrier contributions to the support mechanism, and therefore, could not fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–32484 Filed 12–20–96; 8:45 am]

BILLING CODE 6712–01

Public Information Collections Approved by Office of Management and Budget

December 16, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

OMB Control No.: 3060–0719.

Expiration Date: 12/31/99.

Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form No.: N/A.

Estimated Annual Burden: 5600 total annual hours; 3.5 hours per respondent (avg.); 400 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: Pursuant to the mandate in Section 276(b)(1)(A) to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call'', 47 U.S.C. Section 276(b)(1)(A), intraLATA carriers are required to provide to interexchange carriers (''IXCs'') a quarterly report listing payphone automatic payphone identifications (''ANIs''). Without provision of this report, resolution of disputed ANIs would be rendered very difficult. IXCs would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this collection, lengthy investigations would be necessary to verify claims. The report allows IXCs to determine which dial-around calls are made from payphones. The data, which must be maintained for at least 18 months after the close of a compensation period, will facilitate verification if disputed ANIs.

OMB Control No.: 3060–0721.

Expiration Date: 12/31/99.

Title: One-Time Report of Local Exchange Companies of Cost Accounting Studies.

Form No.: N/A.

Estimated Annual Burden: 20,000 total annual hours; 50 hours per respondent (avg.); 400 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: Pursuant to the mandate in Section 276(b)(1)(A) to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call'', 47 U.S.C. Section 276(b)(1)(A), incumbent LECs are required to offer individual central office coin transmission services to payphone service providers (''PSPs'') under a nondiscriminatory, public tariffed offering if the LECs provide those services for their own operations. Because the incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, the Commission requires them to submit cost support for their central office coin services, on a one-time basis. The report would contain engineering studies, time and wage studies, and other cost accounting studies to identify the direct cost of central office coin services. This will ensure that the services are reasonably priced and do not include subsidies.

OMB Control No. 3060–0723.

Expiration Date: 12/31/99.

Title: Public Disclosure of Network Information by Bell Operating Companies.

Form No.: N/A.

Estimated Annual Burden: 350 total annual hours; 70 hours per respondent (avg.); 7 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: Pursuant to Section 276(b)(1)(C) provisions that prescribe a set of nonstructural safeguards for BOC payphone services, to foster development of competition in the provision of local telephone service, 47 U.S.C. Section 276(b)(1)(C), the BOCs are required to publicly disclose changes in their networks or new network services at two different points in time. First, disclosure would occur at the ''make/buy''point: when a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC would introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. In no event, however, would the public disclosure occur less than six months before the introduction of the service. Without provision of these reports, the industry would be unable to ascertain whether the BOCs designing new network services or changing network technical specifications are to the advantage of their own payphones, or might disadvantage BOC payphone competitors. The requirement for a minimum 6-month period of public disclosure prior to the introduction of a new service is vital to ensure that BOCs do not design new network services or change network technical specifications to the advantage of their own payphones.

OMB Control No.: 3060–0724.

Expiration Date: 12/31/99.

Title: Annual Report of Interexchange Carriers Listing the Compensation Amount Paid to Payphone Providers and the Number of Payees.

Form No.: N/A.

Estimated Annual Burden: 550 total annual burden hours; 2 hours per respondent (avg.); 275 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: Pursuant to the mandate in Section 276(b)(1)(A) to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call'', 47 U.S.C. Section(b)(1)(A), IXCs, who are responsible for paying per-call compensation to payphone providers, are required to provide annual reports to the Common Carrier Bureau listing the amount of compensation paid to payphone providers and the number of payees. Without provision of this report, the Commission would be unable to ensure that all the IXCs are paying their respective compensation obligations.

OMB Control No.: 3060–0726.

Expiration Date: 12/31/99.

Title: Quarterly Report of Interexchange Carriers Listing the Number of Dial-Around Calls for Which Compensation is Being Paid to Payphone Owners.

Form No.: N/A.

Estimated Annual Burden: 550 total annual burden; 30 minutes per respondent (avg.); 1100 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: Pursuant to the mandate in Section 276(b)(1)(A) to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call'', 47 U.S.C. Section (b)(1)(A), IXCs, who are responsible for paying per-call compensation to payphone providers are required to provide to payphone providers a quarterly report listing the dial-around calls made from each payphone provider's payphones. Without provision of this report, payphone providers would be unable to ascertain the compensation amount to be paid by the IXCs.

OMB Control No.: 3060–0743.

Expiration Date: 12/31/99.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996—CC Docket No. 96–128.

Form No.: N/A.

Estimated Annual Burden: 136,677 total annual hours; 30 hours per respondent (avg.); 4542 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: The rules adopted in CC Docket No. 96–128: (1) establish a plan to ensure fair competition for each and every completed intrastate and interstate call using a payphone; (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company payphones; (4) permit the BOCS to negotiate with the payphone location provider about a payphone's presubscribed interLATA carrier; (5) permit all payphone providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; and (6) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone. All the information collection requirements would be used to ensure that interexchange carriers, payphone service providers, LECs, the states, comply with their obligations under the Telecommunications Act of 1996.

OMB Control No.: 3060–0756.

Expiration Date: 06/30/97.

Title: Procedural Requirements and Policies for Commission Processing of Bell Operating Company Applications for the Provision of In-Region, InterLATA Services Under Section 271 of the Communications Act.

Form No.: N/A.

Estimated Annual Burden: 16,600 total annual burden; 291 hours per respondent; 57 respondents.

Estimated Annual Reporting and Recordkeeping Burden: $0.

Description: The Commission issued a Public Notice (FCC 96–469) that establishes various procedural requirements and policies relating to the Commission's processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to Section 271 of the Communications Act of 1934, 47 U.S.C. Section 271. Among other things, BOCs must file applications which provide

information on which the applicant intends to rely in order to satisfy the requirements of Section 271; state regulatory commission will file written consultations relating to the applications; and the Department of Justice will file written consultations relating to the applications. All of the requirements would be used to ensure that BOCs have complied with their obligations under the Communications At of 1934, as amended before being authorized to provide in-region, interLATA services pursuant to Section 271.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–32485 Filed 12–20–96; 8:45 am]

BILLING CODE 6712–01

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1147–DR]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–1147–DR), dated November 26, 1996, and related determinations.

EFFECTIVE DATE: November 26, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 26, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Hawaii, resulting from prolonged and heavy rains, high surf, flooding, landslides, mudslides, and severe storms beginning on November 5, 1996, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Hawaii to have been affected adversely by this declared major disaster:

The Island of Oahu for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–32505 Filed 12–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1148–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1148–DR), dated December 9, 1996, and related determinations.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 9, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe thunderstorms, high winds, rain, and flooding on November 8–15, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Barbara T. Russell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Clinton, Essex, Fulton, Montgomery, Schuyler, and Steuben Counties for Individual Assistance.

Chemung, Clinton, Delaware, Essex, Fulton, Lewis, Montgomery, Schoharie, Schuyler, Tompkins, and Steuben Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–32507 Filed 12–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3123–EM]

Rhode Island; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Rhode Island (FEMA–3123–EM), dated November 19, 1996, and related determinations.

EFFECTIVE DATE: December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby amend the emergency declaration to include other assistance as authorized under Title V of the Stafford Act:

Debris clearance and emergency protective measures as authorized under Title V of the Stafford Act in response to the water main break in Kent and Providence Counties (already designated for emergency provision and/or restoration of water service).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director. Response and Recovery Directorate.

[FR Doc. 96–32506 Filed 12–20–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 202–002744–089.

Title: West Coast of South America Agreement.

Parties:

A.P. Moller-Maersk Line
Compania Chilena de Navegacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Crowley American Transport, Inc.
Sea-Land Service, Inc.
South Pacific Shipping Company, Ltd. d/b/a Ecuadorian Line

Synopsis: The proposed Agreement revises Article 7(g) to file provisions pertaining to the participation of a member who has submitted its notice of resignation, and revises Article 9(d) regarding voting pursuant to polls.

Agreement No.: 202–010776–101.

Title Asia North America Rate Agreement.

Parties:

American President Lines, Ltd.
Hapag-Lloyd Aktiengesellschaft
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nedlloyd Lijnen B.V.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Containers
Sea-Land Service, Inc.

Synopsis: The proposed Agreement adds a new Article 14.4 of the Agreement to provide for ''Joint Service Contracts'' with shippers upon authorizing vote of the parties. The new article also sets parameters for such contracts. The parties have requested a shortened review period.

Agreement No.: 202–011536–001.

Title: The Grand Alliance Agreement.

Parties:

Hapag-Lloyd, A.G.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
P&O Containers Limited

Synopsis: The parties are amending their agreement to authorize discussion and agreement, on a voluntary adherence basis, on rates, charges, classifications, rules, brokerage and forwarder compensation in the trades covered by the agreement, excluding the trade to and from the European Community.

By Order of the Federal Maritime Commission.

Dated: December 17, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–32475 Filed 12–20–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations of Topics for Evidence-based Practice Centers (EPCs)

The Agency for Health Care Policy and Research (AHCPR) invites nominations of topics for evidence reports on the prevention, diagnosis, treatment, and management of common diseases and clinical conditions and, where appropriate, the use of alternative/complementary therapies, and for technology assessments of specific medical procedures or health care technologies.

As part of the effort to reorganize and restructure its programs, AHCPR is no longer facilitating the development of clinical practice guidelines and is expanding its program of health care technology assessments. AHCPR will serve as a science partner with private-sector and other public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States. The Agency's goal is to narrow the gap between what is known and what is done in health care. AHCPR will support Evidence-based Practice Centers (EPCs) to undertake scientific analyses and evidence syntheses of high-priority topics. The EPCs will produce science syntheses—evidence reports and technology assessments—that provide the scientific foundation for public and private organizations to use in developing and implementing their own practice guidelines, performance measures, and other tools to improve the quality of health care and in making decisions related to the effectiveness or appropriateness of specific health care technologies.

The process that AHCPR will employ to select priority topics for analyses by the EPCs is described below.

Background

Under Title IX of the Public Health Service Act, AHCPR is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research and through promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–6 and 1320b–12). In carrying out these purposes, AHCPR, among other activities, has in the past arranged for the development of clinical practice guidelines and has conducted assessments of health care technologies.

Through the creation of EPCs, AHCPR will be better able to serve as a science partner with private-sector and other public organizations in addressing a greater number of health care topics and a broader range of clinical conditions and health problems. The EPCs will provide a strong scientific foundation for private and public organizations to use in their own efforts to improve clinical practice. The EPCs will conduct literature reviews and assess and synthesize scientific evidence to produce evidence reports and technology assessments. The reports and assessments will provide systems of care, provider societies, health plans, public and private purchasers, States, and others a scientific foundation for development and implementation of their own practice guidelines, clinical

pathways, review criteria, performance measures, and other tools to improve the quality of care in their own settings and populations. They may also be used to inform health care decisions, such as coverage policies, based on the effectiveness or appropriateness of specific services, procedures, or technologies.

Evidence-Based Practice Centers (EPCs)

AHCPR will support the establishment of a group of EPCs. The EPCs will prepare evidence reports and technology assessments on topics for which there is significant demand by health care providers, insurers, purchasers, health-related societies, and consumer organizations. Such topics may include the prevention, diagnosis and/or treatment of particular diseases or health conditions including, where appropriate, the use of alternative/complementary therapies, as well as the appropriate use of more commonly provided services, procedures, or technologies. AHCPR will publish and widely disseminate to potential users the evidence reports and technology assessments produced by the EPCs.

Selection Criteria

Selection criteria for AHCPR evidence report and technology assessment topics include: (1) high incidence or prevalence in the general population or in major subpopulations as defined by age, gender, or ethnicity and other populations; (2) significance for the needs of the Medicare and Medicaid, and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) potential to inform and improve patient or provider decisionmaking; (6) potential to reduce clinically significant variations in the prevention, diagnosis, treatment, or clinical management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the study or analysis of the topic; and (8) potential opportunities for rapid implementation. The topics selected will complement AHCPR's efforts to build a balanced portfolio of evidence reports and technology assessments.

These criteria are consistent with the criteria in the Public Health Service Act; section 914 (42 U.S.C. 299b–3) for selecting priority topics for guideline development and section 904 (42 U.S.C. 299a–2) for prioritizing topics for technology assessment. The process set out in this Notice supersedes the proposed methodology for establishing priorities for health care technology assessments, that was published in the Federal Register on April 25, 1994 (59 FR 19725).

Nomination and Selection Process

All nominations of topics for AHCPR evidence reports and technology assessments should be focused on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technology. Potential topics should be carefully defined and circumscribed, so that within 6 to 12 months databases can be searched, the evidence reviewed, supplemental analyses performed, and final evidence reports or technology assessments produced. Topics selected will not duplicate current and widely available clinical practice guidelines or technology assessments (unless new evidence suggests the need for revisions or updates).

Nominations should be brief (1–2 pages) and may be in the form of a letter. For each topic nominated, nominators should provide a rationale and any available supporting evidence reflecting the importance and clinical relevance of the topic. They should also indicate the potential usefulness of the evidence report or technology assessment within their professional practices or organizations. Information should include:

- A clearly defined topic, with specific questions to be answered that will establish the focus and boundaries of the report.
- Indication of the availability of data for study and if available, any information on the incidence, prevalence and/or severity of the particular disease or health condition including, if relevant, its significance for the Medicare and Medicaid populations; or the frequency of use and cost of the procedure, treatment, or technology; an indication of how the evidence report or assessment might be used within the nominator's professional or organizational setting; and any known currently available technology assessments, practice guidelines, disease management protocols, or other tools or standards pertaining to the topic and their deficiencies if any.
- References to significant differences in practice patterns and/or results, the availability of alternative therapies, and any known controversies in these areas.

Nominators of topics that are selected may have the opportunity to serve as resources to EPCs as they develop evidence reports and technology assessments. Nominators may also be requested to serve as peer reviewers of draft evidence reports and technology assessments.

AHCPR will review topic nominations and supporting information and determine final topics, seeking additional information as appropriate. Final topics will be assigned to specific EPCs.

Materials Submission and Deadline

To be considered for the first group of evidence reports and technology assessments, topic nominations should be submitted by February 21, 1997 to: Douglas B. Kamerow, M.D., M.P.H., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Willco Building, Suite 310, Rockville, Maryland 20852.

Nominations may also be made electronically as an ASCII file, either as an attachment or incorporated into the body of the message, to the following e-mail address: epctopic@ahcpr.gov.

After February 21, 1997, nominations will be accepted on an ongoing basis by mail or electronically at the above addresses for topics for subsequent evidence reports and technology assessments.

All responses will be available for public inspection at the Office of the Forum for Quality and Effectiveness in Health Care, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. AHCPR will not reply to individual responses, but will consider all nominations in selecting priority topics. Topics selected will be announced from time to time in the Federal Register and in AHCPR press releases.

Request for Evidence-Based Practice Center Solicitation

To receive a copy of the contract solicitation for the EPCs, mail or telefax: requestor's name, affiliation (business or organization); address (including zip code); and telephone and telefax numbers to: Agency for Health Care Policy and Research, Office of Management, Contracts Management Staff, Attn.: Al Deal, Suite 601, 2101 East Jefferson Street, Rockville, MD 20852, telefax (301) 443–7523. The solicitation is also available as an FTP file through AHCPR's Web site: www.ahcpr.gov/news/

For Additional Information

Additional information about topic nominations can be obtained by contacting: Margaret Coopey, Health Policy Analyst, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Willco Building, Suite 310, Rockville, Maryland 20852, telephone (301) 594–4015. E-mail address mcoopey@po6.AHCPR.gov.

Dated: December 18, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–32515 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 96N–0457]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 21, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Cosmetic Product Voluntary Reporting Program (21 CFR 720.4, 720.6, 720.8(b)) (OMB Control Number 0910–0030—Reinstatement)

Under the Federal Food, Drug, and Cosmetic Act (the act) cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA has requested, under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file an ingredient statement for each of their products with the agency (§ 720.4). Ingredient statements for new submissions (§ 720.1) are reported on Form FDA 2512, entitled ''Cosmetic Product Ingredient Statement'' and Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, entitled ''Discontinuance of Commercial Distribution of Cosmetic Product Formulation'' (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input in a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's data base also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise deleterious to humans and the public health generally. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on the frequency of use.

FDA estimates the burden of the cosmetic product for each submission will vary in relation to the size of the company and the breadth of its marketing activities. The estimated reporting burden of this collection of information is as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.1 & 720.4 (new submissions)	FDA 2512/2512a	550	4.2	2,310	0.50	1,155
720.4 & 720.6 (amendments)	FDA 2512/2512a	550	1.4	770	0.33	254
720.6 (notice of discontinuance)	FDA 2514	550	4.5	2,500	0.10	250
720.8(b) (request for confidentiality)		2	1.0	2	1.50	3
Total				5,582		1,662

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: December 12, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32426 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0115]

Compliance Policy Guides Manual; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an updated bound edition of ''FDA Compliance Policy Guides'' (CPG manual). The CPG manual explains FDA's policy on regulatory issues related to FDA laws and regulations. The CPG manual is intended to provide guidance to FDA field inspection and compliance staffs.

ADDRESSES: The CPG manual may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB96–915499 for each copy of the document. Payment may be made by check, money order, charge card (American Express, Visa, or MasterCard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. The CPG manual is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara A. Rodgers, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0417.

SUPPLEMENTARY INFORMATION: FDA is issuing the updated bound edition of the CPG manual to provide information both on new and revised CPG's. CPG's that are new or revised with this printing are identified in the index at the end of the manual.

The statements made in the CPG manual are not intended to create or confer any rights, privileges, or benefits on or for any private person or to bind FDA, but they are intended merely for internal FDA guidance.

Dated: December 12, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32423 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

Establishment Prescription Drug User Fee Revenues and Rates Fiscal Year 1997

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing user fee revenues and rates for Fiscal Year (FY) 1997. The Prescription Drug User Fee Act of 1992 (the PDUFA) authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such marketed products. Fees for applications, establishments, and products for FY 1993 were established by the PDUFA. Fees for future years are to be determined by FDA using criteria delineated in the statute.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4872.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Pub. L. 102–571) establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biologic products, (2) certain establishments where such products are made, and (3) certain marketed products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)). Under the PDUFA, one-third of the total user fee revenue for each FY must come from each of the three types of fees.

For FY 1993, the total revenues to be derived from fees and the fee rates for each of the categories were established in the PDUFA (21 U.S.C. 379h(b)(1)). For FY 1994 through 1997, however, the PDUFA establishes only target total fee revenues and fees. For these years, FDA is authorized to increase the total fee revenues and to establish new fee rates for each of the three categories so that the revised total fee revenues are realized (21 U.S.C. 379h(c)).

This notice establishes total fee rates for FY 1997. These fees are retroactive to October 1, 1996, and will remain in effect through September 30, 1997. For fees already paid on applications and supplements submitted on or after October 1, 1996, FDA will bill/refund applicants for the difference between fees paid and fees due under the new fee schedules. For applications and supplements submitted after December 31, 1996, the new fee schedule should be used. Invoices for establishment and product fees for FY 1997 will be issued in December 1996, using the new fee schedules.

II. Revenue Increase and Fee Adjustment Process

The PDUFA provides that total fee revenues for each FY, as set out in the original fee schedule (see 21 U.S.C. 379h(b)(1)), shall be increased by notice in the Federal Register. The increase must reflect the greater of : (1) The total percentage increase that occurred during the FY in the Consumer Price Index (the CPI) (all items; U.S. city average), or (2) the total percentage pay increase for that FY for Federal employees, as adjusted for any locality-based payment applicable to employees stationed in the District of Columbia (see 21 U.S.C. 379h(c)(1)). The PDUFA also provides that within 60 days after the end of each FY, FDA shall adjust the user fee rates in each of the three categories of fees (application, establishment, and product) to achieve the revised total fee revenues. The new individual user fees must be adjusted in a manner that maintains the proportions established in the original fee schedules, so that approximately one-third of the revenues will come each from applications, establishments, and product fees (21 U.S.C. 379h(c)(2)).

III. Total Fee Revenue Adjustment

For FY 1996, the total percentage increase in the CPI was 3.00 percent, whereas the increase in applicable Federal salaries for FY 1997 is 3.33 percent. Thus, for computing the total fee revenues for FY 1997, the percentage is 3.33. The new adjusted total fee revenue is computed by applying the increase as a percentage (103.33 percent) to the FY 1997 target fee revenue amount from the PDUFA schedule ($84 million). The FY 1997

total adjusted fee revenue amount then totals $86,797,200.

IV. Fee Calculations for Application, Establishment, and Product Fees

The PDUFA provides that in making adjustments to the user fee rates, the one-third proportionality must be maintained among application, product, and establishment fees. Thus, the amount of revenues to be obtained from each category are $28,932,400 ($86,797,200 divided by 3).

A. Application Fees

Application fees are assessed on each ''human drug application,'' as defined in the PDUFA (see 21 U.S.C. 379g(1)). Application fees are levied for: (1) Review of certain new drug applications submitted after September 1, 1992, under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)); (2) for review of an application for certain molecular entities or indications for use submitted after September 30, 1992, under section 505(b)(2) of the act; (3) review of applications for initial certifications or approvals of antibiotic drugs submitted after September 1, 1992, under section 507 of the act (21 U.S.C. 357); and (4) for review of applications for licensure of certain biological products under the Public Health Service Act (42 U.S.C. 262).

Fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data on safety and effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A) and 379h(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications with clinical data.

In most cases, a first payment of 50 percent of an application or supplement fee is due at the time the application or supplement is submitted (21 U.S.C. 379h(a)(1)(B)(i)). The final payment is due 30 days from the date FDA issues an invoice after issuance of an action letter for the application (see 21 U.S.C. 379g(6)(B)), or at the time an application is withdrawn, unless FDA waives this portion of the fee (21 U.S.C. 379h(a)(1)(A)(ii)). If FDA refuses to file an application or supplement, one-half of the first payment is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

In setting the specific rate for each type of fee, FDA is required to estimate the numbers of applications, supplements, establishments, and products that it expects will qualify for fees in FY 1997. FDA makes this estimate based on the number of products, establishments, or applications subject to fees in FY 1996.

For FY 1996, FDA received and filed 131 original applications (New Drug Applications, Product License Applications, and Establishment License Applications) and received and filed 109 efficacy supplements. After subtracting those that were not assessed fees because they did not meet the definition of human drug application or supplement under the PDUFA, FDA received, filed, and assessed fees for 107 applications that require clinical data, 17 applications that did not require clinical data, and 82 supplements that require clinical data. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee (that is, one-half the fee due on an application that requires clinical data), the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications subject to full application fees.

In addition, as of September 30, 1996, FDA assessed fees for two applications that required clinical data that were refused to file, or were withdrawn before filing. After refunds, each of these applications paid one-fourth the full application fee and are counted as one-fourth of an application.

Using this methodology, the approximate equivalent number of applications that required clinical data and were assessed fees in FY 1996 was 157, before any further decisions were made on requests for waivers or reductions. Additional waivers or reductions of FY 1996 fees are expected to account for approximately 16 equivalents of applications that require clinical data. Therefore, FDA estimates that approximately 141 equivalent applications that require clinical data will qualify for fees in FY 1997, after allowing for possible waivers or reductions. Thus, the FY 1997 application fee rate is determined by dividing the adjusted total fee revenue to be derived from applications ($28,932,400) by the equivalent number of applications projected to qualify for fees in FY 1997 (141), for a fee of $205,000 per application that requires clinical data (rounded to the nearest $1,000). A fee of one-half this amount or $102,500 applies to applications that do not require clinical data and to supplements that require clinical data. The following calculations summarize the determination of FY 1997 application fee rates:

- 107 applications that require clinical data, + (17÷2) applications that do not require clinical data, + (82÷2) supplements that require clinical data, + (2÷4) applications that require clinical data and which FDA refuses to file or the sponsor withdraws before filing minus 16 waivers or reductions = 141 (the estimated number of ''full fee'' applications for FY 1997 based on FY 1996 experience).
- $28,932,400 (FY 1997 estimated revenue to be derived from applications) ÷141 (the estimated number of applications for FY 1997) = $205,000 per application (rounded to the nearest $1,000).
- For applications that do not require clinical data and supplements that require clinical data, the rate will be one-half the full application fee or $102,500.

B. Establishment Fees

The FY 1996 establishment fee was based on an estimate of 197 establishments subject to fees. In FY 1996, 264 establishments qualified for fees before any decisions on requests for waivers or reductions were made. FDA estimates that approximately 250 establishments will qualify for fees in FY 1997 after allowing for possible waivers or reductions. Thus, the number 250 was used in setting the new establishment fee rate. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($28,932,400), by the estimated 250 establishments, for an establishment fee rate for FY 1997 of $115,700 (rounded to the nearest $100).

C. Product Fees

The FY 1996 product fee was based on an estimate that 2,115 products would be subject to product fees in FY 1996. For FY 1996, 2,241 products qualified for fees before any decisions on requests for waivers or reductions were made. However, FDA estimates that only 2,200 products will qualify for product fees in FY 1997, after allowing for estimated waivers or reductions. Accordingly, the FY 1997 product fee rate was determined by dividing the adjusted total fee revenue to be derived from product fees ($28,932,400) by the estimated 2,200 products for a product fee rate of $13,200 (rounded to the nearest $100).

V. Adjusted Fee Schedules for FY 1997

The fee rates for FY 1997 are set out in the following table:

Fee category	Fee rates for FY 1997
Applications	
Requiring clinical data	$205,000
Not requiring clinical data	102,500
Supplements requiring clinical data	102,500
Establishments	115,700
Products	13,200

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA that is submitted after December 31, 1996, must be accompanied by the appropriate application fee established in the new fee schedule. FDA will refund applicants who submitted application fees between October 1, 1996, and December 31, 1996, based on the adjusted rate schedule.

B. Establishment and Product Fees

By December 31, 1996, FDA will issue invoices for establishments and product fees for FY 1997 under the new fee schedules. Payment will be due by January 31, 1997. FDA will issue invoices in October 1997 for any products and establishments subject to fees for FY 1997 that qualify for fees after the December 1996 billing.

Dated: December 15, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–32493 Filed 12–19–96; 10:33 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0486]

VISX, Inc.; Premarket Approval of VISX Excimer Laser System (Models B and C) for Phototherapeutic Keratectomy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by VISX, Inc., of Santa Clara, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the VISX Excimer Laser System (Models B and C). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 22, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Morris Waxler, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION: On December 24, 1991, VISX, Inc., Santa Clara, CA 95051, submitted to CDRH an application for premarket approval of the VISX Excimer Laser System (Models B and C). The VISX Excimer Laser System delivers pulses at 193 nanometers wavelength. The device is indicated for phototherapeutic keratectomy (PTK) in subjects with decreased best corrected visual acuity and/or with disabling pain that are the result of superficial corneal epithelial irregularities or stromal scars in the anterior one-third of the cornea. The subjects must have failed with alternative treatment options. For safety, the immediate postoperative corneal thickness must not be less than 250 microns.

Examples of those conditions that warrant PTK are:(1) Corneal scars and opacity (from trauma and inactive infections); (2) dystrophies (Reis-Buckler's, granular and lattice); (3) Thygeson's superficial keratitis, irregular corneal surfaces associated with filamentary keratitis and Salzmann's nodular degeneration; (4) residual band keratopathy after unsuccessful EDTA treatment, and; (5) scars subsequent to previous (not concurrent) pterygium excision.

On March 21, 1994, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before (*insert date 30 days after date of publication in the* Federal Register), file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 24, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–32429 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. January 13, 1997, 9:30 a.m., and January 14, 1997, 9 a.m., Holiday Inn—Gaithersburg, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 or 1–800–465–4329 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Sue Bae, KRA Corp. at 301–495–1591, ext. 227. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, January 13, 1997, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 5:30 p.m.; open public hearing, January 14, 1997, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ophthalmic Devices Panel, code 12396. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 6, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 13, 1997, the committee will discuss general issues relating to a premarket approval application (PMA) for a retinal tamponade used for the treatment of complicated retinal detachments. On January 14, 1997, the committee will discuss general issues relating to a PMA supplement for an excimer laser for photorefractive keratectomy to correct low to moderate myopia with astigmatism.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information relevant to investigational device exemption applications and PMA's for vitreo-retinal, surgical and diagnostic devices, intraocular and corneal implants, and contact lenses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. January 16, 1997, 8 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 800–228–9290 or 301–590–0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Alice Hall Hayes, KRA Corp. at 301–495–1591, ext. 223. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Closed committee deliberations, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6 p.m.; Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Gastroenterology and Urology Devices Panel, code 12523. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 9, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear a presentation on the revisions made in the Draft Guidance on Penile Rigidity Implants (November 1996). The committee will discuss general issues related to a PMA for a metallic mesh stent intended to relieve prostatic obstruction secondary to benign prostatic hyperplasia (BPH) or bladder neck contracture.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding medical devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 30, 1997, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 23, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the influenza virus vaccine formulation for 1997–1998. The committee will also hear briefings on a research program in the Division of Bacterial Products and on recent activities in the Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will review data of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

Biological Response Modifiers Advisory Committee

Date, time, and place. January 30, 1997, 3 p.m., Rockwall 1 Bldg., conference room 4108, fourth floor, 11400 Rockville Pike, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 4:30 p.m.; closed committee deliberations, 4:30 p.m. to 5:30 p.m.; William Freas, Sheila D. Langford, or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Biological Response Modifiers Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 23, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural research program for the Laboratory of Cell Biology, Division of Cytokine Biology.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23,

Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 16, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–32427 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

Memorandum of Understanding Between the Food and Drug Administration and the Republic of Belarus

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Republic of Belarus. The purpose of the MOU is to exchange information on drugs and biological products and to facilitate the development of the Belarus health care sector by establishing in Belarus a streamlined registration procedure for U.S. drugs and biological products.

DATES: The agreement became effective March 25, 1996.

FOR FURTHER INFORMATION CONTACT: Bradford W. Williams, Office of Compliance, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0165.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of understanding.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

224–96–4004

Memorandum of Understanding Between the Food and Drug Administration of the Department of Health and Human Services of the United States of America and the Ministry of Health of the Republic of Belarus on Cooperation and Information Exchange for Facilitating the Introduction of Drugs and Biological Products into the Republic of Belarus

The Food and Drug Administration (FDA), of the Department of Health and Human Services of the United States of America, on the one hand; and the Ministry of Health of the Republic of Belarus, on the other hand, hereinafter referred to as the parties,

Guided by principles recorded in the Agreement between the Government of the United States of America and the Government of the Republic of Belarus on Science and Technology Cooperation, signed in Minsk on January 14, 1994, and

Strengthening the bonds of friendship between the parties, Have reached an understanding on matters of cooperation:

I

The goals of the parties are:

1. To exchange information on drugs and biological products and on requirements applicable to them (including standardization, registration, quality control, and side effects), and prompt exchange of information on the removal of drugs and biological products from the market or restrictions on their use.
2. To facilitate the development of the Belarusian health care sector by establishing in Belarus a streamlined registration procedure for United States drugs and biological products that are manufactured and marketed in the United States under the jurisdiction of the FDA as provided in the Annexes to this Memorandum of Understanding. The Belarusian party should use the streamlined procedure for such products.

The parties confirm that it would be mutually beneficial for the parties to work together to streamline the process for registering in Belarus drugs and biological products when these products are permitted by the FDA to be marketed in the United States. The effect of the parties joint endeavors under this Memorandum of Understanding should be to extend to Belarusian users access to the same United States drugs and biological products as are available to United States users of such products, which possess a high degree of safety, effectiveness, and quality .

II

This Memorandum of Understanding covers drugs and biological products manufactured and marketed in the United States under the jurisdiction of the FDA including:

1. Drugs: articles that meet the definition of a drug under the United States Federal

Food, Drug and Cosmetic Act. Drugs include both prescription drugs and non prescription drugs (Over-the-Counter, ''OTC'' products). This Memorandum of Understanding does not apply to homeopathic drugs or to vitamins, mineral or herbal products, or any other dietary supplements.

2. Biological products: products that are regulated as biological products under the United States Public Health Service Act.

III

1. The Belarusian party should identify the streamlined registration requirements for those drugs and biological products that are manufactured and marketed in the United States under the jurisdiction of the FDA.
2. For drugs and biological products that are manufactured and marketed in the United States under the jurisdiction of the FDA, the Belarusian party intends to accept the FDA's decisions and regulations on premarket approval, licensing, monographs, and related documentation, as well as FDA's quality standards and enforcement of manufacturing controls and other requirements.
3. In addition to any requirements for registration as drugs, any products that can be defined as a controlled substance or highly addictive must receive the additional approval of the appropriate Belarusian bodies under the laws and regulations of the Belarus. Products for which this approval will be necessary should be further explained in an exchange of letters between the participants.

This Memorandum of Understanding should apply equally to pharmaceutical or biological products manufactured and marketed in the United States under the jurisdiction of the FDA which require prescription prior to sale and those which are sold directly ''Over-the-Counter'' (OTC) without prescription. It is understood that marketing status in the Republic of Belarus will be in accordance with Belarusian laws and regulations, notwithstanding United States marketing status.

4. This Memorandum of Understanding lists, in Annexes, the information which the United States firms should provide to the Belarusian party on drugs and biological products that are manufactured and marketed in the United States under the jurisdiction of the FDA, in order to obtain permission for them to be marketed in the Republic of Belarus. Upon submission of information as listed in the Annexes, the Belarusian party intends not to require, as a condition of registration or importation, the conduct of any additional clinical or analytical review or testing, or any other medical, scientific, quality, or other related requirements. Registration should take no more than 60 days after the submission to the appropriate Belarusian party of all of the information required in the Annexes and payment of any fee(s) required by Belarus.

Upon submission of a request for registration of vaccines and sera, the Ministry of Health of the Republic of Belarus may require additional documentation which will meet the requirements of the Republic of Belarus. In cases when additional documentation is necessary, the Belarusian party should notify the firm seeking registration within the 60 day period.

5. Upon request of the Belarusian party, the FDA should provide access to information on the compliance status of drugs and biological products and manufacturers that are eligible for Belarusian registration under this Memorandum, to the extent the information is permitted by United States laws. The FDA should also respond to inquiries from the Belarusian party about information submitted in accordance with the Annexes with respect to such matters as the marketing status of any drug or biological product. The parties intend to share information about all drugs and biological products that present a significant risk to users.
6. Upon request of the FDA, the Belarusian party will consider confidential any information provided to it by the FDA if it is not public information. Similarly, at the request of the Belarusian party, the FDA will respect the confidentiality of information provided by the Belarusian party to the FDA, to the extent permitted by law.
7. Under this Memorandum of Understanding, subject to availability of resources, the parties plan to share knowledge and provide assistance and information to one another when necessary.
8. The FDA should provide the Belarusian party with up-to-date copies of laws, regulations, provisions, and procedures used to ensure the level of quality of drugs and biological products, necessary for public health. The Belarusian party should provide the FDA with up-to-date copies of the laws, regulations, provisions, and procedures for registration of a given product imported into the Republic of Belarus from other countries and, in particular, from the United States. The Annexes to this Memorandum of Understanding should contain the sole procedure and list of requirements applicable to those products manufactured and marketed in the United States under the jurisdiction of the FDA.
9. The parties should consult periodically, subject to the availability of funds, in order to promote cooperation and to facilitate implementation of this Memorandum of Understanding. As the need arises, the parties should develop and agree on a specific plan of cooperation.
10. Subject to the availability of funds, the parties may establish a coordinating committee and one or more technical committees, including representatives of each party with knowledge in regulation of drugs and biological products, in order to facilitate implementation of this Memorandum of Understanding.

IV

The following offices are designated as liaison offices for the parties:

A. For the FDA:

Director
(currently Bradford W. Williams)
Division of Drug Labeling and Nonprescription Drug Compliance
Office of Compliance
Center for Drug Evaluation and Research
Food and Drug Administration
7520 Standish Place
Rockville, Maryland 20855
USA

B. For the Ministry of Health:

Director of the Administration of Pharmacy, Medical Equipment, and Regulations
Ministry of Health
39 Myasnikov Street
220097 Minsk
Republic of Belarus

Activities under this Memorandum of Understanding will begin on the last date of signature by all parties and will last for a period of three years. Activities under this Memorandum of Understanding may be extended or amended by mutual written consent. They may be terminated by any party by a sixty day advance written notice to the other parties done at Minsk, Belarus, in duplicate, in the English and Russian languages, this 27th day of March, 1996.

For the Food and Drug Administration of the Department of Health and Human Services of the United States of America:

Mary Pendergast
Deputy Commissioner/
Senior Advisor to the Commissioner

For the Ministry of Health of the Republic of Belarus:

Inessa M. Drobishevkaia
Minister

Annex I

Application Procedures and Information Which the United States Firm Must Provide to Belarusian Authorities for Registration and/or Re-registration in the Republic of Belarus of Drugs and Biological Products Manufactured and Marketed in the United States Under the Jurisdiction of the Food and Drug Administration (FDA)

1. The manufacturing firm or their authorized representative shall submit one (1) English language and three (3) Russian language copies of an application which includes the following information to:

   Chief of the Pharmacy Department,
   Department for Pharmacy, Medical Equipment and Regulations
   Ministry of Health
   39 Myasnikov Street
   220097 Minsk
   Republic of Belarus

2. Information on the manufacturing firm and/or their authorized representative including:

a. Name of registering firm

b. Name of manufacturing firm, if applicable (if representing another firm, a notarized letter authorizing the registering firm to register the products in Belarus)
c. Address, telephone and facsimile numbers of registering and/or manufacturing firm
d. Name, title and signature of the authorized responsible representative(s)
e. Certification that the drugs or biological products are manufactured in the United States.
3. The FDA Letter of Approval, or, For products subject to an FDA Over-the-Counter (OTC) monograph, copies of the relevant sections of the Final Monograph or Tentative Final Monograph with a certification by the manufacturing firm and/or its authorized representative that the product conforms in all respects to the Final Monograph or Tentative Final Monograph.
4. The FDA approved product package insert (information and instruction sheet), labels and labeling. The information provided must include the following:
a. Name: trade, generic, and chemical
b. Description: chemical and pharmacological group
c. Clinical pharmacology/mechanism of action
d. Indications and instructions for usage
e. Contraindications
f. Observations
g. Precautionary measures
h. Adverse reactions and toxicity data
i. Information on overdose
j. Dosage and methods of administration
k. How medical product is supplied, including dosages and product strength
l. Information on storage conditions and expiration.
m. Other information contained in the insert.
5. For the registration of prescription drugs (New Molecular Entities) manufactured in the United States and covered by an approved New Drug Application:
a. A Summary (expert report) of results of pre-clinical and clinical studies of the pharmaceutical. This report must include a collection of general information concerning the pharmaceutical made up of short summaries of each of the following points:
i. Pharmacological report (specifications) supporting all indications for usage as stated in the instructions, including summary of the pivotal clinical trials(s)
ii. Toxicology report (acute, subacute, subchronic, and chronic toxicology)
iii. Specific activity report related to the following: side effects, birth defects, allergies, skin irritations
b. In a short summary of information on use of the pharmaceutical in clinical conditions and after FDA approval. A copy of any scientific publications concerning the pharmaceutical should be submitted.
c. A short summary of information about side effects of the pharmaceutical and any adverse experiences with the pharmaceutical learned since FDA approval.
6. For the registration of generic drug products manufactured in the United States under the jurisdiction of the FDA:
a. A summary bioequivalence study and results.
7. Requirements for the registration of pharmaceutical substances manufactured and marketed in the United States:
a. Certificate of Analysis for the substance from the manufacturing company (original copy or notarized copy).
b. Information on the product(s) which will be manufactured in the Belarus using the substance.
8. Methods of analysis and release specifications. Guidelines on documentation required are contained in Annex II.
9. The manufacturing firm and/or its authorized responsible representative shall sign and submit a statement that the firm meets the current Good Manufacturing Practice (GMP) requirements.
10. The manufacturing firm and/or its authorized representative shall provide a copy of the most recent FD–483, FDA Notice of Inspection Observations, that is relevant to the drug or biological product for which registration is sought.
11. The manufacturing firm and/or its authorized responsible representative shall sign and submit a statement that all information submitted is truthful, accurate, and complete.
12. In case of any change of information provided in the original application, including any FDA-approved changes in the package insert, labels or labeling, the manufacturing firm and/or its authorized representative shall provide notification of these changes within 30 days.
13. The manufacturing firm and/or its authorized representative shall provide samples of the product in the packaged form in which the product is offered for registration.
14. For re-registration of pharmaceutical or biological preparations manufactured and marketed in the United States:
a. Copy of the original registration certificate issued by the Ministry of Public Health
b. Complete information on changes in the composition or manufacturing process since the original registration
c. Summary of information concerning side effects, adverse effects and complaints received by the firm during the previous 5 years.

Annex II

Addendum 1

Supplemental Guidelines for Submission of Methods of Analysis and Release Specifications in Applications for Synthetic Chemical Compounds (substances) for Registration in the Republic of Belarus

Where appropriate for the substance submitted:
1. Description of material (appearance)
2. Identification test(s)
3. Solubility
4. Flash point/evaporation point
5. Melting point and boiling point
6. Specific gravity/density
7. Specific rotation
8. Absorbance test (Specific Absorbance)
9. Refractive index
10. Clarity and color of solution
11. Impurity(ies) test(s) (Chromatographic Profile)
12. pH test
13. Chlorides test
14. Sulphates test
15. Loss on drying
16. Water contents assessed by Carl Fisher titration (include weight tested)
17. Residual solvents test
18. Heavy metals test
19. Assay
20. Microbiological tests
21. Residue on ignition

Annex II

Addendum 2

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Liquid Injection Dosage Form Products for Registration in the Republic of Belarus

Where appropriate for the product submitted:
1. Description (appearance)
2. Identification test
3. Transmittance/Absorbance test
4. Particle size (in cases of suspension, emulsion)
5. Solution pH
6. Specific rotation
7. Specific gravity/density
8. Impurity(ies) test(s) (Chromatographic Profile)
9. Net contents test/Deliverable Volume
10. Pyrogen test (L.A.L. test)
11. Sterility testing
12. Completeness of solution and particulate test
13. Clarity and color of solution
14. Assay

Annex II

Addendum 3

Guidelines on Information Appropriate for Submission of Methods for Analysis and Release Specifications in Applications for Solid Dosage Forms for Preparation of Injections and Antibiotics for Registration in the Republic of Belarus

Where appropriate for the product submitted:
1. Description (appearance)
2. Solubility
3. Net contents test
4. Identification test
5. Melting range
6. Specific rotation
7. Specific absorbance
8. Completeness of solution and particulate test
9. Impurity(ies) test(s) (Chromatographic Profile)
10. pH test
11. Chlorides test
12. Sulphates test
13. Loss on drying
14. Water test determined using Carl Fisher titration (include weight tested)
15. Heavy metals

16. Pyrogenicity tests (chemical test)
17. Test for sterility
18. Assay
19. Uniformity of dosage units
20. Clarity and color of solution

Annex II

Addendum 4

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Liquid Ophthalmic Dosage Form Products for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description (appearance, color, clarity, particulate matter)
2. Identification test
3. Impurity(ies) test(s) (Chromatographic Profile)
4. Transmittance/Absorbance test
5. Viscosity (for solutions containing methyl cellulose or similar substances)
6. pH test
7. Determination of fill volume (method and allowable deviations)
8. Sterility test
9. Assay
10. Particulates count- clear liquids
11. Particle size- suspensions

Annex II

Addendum 5

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Liquid Dosage Forms for Internal and External Use Products for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description (appearance, color)
2. Identification test
3. pH test
4. Specific gravity/density
5. Viscosity
6. Particle size test (in cases of suspension, emulsion)
7. Net contents test
8. Assay
9. Microbiological purity test(s)
10. Impurity(ies) test(s) (Chromatographic Profile)

Annex II

Addendum 6

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Aerosol Dosage Forms for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description
2. Container integrity test
3. Pressure test
4. Assay
5. Uniformity of delivered dose
6. Net contents test and number of doses in container (for dosed aerosols)
7. Percent total volume delivered
8. Aerosol particle size test
9. Identification test
10. Water content test (method and allowable limits)
11. Impurity(ies) test(s) (Chromatographic Profile)
12. Microbiology purity (description of test or reference to Pharmacopeia)

Annex II

Addendum 7

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Tablets and Dragee Dosage Form Products for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description (appearance, color of tablets, appearance in fracture, size of tablets, diameter and height, strength)
2. Average mass of tablets, method, allowable deviations
3. Identification test
4. Impurity(ies) test(s) (Chromatographic Profile)
5. Insoluble Ash test (HCl)
6. Disintegration test (method) and/or
7. Dissolution test, or release rate test
8. Uniformity of dosage units test/content uniformity test
9. Assay
10. Microbiology purity test(s)

''Requirement no. 8 shall apply for tablets in which proportion of active ingredient in one tablet amounts to 50 mg or less.

Annex II

Addendum 8

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Solid Oral Capsule Dosage Form Products for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description of capsule and its contents (appearance, form, color)
2. Identification test
3. Average weight of capsule contents/ weight variation test (method and allowable deviations)
4. Disintegration test (method) and/or
5. Dissolution test, or release rate test
6. Uniformity of dosage units test/content uniformity
7. Solubility test
8. Assay
9. Microbiology purity test
10. Impurity(ies) test(s) (Chromatographic Profile)

Requirements 6 and 7 apply to capsules in which proportion of active ingredient per one capsule amounts to 50 mg. or less.

Annex II

Addendum 9

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Suppository Products for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description (appearance, color, form, diameter, homogeneity)
2. Average weight of dosage unit test
3. Identification test
4. Melting point or measuring full deformation time (lipophilic bases)
5. Dissolution time (hydrophilic bases)
6. Test for uniformity of dosage units (content uniformity)
7. Assay
8. Microbiology purity test(s)
9. Impurity(ies) test(s) (Chromatographic Profile)

Requirement 5 shall be observed for suppositories where proportion of active ingredient in one suppository amounts to 50 mg. or less

Annex II

Addendum 10

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Topical Solid Products for External Use for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Description (appearance, color)
2. Identification test
3. Net Contents test
4. pH of aqueous extraction solution
5. Uniformity of dosage unit test
6. Particle size test (Size determination of drug particles)
7. Sterility test (for eye ointments)
8. Assay
9. Microbiological purity tests
10. Impurity(ies) test(s) (Chromatographic Profile)

Requirement 6 shall apply in accordance with the type of ointment

Annex II

Addendum 11

Supplemental Guidelines for the Submission of Methods for Analysis and Release Specifications in Applications for Tincture and Extract products for Registration in the Republic of Belarus

Where appropriate for the product submitted:

1. Alcohol test
2. Description (appearance, color)
3. Identification test
4. Heavy metals
5. Specific gravity/density.
6. Residue on drying
7. Net contents test
8. Assay
9. Moisture content test

NOTE: This Applies only to tincture and extract regulated as drug products.

Medicinal Plants and Teas are not covered under this Memorandum of Understanding.

[FR Doc. 96–32424 Filed 12–20–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–R–200]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

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 (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320. The collection of HEDIS 3.0 performance measures, including the Health of Seniors and Consumer Assessment of Health Plans Study surveys is necessary for HCFA to obtain the information necessary for the proper oversight and administration of the Medicare Managed Care Program. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the delay in reporting of health care quality measures. If emergency clearance is not provided HCFA will be forced to postpone the collection of this data for eighteen months due to the timing of contract cycles.

HCFA is requesting OMB review and approval of this collection by 12/31/96, with a 180-day approval period. During this 180-day period HCFA will publish a separate Federal Register notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection; *Title of Information Collection:* HEDIS 3.0 (Health Plan Data and Information Set), including the Health of Seniors and Consumer Assessment of Health Plans Study (CAHPS) surveys and supporting regulations 42 CFR 417.470, and 42 CFR 417.126; *Form Number:* HCFA–R–200; *Use:* HEDIS will be used for 3 purposes: (1) to provide summary comparative data to the Medicare beneficiary to assist them in choosing among health plans; (2) to provide information to health plans for internal quality improvement activity; and (3) to provide HCFA, as purchaser, information useful for monitoring quality of and access to care provided by the plans; *Frequency:* annually; *Affected Public:* Individuals or Households, non-profit and for profit HMOs which contract with HCFA to provide managed health care to Medicare beneficiaries; *Number of Respondents:* 438,674; *Total Annual Responses:* 438,674 *Total Annual Hours Requested:* 671,000.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1325. Written comments and recommendations for the proposed information collections should be sent by 12/31/96 directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch; Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 17, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–32687 Filed 12–20–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Center for Research Resources; Notice of Meeting of the National Advisory Research Resources Council and Its Planning Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR). This meeting will be open to the public as indicated below. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide a summary of the meeting and a roster of the members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: The Subcommittee on Planning of the National Advisory Research Resources Council.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 3B41, Building 31B, Bethesda, Maryland 20892.

Open: February 6, 7:30 a.m.–8:45 a.m.

Purpose/Agenda: To discuss policy issues.

Name of Committee: National Advisory Research Resources Council.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, Maryland 20892.

Open: February 6, 9 a.m. until recess.

Closed: February 7, 8:30 a.m. until 11 a.m.

Open: February 7, 11 a.m. until adjournment.

Purpose/Agenda: Report of Center Director and other issues related to Council business.

Executive Secretary: Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Building 12A, Room 4011, Bethesda, MD 20892, Telephone: (301) 496–6023.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214, Extramural Research Facilities Construction Projects, National Institutes of Health.)

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32413 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, February 6–7, 1997, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland.

The Council meeting will be open to the public on February 6 from 8:30 a.m. to approximately 3:00 p.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 3:00 p.m. to recess on February 6 and from 8:30 a.m. to adjournment on February 7 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32414 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: PEACE II—Homocysteine.

Date: January 13–14, 1997.

Time: 7:30 p.m.

Place: Holiday Inn Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Two Rockledge Center, Room 7194, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Bogalusa Heart Study.

Date: February 10, 1997.

Time: 9:00 a.m.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Review of the Independent Scientist Awards (K02s) and the Mentored Clinical Scientist Development Awards (K08s).

Date: February 11, 1997.

Time: 8:00 a.m.

Place: Woodfin Suite Hotel, 1380 Piccard Drive, Rockville, Maryland 20852.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32418 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Emphasis Panel (SEP) meeting.

Name of SEP: Studies to Evaluate Dioxin Toxic Equivalency Factors (TEFs).

Date: January 16, 1997.

Time: 9:00 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Conference Center 101–C, Research Triangle Park, NC.

Contact Person: Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32411 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual contract proposals.

Name of SEP: Efficacy Trial of Spermicidal Agents.

Date: January 13, 1997.

Time: 8:00 a.m.—adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these proposals could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32412 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, February 3, 1997, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public from 9:00 a.m. to approximately 2:00 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 2:00 p.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, and Executive Secretary, National Advisory Environmental Health Sciences Council, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32415 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 29–30, 1997, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 28 in the 5th Floor Conference Room, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:45 p.m. on January 29 and from 9 a.m. to adjournment on January 30 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Kimberly Caraballo at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on January 28 will be closed to the public from 2 p.m. to approximately 3:30 p.m., and the regular Board meeting on January 29 will be closed from approximately 4:45 to 5:15 p.m. for the Board meeting on January 29 will be closed from approximately 4:45 to 5:15 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Programs No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32416 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Multidisciplinary Sciences.
Date: February 14, 1997.
Time: 8:00 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 6701 Rockledge Drive, Room 5120, Bethesda, Maryland 20892, (301) 435–1179.

Name of SEP: Clinical Sciences.
Date: February 17–18, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, MD.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Biological and Physiological Sciences.
Date: February 20–21, 1997.
Time: 8:00 a.m.
Place: Hyatt Regency, Bethesda, MD.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Biological and Physiological Sciences.
Date: March 3–4, 1997.
Time: 9:00 a.m.
Place: Hyatt Regency, Bethesda, MD.
Contact Person: Dr. Richard Marcus, Scientific Review Administrator, 6701 Rockledge Drive, Room 5194, Bethesda, Maryland 20892, (301) 435–1256.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 6–7, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32417 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	January–March 1997 meetings	Time	Location
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–435–1216.	Mar. 10–11	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–435–1219.	Mar. 14	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, 301–435–1217.	Mar. 4–5	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–435–1218.	Mar. 13	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, 301–435–1219.	Mar. 7	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–435–1219.	Mar. 21	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Biobehavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–435–1257.	Feb. 26–27	8:30 a.m	St. James Hotel, Washington, DC.
Human Development & Aging-1, Dr. Anita Miller Sostek, 301–435–1260.	Feb. 20–21	9:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Michael Micklin, 301–435–1258.	Feb. 25–26	8:30 a.m	DoubleTree Hotel, Rockville, MD.
Human Development & Aging-3, Dr. Anita Miller Sostek, 301–435–1260.	Feb. 27–28	9:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–435–1261.	Feb. 13–14	8:00 a.m	Hyatt Regency Hotel, Bethesda, MD.
Biochemical Sciences Initial Review Group			
Biochemistry, Dr. Chhanda Ganguly, 301–435–1739.	Feb. 19–21	8:30 a.m	Georgetown Holiday Inn, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, 301–435–1740.	Feb. 20–21	8:30 a.m	Wyndham Bristol Hotel, Washington, DC.
Pathobiochemistry, Dr. Zakir Bengali, 301–435–1742.	Jan. 31–Feb. 1	8:30 a.m	Radisson Huntley Hotel, Santa Monica, CA.
Physiological Chemistry, Dr. Donald Schneider, 301–435–1165.	Feb. 20–21	8:00 a.m	Hyatt Regency Hotel, Bethesda, MD.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural, Products Chemistry, Dr. Harold Radtke, 301–435–1728.	Feb. 20–21	9:00 a.m	Georgetown Holiday Inn, Washington, DC.
Biophysical Chemistry, Dr. John Beisler, 301–435–1727.	Feb. 27–Mar. 1	8:30 a.m	St. James Hotel, Washington, DC.
Medicinal Chemistry, Dr. Ronald Dubois, 301–435–1722.	Feb. 12–14	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Metallobiochemistry, Dr. Asher Hyatt, 301–435–1751.	Feb. 20–21	8:30 a.m	The Georgetown Inn, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–435–1726.	Feb. 27–28	8:30 a.m	Hotel Del La Poste, New Orleans, LA.
Physical Biochemistry, Dr. Gopa Rakhit, 301–435–1721.	Feb. 24–25	8:30 a.m	DoubleTree Hotel, Rockville, MD.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–435–1212.	Feb. 19–21	8:00 a.m	Holiday Inn, Silver Spring, MD.
Cardiovascular & Rental, Dr. Anthony Chung, 301–435–1213.	Feb. 17–18	8:30 a.m	Holiday Inn, Silver Spring, MD.

Study section/contact person	January–March 1997 meetings	Time	Location
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhari, 301–435–1210.	Feb. 24–25	8:30 a.m	DoubleTree Hotel, Rockville, MD.
Hematology-1, Dr. Clark Lum, 301–435–1195	Feb. 13–14	8:00 a.m	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, 301–435–1777.	Feb. 19–20	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Pathology A, Dr. Larry Pinkus, 301–435–1214	Feb. 4–5	8:30 a.m	Westin Hotel, Washington, DC.
Pharmacology, Dr. Jeanne Ketley, 301–435–1789.	Feb. 26–27	8:00 a.m	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group			
Biological Sciences-2, Dr. Camilla Day, 301–435–1024.	Mar. 3–5	8:30 a.m	Wyndham Bristol Hotel, Washington, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, 301–435–1023.	Feb. 5–6	8:00 a.m	Sheraton Reston Hotel, Reston, VA.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, 301–435–1022.	Feb. 19–20	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development-2, Dr. Sherry Dupere, 301–435–1021.	Feb. 20–21	8:30 a.m	Holiday Inn, Bethesda, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–435–1019.	Feb. 26–28	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Molecular Biology, Dr. Robert Su, 301–435–1025.	Feb. 13–14	8:30 a.m	The Georgetown Inn, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–435–1026.	Feb. 6–7	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Endocrinology and Reproductive Sciences Initial Review Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–435–1046.	Feb. 20–21	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–435–1043	Feb. 20–21	8:30 a.m	Holiday Inn, Bethesda, MD.
Human Embryology & Development-1, Dr. Michael Knecht, 301–435–1046.	Feb. 27–28	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–435–1044.	Feb. 10–11	8:00 a.m	Hyatt Regency Hotel, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–435–1042.	Feb. 24–25	8:00 a.m	Ramada Inn, Rockville, MD.
Genetic Sciences Initial Review Group			
Biological Sciences-1, Dr. Nancy Pearson, 301–435–1047.	Mar. 5–7	8:30 a.m	St. James Hotel, Washington, DC.
Genetics, Dr. David Remondini, 301–435–1038.	Feb. 27–28	9:00 a.m	Hotel Plaza Real, Santa Fe, NM.
Genome, Dr. Cheryl Corsaro, 301–435–1045	Feb. 24–25	9:00 a.m	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. David Remondini, 301–435–1038.	Feb. 13–14	9:00 a.m	ANA Hotel, Washington, DC.
Health Promotion and Disease Prevention Initial Review Group			
Epidemiology & Disease Control-1, Dr. Scott Osborne, 301–435–1782.	Feb. 12–14	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. J. Terrell Hoffeld, 301–435–1781.	Feb. 24–25	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Nursing Research, Dr. Gertrude McFarland, 301–435–1784.	Feb. 20–21	8:30 a.m	Double Tree Hotel, Rockville, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Dr. Gene Zimmerman, 301–435–1220.	Feb. 21–22	8:30 a.m	Radisson Miyako Hotel, San Francisco, CA.
Experimental Immnunology, Dr. Calbert Laing, 301–435–1221.	Feb. 13–14	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. Betty Hayden, 301–435–1223.	Feb. 13–14	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–435–1224.	Feb. 26–28	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Infectious Diseases and Microbiology Review Group			
Bacteriology & Mycology-1 Dr. Timothy Henry, 301–435–1147.	Feb. 13–14	8:30 a.m	Marriott Residence Inn, Bethesda, MD.

Study section/contact person	January–March 1997 meetings	Time	Location
Bacteriology & Mycology-2, Dr. William Branche, Jr., 301–435–1148.	Feb. 12–13	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–435–1152.	Feb. 24–25	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics-1, Dr. Martin Slater, 301–435–1149.	Feb. 26–28	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, 301–435–1150.	Feb. 27–28	8:30 a.m	Homewood Suites, Santa Fe, NM.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–435–1146.	Feb. 13–14	8:00 a.m	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–435–1151	Mar. 3–4	8:30 a.m	Double Tree Hotel, Rockville, MD.
Musculoskeletal and Dental Science Initial Review Group			
General Medicine A-1, Dr. Harold Davidson, 301–435–1776.	Feb. 3–4	8:30 a.m	Marriott Hotel, Pooks Hill, Bethesda, Md.
General Medicine B, Dr. Shirley Hilden, 301–435–1198.	Feb. 27–28	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine–-1, Dr. Priscilla Chen, 301–435–1787.	Feb. 3–4	8:30 a.m	Holiday Inn-Old Town, Alexandria, VA.
Oral Biology & Medicine-2, 301–435–1787.	Feb. 17–18	8:30 a.m	ANA Hotel, Washington, DC.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–435–1215.	Feb. 3–4	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Neurological Sciences Initial Review Group			
Neurological Sciences-1, Dr. Carl Banner, 301–435–1251.	Feb. 26–27	8:30 a.m	Hyatt Regency Hotel, Bethesda, MD.
Neurological Sciences-2, Dr. Kathleen Michels, 301–435–1250.	Feb. 10–12	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Neurology B-1, Dr. Kathleen Michels, 301–435–1250.	Feb. 10–11	8:00 a.m	ANA Hotel, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, 301–435–1245.	Feb. 24–25	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, 301–435–1252.	Feb. 26–28	8:30 a.m	Radisson Barcelo Hotel, Washington, DC.
Nutritional and Metabolic Sciences Initial Review Group			
General Medicine A-2, Dr. Mushtaq Khan, 301–435–1778.	Feb. 27–28	8:30 a.m	DoubleTree Hotel, Rockville, MD.
Metabolism, Dr. Krish Krishman, 301–435–1779.	Feb. 27–28	8:00 a.m	DoubleTree Hotel, Rockville, MD.
Nutrition, Dr. Sooja Kim, 301–435–1780	Feb. 27–28	8:30 a.m	DoubleTree Hotel, Rockville, MD.
Oncological Sciences Initial Review Group			
Chemical Pathology, Dr. Edmund Copeland, 301–435–1715.	Feb. Jan. 30–Feb 1	8:00 a.m	DoubleTree Hotel, Ventura, CA.
Experimental Therapeutics-1, Dr. Philip Perkins, 301–435–1718.	Feb. 20–21	8:30 a.m	Hyatt Hotel, Key Bridge, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, 301–435–1719.	Feb. 26–28	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Metabolic Pathology, Dr. Marcelina Powers, 301–435–1720.	Feb. 18–20	8:30 a.m	Holiday Inn, Silver Spring, MD.
Pathology B, Dr. Martin Padarathsingh, 301–435–1717.	Mar. 3–5	8:00 a.m	Keystone Resort, Keystone, CO.
Radiation, Dr. Paul Strudler, 301–435–1716.	Feb. 24–26	8:30 a.m	Tamarron Resort, Durango, CO.
Pathophysiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Anne Clark, 301–435–1017.	Feb. 26–27	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Michael Lang, 301–435–1015	Feb. 14–15	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–435–1016.	Mar. 10–12	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–435–1249.	Feb. 17–18	8:30 a.m	Radisson Barcelo Hotel, Washington, DC.

Study section/contact person	January–March 1997 meetings	Time	Location
Sensory Disorders & Language, Mrs. Sosi Windle, 301–435–1277.	Feb. 12–14	8:30 a.m	Capitol Holiday Inn, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–435–1246.	Feb. 19–21	8:30 a.m	Ramada Inn, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Feb. 12–13	8:30 a.m	Radisson Barcelo Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsema, 301–435–1248.	Feb. 12–14	8:00 a.m	Omni Shoreham Hotel, Washington, DC.
Surgery, Radiology and Bioengineering Initial Review Group			
Diagnostic Radiology, Dr. Eileen Bradley, 301–435–1178.	Feb. 24–25	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery & Bioengineering, Dr. Nadarajen Vydelingum, 301–435–1176.	Feb. 20–21	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery, Anesthesiology & Trauma, Dr. Gerald Becker, 301–435–1750.	Feb. 19–20	1:00 p.m.	Georgetown Holiday Inn, Washington, DC.

The meetings willl be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: December 16, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32419 Filed 12–20–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–90]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT:

Mildred M. Hamman, (202)–708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Designated for Occupancy by Disabled, Elderly, or Mixed.

OMB Number: 2577–0192.

Description of the need for the information and proposed use: The information collection burden associated with designated housing is required by statute. Section 10 of the Housing Opportunity and Extension Act of 1996 modified Section 7 of the U.S. Housing Act of 1937 to require Public Housing Agencies (PHAs) to submit to HUD a plan for designation before they designate projects for elderly families only, disabled families only, or elderly and disabled families. In this plan, PHAs must document why the designation is needed and what additional housing resources will be available to the non-designated group.

Form Number: None.

Members of affected public: Public Housing Agencies, State or Local Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 176 respondents per year, one response per respondent, 21 hours average per response, 3,358 total reporting burden hours per year.

Status of the proposed information collection: Revision.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, amended.

Dated: December 17, 1996.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–32468 Filed 12–20–96; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Environmental Impact Statement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a final Environmental Impact Statement for the proposed reintroduction of the Mexican gray wolf within its historic range in the southwestern United States.

FOR FURTHER INFORMATION CONTACT: David Parsons, Mexican Gray Wolf Recovery Coordinator, P.O. Box 1306, Albuquerque, New Mexico 87103–1306, at (505) 248–6920.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the above address. Copies of the final EIS have been distributed to public libraries throughout Arizona and New Mexico, to Federal, State, local, and tribal agencies and organizations that commented on the draft EIS, and to individuals requesting copies. Copies of the EIS and copies of public comment on the draft EIS are also available for inspection at the U.S. Department of the Interior, Fish and Wildlife Service, Region 2 Headquarters, Albuquerque, New Mexico. Any comments on the proposal must be received no later than 30 days after the date of publication of the notice of availability, by EPA in the Federal Register, of the EIS on the reintroduction of the Mexican gray wolf within its historic range in the southwestern United States. No action will be taken on this proposal before 30 days following publication of the notice of availability of the EIS by EPA.

Dated: December 16, 1996.

John G. Rogers,

Director, Fish and Wildlife Service.

Dated: December 17, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–32476 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–55–M

[AK–962–1410–00–P; AA–6677–A]

Bureau of Land Management, Alaska; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Koniag, Inc., successor in interest to Nu-Nachk Pit, Inc., for approximately 10,760 acres. The lands involved are in the vicinity of Larsen Bay, Alaska.

Seward Meridian, Alaska

T. 30 S., R. 28 W.
T. 32 S., R. 28 W.
T. 29 S., R. 30 W.
T. 32 S., R. 30 W.
T. 31 S., R. 31 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 22, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Michael C. Johnson,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–32500 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–JA–P

Bureau of Land Management

[AK–962–1410–00–P; F–14940–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Stevens Village for 27.43 acres. The lands involved are in the vicinity of Stevens Village, Alaska:

T. 14 N., R. 7 W., Fairbanks Meridian, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 22, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Michael C. Johnson,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–32481 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–JA–M

[AK–962–1410–00–P; F–14944–A]

Bureau of Land Management, Alaska; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Tozitna, Limited for 327.95 acres. The lands involved are in the vicinity of Tanana, Alaska, within T. 4 N., R. 22 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News-Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 22, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–32499 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–$$–P

Bureau of Land Management—Interior

[ID–015–07–1610–00]

Amendment To Extend Public Comment Period on Draft Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS).

SUMMARY: On Tuesday, August 13, 1996 a Notice of Availability was published in the Federal Register for the draft Owyhee Resource Management Plan and draft Environmental Impact Statement (RMP/EIS). That notice indicated that the public comment period provided for in 43 CFR Part 1600 (BLM Planning Regulations) would remain open until November 15, 1996. A subsequent notice published on Friday, November 8, 1996 amended that notice and extended the public comment period until January 3, 1997. This notice amends both of those previous notices. The comment period has now been extended and will close on July 3, 1997.

DATES: The public comment period for the draft Owyhee Resource Management Plan and draft Environmental Impact Statement (RMP/EIS) has been extended and will close on July 3, 1997.

ADDRESSES: Written comments may be submitted at any time during the comment period to the Boise Field Office and should be sent to: Owyhee Area Manager, Bureau of Land Management, Boise Field Office, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Area Manager; or Fred Minckler, Team Leader at the address above. Telephone (208) 384–3300.

Dated: December 11, 1996.

David Vail,

Operations Manager.

[FR Doc. 96–32454 Filed 12–20–96; 8:45 am]

BILLING CODE 4310–GG–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Loan Guarantees to Israel; Notice of Investment Opportunity

The Government of Israel (the ''GOI'') wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development (''USAID'')-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to $10 billion principal amount of loans over a five-year period, with a maximum of $2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering contemplated to be made under the authorization for the current fiscal year.

In order to be considered as a managing underwriter for the proposed transaction, interested parties must demonstrate the requisite financial and technical capabilities by their responses to a Request for Proposals (''RFP''), which will be available from the GOI prior to the offering. Interested parties who wish to receive an RFP, when available, should contact Mr. Eliahu Ziv-Zitouk, Consul and Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 800 Second Avenue, New York, New York 10017 (fax: 212/499–5715).

Selection of underwriters and the terms of the loans are initially subject to the individual discretion of the GOI and thereafter subject to approval by USAID. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet the legal requirements for serving in such role. All firms are encouraged to submit proposals, regardless of ethnic origins, race or gender.

The full repayment of the loans will be guaranteed by USAID. To be eligible for a USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set forth in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned: Room 3417A N.S., 2201 C Street, N.W., Washington, D.C. 20523–0030, Telephone: 202/647–9839.

Dated: December 13, 1996.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 96–32532 Filed 12–20–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Under the Clean Water Act

In accordance both with a Court order dated November 19, 1996, and Department Policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *The Telluride Company,* Civil No. 93–K–2181 (D. Colo.), was lodged with the United States District Court for the District of Colorado on October 15, 1996.

The November 19, 1996, Court order required, among other things, that the proposed Consent Decree be published in the Federal Register in each of three consecutive weeks. This is the third and final publication of the proposed Consent Decree.

The proposed Consent Decree concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), resulting from the defendants' unauthorized filling of over 46 acres of alpine wetlands as part of their mountain resort development near Telluride, San Miguel County, Colorado. As part of the proposed Consent Decree, defendants will be required to pay a penalty of $1.1 million dollars and to implement a 16-acre restoration project to the satisfaction of the U.S. Environmental Protection Agency. Defendants have also agreed to abide by a site-wide management plan for the continued protection and preservation of the remaining wetlands that they own. The proposed Consent Decree preserves the United States' right to appeal in earlier ruling of the Court. If the appeal is successful, defendants will be obligated to perform an additional 15-acres of wetland restoration along the San Miguel River and pay an additional penalty of $50,000.

The Clerk of the United States District Court will receive written comments relating to the proposed Consent Decree until January 23, 1997. Comments should be addressed to James R. Manspeaker, Clerk of the District Court, United States Courthouse, 1929 Stout Street, Denver, CO 80294. Please send a copy of any comments to Robert H. Foster, U.S. Department of Justice,

Environmental Defense Section, 999 18th Street, Suite 945, Denver, CO 80202. The comments should refer to *United States* versus *The Telluride Company,* Civil No. 93–K–2181 (D. Colo.), and should also make reference to DJ # 90–5–1–4–293.

The proposed Consent Judgment may be examined at three (3) locations: (1) The Clerk's Office, United States District Court for the District of Colorado, 1929 Stout Street, Denver, CO 80295, (2) the Clerk's Office, San Miguel County Courthouse, 305 West Colorado, Telluride, CO 81435 and (3) the Clerk's Office, United States District Court for the District of Colorado, 402 Rood Avenue, Room 301, Grand Junction, CO 81501.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 96–30993 Filed 12–20–96; 8:45 am]

BILLING CODE 4410–15–M

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice of information collection under emergency review; Church arson prevention grant program final reporting form.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by December 31, 1996.

If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC, 20503.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until February 21, 1997. 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.

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 Carol Winfield (address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Carol Winfield, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New data collection.

(2) Title of the Form/Collection: Church Arson Prevention Final Reporting 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: County units of government. Other: None. This data collection will gather information from each jurisdiction on the general spending operations within the purpose areas of the grant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 587 respondents at 30 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 293 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: December 18, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–32534 Filed 12–20–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–142]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Information regarding these technologies is available from the Office of Patent Counsel, John F. Kennedy Space Center.

DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Attorney, Mail Code DE–TPO, Kennedy Space Center; telephone (407) 867–2544.

NASA Case No. KSC–11688: Data Acquisition Control and Remote Programmable Amplifier Systems and Method;

NASA Case No. KSC–11804: Low Differential Pressure Generator;

NASA Case No. KSC–11884: Process and Equipment for Nitrogen Oxide Waste Conversion to Fertilizer.

Dated: December 16, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–32538 Filed 12–20–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–143]

Government-Owened Inventions, Available for Licensing.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Adminsitration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Jet Propulsion Laboratory, Mail Code SPJ, Pasadena, CA 91109. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, Mail Code SPJ, NASA Management Office-JPL, Pasadena, CA 91109; telephone (818) 354–5179.

NASA Case No. NPO–19293–1–CU: Convex Diffraction Grating Imaging Spectrometer.

Dated: December 16, 1996.

Edward A Frankle,

General Counsel.

[FR Doc. 96–32539 Filed 12–20–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–141]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: February 12, 1997, 8:30 a.m. to 4:00 p.m.; and February 13, 1997, 8:30 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202)/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Overview
—University Strategy Update
—Potential for Propulsion Advancements
—Subcommittee Reports
—Aviation Safety Research Program
—Aeronautics Enterprise (Metrics)
—Global Strategy Workshop
—Environmental Research Aircraft and Sensor Technology (ERAST)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 17, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–32537 Filed 12–20–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–139]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS) Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Monday, February 3, 1997, 8:30 a.m. to 5:00 p.m., Tuesday, February 4, 1997, 8:30 a.m. to 5:00 p.m., and Wednesday, February 5, 1997, 8:30 a.m. to 4:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 6–A/B West, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Edward J. Weiler, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Welcoming Remarks
—Update on Recent Events
—Budget and Other Programmatic Issues
—Review and Revision of Draft Strategic Plan
—Review of Draft Origins Technology Roadmap
—Plans for SScAC Strategic Planning Summer Meeting

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 17, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–32535 Filed 12–20–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–140]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Thursday, January 23, 1997, 8:30 a.m. to 5:00 p.m., and Friday, January 24, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Jet Propulsion Laboratory, Bldg. 238, Conference Room 543, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of Ongoing Missions
—Structure and Evolution of the Universe (SEU) Strategic Planning
—Plans and Concepts for Future Missions
—Development of SEU Technology ''Roadmap''
—NASA OSS Plans for Education and Public Outreach

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 17, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–32536 Filed 12–20–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CAPITAL PLANNING COMMISSION

District of Columbia Historic Preservation Review Board

AGENCY: National Capital Planning Commission.

ACTION: Proposed convention center; public meeting on historic preservation issues.

SUMMARY: In accordance with Section 106 of the National Historic Preservation Act, the National Capital Planning Commission has submitted the comments of the State Preservation Officer for the District of Columbia in assessing the potential effects on historic properties of the proposed Convention Center.

The site proposed by WCCA is 5½ blocks roughly bounded by Mt. Vernon Place, N Street, 7th & 9th Streets, NW.

The National Capital Planning Commission announces that as part of the State Historic Preservation Officer's review, the Historic Preservation Review Board is holding a public meeting to review the Section 106 documentation which identifies affected historic properties, assesses the effects, and discusses potential measures to mitigate or avoid the adverse effects, including consideration of alternative sites. The meeting will be held on:

Thursday, January 23, 1997 at 10:00 AM, 441–4th Street, N.W. (# Judiciary Square), Room 220 South (Zoning Commission Hearing Room).

The documentation to be considered will be available to the Board and to the general public on and after December 19, 1996 and may be reviewed by calling the National Capital Planning Commission at 202/482–7200.

SUPPLEMENTARY INFORMATION: This meeting will also serve as a component of the public participation efforts required to be undertaken by the National Capital Planning Commission by Section 106 under regulations of the Advisory Council on Historic Preservation. (See 36 CFR 800.3, 800.4 and 800.5). Part 800.5 stipulates that interested persons must be given an opportunity to receive information and express their views. Use of existing public agency involvement procedures is encouraged. Interested persons shall be invited to participate as consulting parties when they so request, including the head of local government, applicants for or holders of grants, permits, or licenses and owners of affected lands, and other interested persons when jointly determined appropriate by the National Capital Planning Commission, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation. To request consulting party status, write: National Capital Planning Commission, 801 Pennsylvania Ave., NW., Washington, D.C. 20576.

FOR FURTHER INFORMATION CONTACT: Nancy Witherell, National Capital Planning Commission, 801 Pennsylvania Ave., NW., Suite 301, Washington, D.C. 20576, Phone (202) 482–7256 or Steve Raiche, Historic Preservation Division, D.C. Department of Consumer & Regulatory Affairs, 614 H Street, NW., Room 305, Washington, D.C. 20001. Phone (202) 727–7360.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 96–32519 Filed 12–21–96; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL CREDIT UNION ADMINISTRATION

Information Collection; Comment Request for Re-Clearance

Dated: December 23, 1996.

The National Credit Union Administration (NCUA) intends to submit the following public information collection request to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Public comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Suzanne Beauchesne, (703–518–6412). Comments and/or suggestions regarding the information collection request should be directed to Ms. Beauchesne, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. (703) 518–6433; E-Mail Address: SUEB@NCUA.GOV within 60 days from the date of this publication in the Federal Register. Comments should also be sent to OMB Desk Officer, Mr. Alexander Hunt, at the following address: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington DC 20530.

National Credit Union Administration

OMB Number: 3133–0137.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval will expire.

Title: Community Development Revolving Loan Program for Credit Unions, Application for Technical Assistance.

Description: P.L. 99–609 (dated 11/6/86) authorized the transfer of the administration of the Community Development Credit Union Revolving Loan Program to the NCUA Board. NCUA Rules and Regulations, Part 705, authorizes the use of the earnings from the program funds to provide technical assistance to credit unions.

Respondents: Federal and State Credit Unions.

Estimated Number of Respondents/Recordkeepers: 71.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Once.

Estimated Total Annual Burden Hours: 71 hours.

Estimated Total Annual Cost: $8,688.98.

By the National Credit Union Administration Board on December 12, 1996.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–32473 Filed 12–20–96; 8:45 am]

BILLING CODE 7535–01–M

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following item, which is open to public observation, to the previously announced open meeting (Federal Register, page 66337, Tuesday, December 17, 1996) scheduled for 9:30 a.m., Thursday, December 19, 1996.

6. NCUA's Budget for 1997 and 1998.

The Board voted two-to-one, Vice Chairman Bowné voting no, that agency business requires that this item be considered with less than the usual seven days notice, that it be open to the public, and that no earlier announcement of this change was possible.

The previously announced items are:

1. Approval of Minutes of Previous Open Meeting.

2. Community Development Revolving Loan Program for Credit Unions: Notice of Applications for Participation.

3. Administrative Action under Section 109 of the Federal Credit Union Act.

4. Request for a Merger Between Two Corporate Credit Unions.

5. Final Rule: Amendment to Parts 701 and 707, NCUA's Rules and Regulations,

Organization and Operations of Federal Credit Unions; and Truth in Savings.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–32668 Filed 12–19–96; 1:45 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure; Meetings

AGENCY: National Labor Relations Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 (1972), and 29 C.F.R. Sec. 102.136 (1993), the National Labor Relations Board has established a National Labor Relations Board Advisory Committee on Agency Procedure, the purpose of which is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite case processing and improve Agency service to the public. Notices of the establishment and renewal of the Advisory Committee were published in the Federal Register on May 13, 1994 (59 FR 25128) and November 27, 1996 (61 FR 60311), respectively.

As indicated in the notice establishing the Advisory Committee, the Committee consists of two Panels which will meet separately, one composed of Union-side representatives and the other of Management-side representatives. Pursuant to Section 10(a) of FACA, the Agency hereby announces that the next meetings of the Advisory Committee Panels will be held on January 28, 1997 (Management-side) and January 30, 1997 (Union-side)

Time and Place: The meeting of the Management-side Panel of the Advisory Committee will be held at 10:00 a.m. on Tuesday, January 28, 1997, at the National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C., in the Board Hearing Room, Rm 11000. The meeting of the Union-side Panel of the Advisory Committee will be held at 10:00 a.m. on Thursday, January 30, 1997, at the same location.

Agenda: The agenda at the meetings of both Advisory Committee Panels will focus on the following issues and questions:

I. As is generally known, the Agency's challenged ballot procedure has for years included an informal practice which is commonly referred to as the ''ten percent rule''. Pursuant to this practice, the ''rule'' provided that normally a Regional Director would not approve a stipulated election agreement if more than 10% of the proposed bargaining unit was in dispute regarding eligibility and accordingly would necessitate at least 10% of the votes being subject to challenge. Further, in a Decision and Direction of Election, a Regional Director would not direct an election in a unit if the eligibility of more than 10% of the employees remained at issue. Finally, the Board, in Requests for Reviews, would not direct elections if more than 10% of the employees would vote subject to challenge. Notwithstanding this general practice, the Board in fact, however, in recent years has departed from the 10% rule on a case by case basis, occasionally directing elections in cases in which the eligibility of substantially more than 10% of the employees remained at issue. In some of these situations determinative election results were obtained, thereby obviating the need to address or decide the eligibility issues.

What would be the implications and ramifications if the Board expanded the so-called ''10% rule'' to as much as 30% or more? What should the upper limit be? Would such an expansion have any impact on the percentage of representation cases resolved by stipulated election agreement? Should Regional Directors be encouraged or authorized to approve stipulated election agreements which provide that in excess of 10% of the employees will vote subject to challenge? Generally, would this approach expedite the processing of Representation cases or would it create additional delay?

II. In a recent decision, *Cross Pointe Paper Corp.* v. *NLRB,* 89 F.3d 447, 152 LRRM 2812 (July 15, 1996), the 7th Circuit directed that the Board conduct a hearing with regard to certain objections.

As a result of the decision in *Cross Pointe,* should the Agency adopt a different approach in regard to investigating and conducting hearings regarding objections? For example, should the Board amend its rules and cease conducting investigations on objections issues and simply direct a hearing on the objections, providing, of course, that the objecting party has proffered evidence establishing a *prima facie* case? What should be required to establish a *prima facie* case? (e.g., authenticated documents, affidavits, specific offers of proof, lists of witnesses with a description of what they would testify to)? If a hearing is not held, should affidavits secured in the investigation be reviewed by the Board?

Public Participation: The meetings will be open to the public. As indicated in the Agency's prior notice, within 30 days of adjournment of the later of the Advisory Committee Panel meetings, any member of the public may present written comments to the Committee on matters considered during the meetings. Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Enid W. Weber, Associate Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Suite 11600, Washington, D.C. 20570–0001; telephone: (202) 273–1937.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Enid W. Weber, Associate Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Suite 11600, Washington, D.C. 20570–0001; telephone: (202) 273–1937.

Dated, December 17, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 96–32504 Filed 12–20–96; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review: Comment Request

Title of Proposed Collection: Evaluation of the Instructional Materials Development Program. 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 date collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. Such a notice was published at Federal Register 47960, dated September 11, 1996. No comments were received.

The materials are now being sent to OMB for review. Send any written comments to Desk Officer: OMB. NSF evaluation of the instructional Materials Development Program OIRA, Office of Management and budget, Washington, DC 205043. Comments should be received by February 17, 1997.

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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Abstract: Evaluation of the Instructional Materials Development Program classroom practice in elementary and secondary schools is closely linked with curriculum and instructional materials. Consequently, those who seek to improve educational opportunities and attainment appropriately include a focus on instructional materials development. The National Science Foundation (NSF) has long recognized the importance of instructional materials through its support for curriculum development. Recent attention to standards-based systemic reform raises new questions about instructional materials, including attention to development, marketing and distribution, adoption and implementation, and impact. The purpose of this study is to provide answers to questions related to these topics by gathering information from developers, marketers, school and district decision makers, and teachers.

Respondents and burden hours;

	Number of respondents	Number of responses/respondents	Average burden/responses (in hours)
Developers	180	1	1
Marketers ..	90	1	1
Customers	135	1	1.5
Teachers ...	200	1	2

Dated: December 17, 1996.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 96–32432 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On November 8, 1996, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on December 17, 1996 to the following applicants:

Rennis S. Holt, Permit #97–016
Gary D. Miller, Permit #97–017
Steven D. Emslie, Permit #97–018

Nadene G. Kennedy,

Permit Office.

[FR Doc. 96–32458 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: January 7–9, 1997; 8:00 a.m.—5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32440 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: January 9, 1997; 8:30 am—5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biotechnology Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1997 CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32444 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Research Equipment Grant Panel in Chemical and Transport Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: January 13, 1997; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 630, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact Person: Dr. Farley Fisher, Program Director, Combustion and Thermal Plasma and Dr. Timothy W. Tong, Program Director, Thermal Transport and Thermal Processing, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY97 Research Equipment Grant proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32448 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Transport Systems (#190); Notice Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport System (#190).

Date and Time: January 13, 1997; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contract Person: Drs. M. C. Roco and Roger E. A. Arndt, Program Directors, Fluid, Particulate, and Hydraulic Systems, Division of Chemical & Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY97 Research Equipment Grant proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential natural, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32449 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Surface Engineering and Tribology (#1205).

Date and Time: January 8, 1997; 8:30 AM-5:00 PM.

Place: Room 580, National Science Foundation, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Closed.

Contact Person: Jorn Larsen-Basse, Program Director, Surface Engineering and Tribology, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32442 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Surface Engineering and Tribology (#1205).

Date and Time: January 10, 1997; 8:30 AM–5:00 PM.

Place: Room 580, National Science Foundation, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Closed.

Contact Person: Jorn Larsen-Basse, Program Director, Surface Engineering and Tribology, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32446 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 16 and January 17, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 920, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32451 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel In Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: January 7, 1997, 8:00 a.m.—4:00 p.m.

Place: Seattle, Washington, The Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue, Seattle, Washington.

Type of Meeting: Closed.

Contact Person: Dr. George A. Hazelrigg, Program Manager, Design and Integration Engineering Program, (703) 306–1330, Dr. Georgia-Ann Klutke, Program Manager, Operations Research and Production Systems, (703) 306–1330, Dr. Jay A. Lee, Program Manager, Materials Processes and Manufacturing, (703) 306–1330, Dr. Ming Leu, Program Manager, Manufacturing, Machines and Equipment Program, (703) 306–1330, National Science Foundation,

4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate the CAREER/PECASE proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential natural, including technical information, financial data such as salaries, and person information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32439 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: Thursday & Friday, January 9–10.

Place: Rooms 730 National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Donald Heinrichs, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Room 725, Arlington, VA 22230. Telephone: (703) 306–1576.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Oceanography Instrumentation and Technical Services Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a prioprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32445 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in International Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in International Programs (#1201).

Date and Time: January 13–14, 1997; 8:00 a.m. to 5:00 p.m.

Place: Room 340.

Type of Meeting: Closed.

Contact Person: Randall Soderquist (or Larry Weber) Program Manager, Division of International Programs, Room 935, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1701.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Division of International Programs' Summer Programs in Japan and Korea as part of the selection process for awards.

Reason for Closing: The meeting is closed to the public because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32450 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: January 8–10, 1997 8:30 a.m.–5:00 p.m.; January 15–17, 1997 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning support for Instrumentation proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32441 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Microelectronic Information Processing Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Microelectronic Information Processing Systems.

Date and Time: January 8, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Foster, Program Director, Microelectronic Information Processing Systems Division, National Science Foundation, Rm. 1155, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF CAREER program in the area of microelectronic information processing systems.

Reason for Closing: The proposals being reviewed include information of a confidential nature including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32443 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: January 10, 1997: 8:00 a.m. to 5:00 p.m.

Place: Room 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Odile de la Beaujardiere, Program Director, Arctic Natural Sciences, Office of Polar Programs, Room 740, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Arctic Natural Sciences Interdisciplinary proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32447 Filed 12–20–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement to be Submitted

1. *The title of the information collection:* 10 CFR Part 140, ''Financial Protection Requirements and Indemnity Agreements''

2. *Current OMB approval number:* 3150–0039

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act)

4. *Who is required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR Part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70

5. *The number of annual respondents:* Approximately 192

6. *The number of hours needed annually to complete the requirement or request:* 865

7. *Abstract:* 10 CFR Part 140 of the NRC's regulations specified information required to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, as amended.

Submit, by Febraury 21, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of December 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–32487 Filed 12–20–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–353]

PECO Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–85 issued to PECO Energy Company (the licensee) for operation of the Limerick Generating Station (LGS), Unit 2, located in Montgomery County, Pennsylvania.

The proposed amendment would revise technical specification (TS) Section 2.1 and its associated TS basis to reflect the change in the Minimum Critical Power Ratio Safety Limit, due to the use of GE13 fuel product line and the cycle-specific analysis performed by the General Electric Company (GE), for LGS, Unit 2, Cycle 5.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised Minimum Critical Power Ratio (MCPR) Safety Limit for LGS Unit 2 Technical Specifications, and its use to determine cycle-specific thermal limits have been performed using NRC-accepted methodology described in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13, and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996 and the Technical Design Procedure (''GETAB Safety Limit'', TDP–0049, Revision 0, July 1996). This change in the MCPR Safety Limit cannot increase the probability or severity of an accident.

The basis of the MCPR Safety Limit calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new MCPR Safety Limit preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the calculation of the MCPR Safety Limit apply to Limerick Generating Station (LGS), Unit 2, Cycle 5 in the same manner as they have applied previously. The probability of fuel damage is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a TS numerical value, designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. It cannot create the possibility of any new type of accident. The new Minimum Critical Power Ratio (MCPR) Safety Limit is calculated using NRC-accepted methodology described in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13, and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996 and the Technical Design Procedure (''GETAB Safety Limit'', TDP–0049, Revision 0, July 1996).

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new Minimum Critical Power Ratio (MCPR) Safety Limit is calculated using NRC-accepted methodology described in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13, and U.S. Supplement, NEDE–24011–P–A–13–US, August 1996 and the Technical Design Procedure (''GETAB Safety Limit'', TDP–0049, Revision 0, July 1996). The fuel licensing acceptance criteria for the calculation of the MCPR Safety Limit apply to LGS Unit 2, Cycle 5 in the same manner as they have applied previously. The MCPR Safety Limit is set high enough to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 22, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or

controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 6, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 17th day of December 1996.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–32488 Filed 12–20–96; 8:45 am]

BILLING CODE 7590–01–P

[Project No. 697]

Notice of Receipt of DOE Topical Report on Tritium Producing Burnable Poison Rod Lead Test Assemblies

In order to maintain the strategic stockpile, the U.S. Department of Energy (DOE) is considering the use of commercial light water reactors to produce tritium. On December 4, 1996, DOE submitted a topical report to the U.S. Nuclear Regulatory Commission (NRC) entitled, ''Report on the Evaluation of the Tritium Producing Burnable Absorber Rod Lead Test Assembly,'' intended to demonstrate that the use of a commercial light-water reactor to irradiate a limited number of lithium burnable poison rods in lead test assemblies (LTAs) does not raise generic issues involving an unreviewed safety question.

The NRC staff will prepare a safety evaluation on the DOE report to address, on a preliminary basis, the acceptability of licensees undertaking irradiation of the LTAs under the provisions of 10 CFR 50.59.

Upon completion of its evaluation, the staff will present its conclusions to the Commission prior to issuance.

The staff plans to hold public meetings to provide for public comment regarding the technical issues early in the evaluation process. In addition, the staff plans to hold a public meeting in the vicinity of the host reactor prior to loading the LTAs into the reactor. The date and location of the meetings will be announced later.

FOR FURTHER INFORMATION CONTACT: J.H. Wilson at (301) 415–1108.

For further details with respect to this action, see the DOE topical report submitted by letter dated December 4, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 13th day of December, 1996.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–32489 Filed 12–20–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 16, 1997
Thursday, January 23, 1997
Thursday, February 13, 1997
Thursday, February 27, 1997
Thursday, March 13, 1997
Thursday, March 27, 1997

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for

Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: December 12, 1996.

Phyllis G. Foley,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 96–32477 Filed 12–20–96; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A97–7]

DiGiorgio, California 93217: (Zack Clark, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Issued December 17, 1996.

Docket Number: A97–7.

Name of Affected Post Office: DiGiorgio, California 93217.

Name(s) of Petitioner(s): Zack Clark, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 13, 1996.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by December 27, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

December 13, 1996—Filing of Appeal letter

December 17, 1996—Commission Notice and Order of Filing of Appeal

January 7, 1997—Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]

January 17, 1997—Petitioners' Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115 (a) and (b)]

February 6, 1997—Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]

February 21, 1997—Petitioners' Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]

February 28, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]

April 12, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–32477 Filed 12–20–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22401; 811–7416]

Voyageur Missouri Municipal Income Fund, Inc.; Notice of Application

December 16, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Voyageur Missouri Municipal Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 90 South Seventh Street, Suite 4400 Minneapolis, Minnesota 55402–4115.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company incorporated under the laws of Minnesota. On December 31, 1992, applicant registered under the Act and filed a registration statement on Form N–2 under the Act and the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant made no public offering of its securities.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

3. Applicant will statutorily dissolve its existence in Minnesota.

For the SEC, by the Division of Investment Management, under delegated authority.

Margeret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32456 Filed 12–20–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22400; 811–7940]

Voyageur Texas Municipal Income Fund; Notice of Application

December 16, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Voyageur Texas Municipal Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 90 South Seventh Street, Suite 4400 Minneapolis, Minnesota 55402–4115.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary K. Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company organized as a Massachusetts business trust. On August 5, 1993, applicant registered under the Act and filed a registration statement on Form N–2 under the Act and the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant made no public offering of its securities.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

3. Applicant terminated its existence in Massachusetts in 1993.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32455 Filed 12–20–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–94–066]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC provides advice and makes recommendations to the Coast Guard on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

DATES: Applications and any supporting information must be received on or before February 28, 1997.

ADDRESS: Application forms may be obtained by writing Commandant (G–MOV–3), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–0001; or by calling (202) 267–0415; or by faxing (202) 267–4826. Completed application forms must be submitted to the same address.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, or Diane Schneider, Executive Secretary, telephone (202) 267–0352, fax (202) 267–4826.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory council constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Secretary of Transportation, via the Commandant of the Coast Guard, on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its committees and working groups may meet to consider specific problems as required.

The Coast Guard will consider applications for seven positions that expire or become vacant on June 30, 1997. To be eligible, applicants should have expertise in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

Each member serves for a term of 3 years. A few members may serve consecutive terms. Members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially interested in receiving applications from qualified women and minority group members.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: December 12, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 96–32470 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–96–060]

Lower Mississippi River Waterway Safety Advisory Committee Ports and Waterways Safety Systems ad hoc Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee Ports and Waterways Safety Systems ad hoc Committee will hold 8 meetings to develop a baseline Vessel Traffic Service system for the Lower Mississippi River area. The meetings will be open to the public.

DATES: The meetings will be held from 9 a.m. to approximately 3 p.m. on Wednesday, January 22, 1997, Wednesday, February 5, 1997, Thursday, February 20, 1997, Wednesday March 5, 1997, Friday, March 21, 1997, Wednesday, April 2, 1997, Thursday, April 17, 1997 and Tuesday, April 29, 1997.

ADDRESSES: The meetings will be held at the New Orleans Board of Trade, Ltd., 316 Board of Trade Place, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of these meetings are given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The meetings are open to the public. Members of the public are encouraged to provide oral or written comments to a committee representative in advance of the meeting. Due to time constraints, only written comments will be received during a meeting. Written comments presented during a meeting will be submitted for consideration at the next meeting.

The agenda for the meeting consists of the following items:

(1) Presentation of the committee charter.

(2) Review of previous meeting minutes.

(3) Committee discussions.

(4) Adjournment.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Committee Administrator as soon as possible.

Dated: December 13, 1996.

T.W. Josiah,

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

[FR Doc. 96–32471 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–14–M

[CGD 96–069]

Marine Oil Spill Response Hazardous Waste Operations and Emergency Response (HAZWOPER) Training Workshop

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard, in cooperation with the Occupational Safety and Health Administration (OSHA) and the Association of Petroleum Industry Cooperative Managers (APICOM), is conducting a workshop to solicit comments from the public on marine oil spill response HAZWOPER training. This workshop is intended to serve as an open forum for the discussion of issues relevant to the training requirements for marine oil spill response workers as contained in 29 CFR 1910.120. Federal, state, and local agencies and the public are invited to participate and provide oral or written comments. This notice announces the date, time, location, and format for the workshop.

DATES: The workshop is scheduled for Wednesday, January 29, 1997, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The workshop will be held at the Holiday Inn and Suites, 625 1st Street, Alexandria, Virginia. Written comments should be mailed to Commandant (G–MOR–3), Room 2100, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 205593–0001, ATTN: LCDR Terry Hoover.

FOR FURTHER INFORMATION CONTACT: Mr. Darryle Waldron, Manager, Clean Seas, via fax at (805) 684–2650. Please include your name, telephone number, FAX number, mailing address and organization. Upon receipt of this information, details about the workshop will be provided via FAX or regular U.S. mail.

SUPPLEMENTARY INFORMATION: The Coast Guard, OSHA, APICOM, and others in the marine oil spill response industry have been working over the past several years to provide clear policy and regulatory language regarding training standards and requirements that accurately address the risks associated with protecting workers responding to marine oil spills. The shared objective of all of these organizations is to prepare definitive language that promotes clear and consistent health and safety training requirements for marine oil spill response personnel.

In order to reach the objective, the workshop will address amending Appendix E of 29 CFR 1910.120 to include a section under Suggested Training Curriculum Guidelines for marine oil spill response. This addition would provide non-mandatory regulatory guidance for marine oil spill response training. Joint publication of a ''National Guidance Document'' to assist all stakeholders in successfully implementing the provisions of 29 CFR 1910.120 during a marine oil spill response will also be discussed.

The workshop format will consist of an opening plenary session with presentations made by a panel, followed by a short question and answer period and concurrent workgroup breakout sessions. The workshop will conclude with a closing plenary session including reports from the breakout sessions and a summary of the workshop findings and recommendations. Due to time constraints, the Coast Guard will limit the number and duration of panel presentations. The Coast Guard will select panel members to make presentations in a manner designed to ensure the broadest possible representation of viewpoints. Anyone wishing to participate in the panel presentations should submit their name, address, organization (if any) and a summation of their presentation at least 14 days prior to the workshop to Commandant (G–MOR), Room 2100, 2100 Second Street, SW, Washington, DC 20593–0001, ATTN: LCDR Terry Hoover.

Dated: December 12, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 96–32472 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–14–M

Privacy Act of 1974: System of Records

AGENCY: United States Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Notice to amend a system of records.

EFFECTIVE DATE: December 23, 1996.

ADDRESSES: Send comments to the Privacy Act Officer, U.S. Department of Transportation, 400 7th St., S.W., M–30, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Crystal Bush, U.S. Department of Transportation, Office of Information Resource Management, 400 7th Street, SW., Washington, DC 20590, 202–366–9713.

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the above mentioned address.

The specific changes to the records system being amended is set forth below followed by the notice, as amended, and is published in their entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems report.

Dated: December 16, 1996.

Crystal M. Bush,

Privacy Act Coordinator, Department of Transportation.

DOT/CG 623

SYSTEM NAME:

Military Pay and Personnel System.

SYSTEM LOCATION:

Department of Transportation (DOT),

a. U.S. Coast Guard (CG), Department of Transportation Computer Center, 400 7th Street, SW, Washington, DC 20590–0001.

b. U.S. Coast Guard Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683–3591.

c. U.S. Coast Guard, 2100 2nd Street, SW, Washington, DC 20593–0001.

d. Decentralized data segments are located at the unit maintaining the individual's pay and personnel record and permanent duty unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. All Coast Guard military personnel, active duty and reserve.

b. Retired reserve Coast Guard military personnel waiting for pay at age 60.

c. Active duty National Oceanic and Atmospheric Administration (NOAA) officers.

d. Personnel separated from service in all the preceding categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records are electronic and/or paper, and may include identifying information, such as name(s), date of birth, home residence, mailing address, social security number, payroll information, and home telephone number. Records reflect:

a. Work experience, educational level achieved, and specialized education or training obtained in and outside of military service.

b. Military duty assignments, ranks held, pay and allowances, personnel actions such as promotions, demotions, or separations.

c. Enrollment or declination of enrollment in insurance programs.

d. Performance evaluation.

e. The individual's desires for future assignments, training requested, and notations by assignment officers.

f. Information for determinations of waivers and remissions of indebtedness to the U.S. Government.

g. Information for the purpose of validating legal requirements for garnishment of wages.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Title 37 U.S.C. as implemented in GAO Manual for Guidance of Federal Agencies, Title 2 GAO, Title 6 GAO and Title 14 U.S.C. 92(i).

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To the Department of Treasury for the purpose of disbursement of salary, U.S. Savings Bonds, allotments, or travel claim payments.

b. To government agencies to disclose earnings and tax information.

c. To the Department of Defense and Veterans Administration for determinations of benefit eligibility for military members and their dependents.

d. To contractors to manage payment and collection of benefit claims.

e. To the Department of Defense for manpower and readiness planning.

f. To the Comptroller General for the purpose of processing waivers and remissions.

g. To contractors for the purpose of system enhancement, maintenance, and operations.

h. To federal, state, and local agencies for determination of eligibility for benefits connected with the Federal Housing Administration programs.

i. To provide an official of another federal agency information needed in the performance of official duties to reconcile or reconstruct data files in support of functions for which the records were collected and maintained.

j. To an individual's spouse, or person responsible for the care of the individual concerned when the individual to whom the record pertains is mentally incompetent, critically ill or under other legal disability for the purpose of assuring the individual is receiving benefits or compensation they are entitled to receive.

k. To a requesting government agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while a member of government service.

l. To businesses for the purpose of electronic fund transfers or allotted pay transactions authorized by the individual concerned.

m. To credit agencies and financial institutions for the purpose of processing credit arrangements authorized by the individual concerned.

n. To other government agencies for the purpose of earnings garnishment.

o. To prepare the Officer Register and Reserve Officer Register which is provided to all Coast Guard officers and the Department of Defense.

p. To other federal agencies and collection agencies for the collection of indebtedness and outstanding travel advances to the federal government.

q. The home mailing addresses and telephone numbers of members and their dependent/s to duly appointed Family Ombudsman and personnel within the Coast Guard for the purpose of providing entitlement information to members or their dependents.

See Prefatory Statement of General Routine Uses, 3 and 5 do not apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks, magnetic tape microfilm, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by name or social security number and can be accessed by employees in pay and personnel offices and other pay and personnel employees located elsewhere who have a need for the record in the performance of their duties.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. The magnetic tape backups have limited access in that users must justify the need and obtain tape numbers and volume identifiers from a central source before they are provided data tapes. Paper record and microfilm records are in limited access areas in locking storage cabinets.

RETENTION AND DISPOSAL:

Leave and Earnings Statements, and pay records are microfilmed and retained on site four years, then archived at the Federal Record Center, and destroyed when 50 years old. The official copy of the personnel record is maintained in the Official Officer Service Records, DOT/CG 626 for active duty officers, the Enlisted Personnel Record System, DOT/CG 629 for active duty enlisted personnel or the Official Coast Guard Reserve Service Record, OST/CG 576 for inactive duty reservists. Duplicate magnetic copies of the pay and personnel record are retained at an off site facility for a useful life of seven years. Paper records for waivers and remissions are retained on site six years three months after the determination and then destroyed. Paper records to determine legal sufficiency for garnishment are retained on site six years three months after the member separates from the service or the garnishment is terminated and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

a. All information on Coast Guard members other than b., c., and d. below:

(1) For active duty members of the Coast Guard: Chief, Office of Personnel, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001.

(2) For Coast Guard inactive duty reserve members and retired Coast Guard reservists awaiting pay at age 60: Chief, Office of Readiness and Reserve, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001.

b. For Coast Guard Waivers and Remissions: Chief, Personnel Services Division (G-PMP), Office of Personnel, U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20590–0001.

c. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683–3591.

d. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters.

e. For NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

Inquiries should be directed to:

a. For all information on Coast Guard members other than b., c., and d. Below: Department of Transportation, U.S. Coast Guard Headquarters (G-SII), 2100 2nd Street, SW, Washington, DC 20593–0001.

b. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, U.S. Coast Guard Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683–3591.

c. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters. Addresses for the units handling the individual's pay and personnel record are available from the individual's commanding officer.

d. For all information on NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

RECORD ACCESS PROCEDURES:

Contact the addressee under notification procedures and specify the exact information you desire. Requests must include the full name and social security number of the individual concerned. Prior written notification of personal visits is required to ensure that the records will be available at the time of visit. Photographic proof of identity will be required prior to release of records. A military identification card, driver's license or similar document will be considered suitable identification.

CONTESTING RECORD PROCEDURES:

Contact the addressee under notification procedures and specify the exact information or items you are contesting and provide any documentation that justifies your claim. Correspondence contesting records must include the full name and social security number of the individual concerned.

RECORD SOURCE CATEGORIES:

a. The individual's record from the following systems of records:

(1) Official Officer Service Records, DOT/CG 626

(2) Enlisted Personnel Record System, DOT/CG 629

(3) Official Coast Guard Reserve Service Record, DOT/CG 676

b. Information is obtained from the individual, Coast Guard personnel officials, National Oceanic and Atmospheric Administration personnel officials, and the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–32544 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: Interested persons are invited to submit comments on or before January 22, 1997.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB for reinstatement, without change, of a previously approved collection for which approval has expired and extension of a currently approved collection.

1. *Title:* Domestic and International Flight Plan Forms.

OMB Control Number: 2120–0026.

Form Number: FAA Form 7233–1, FAA Form 7233–4.

Type of Request: Extension of a currently approved collection.

Abstract: The Federal Aviation Administration Act of 1958, Section 307 (49 U.S.C. 1348) authorized regulations governing the flight of aircraft. 14 CFR prescribes requirements for filing domestic and international flight plans. Information is collected to provide protection to aircraft in flight and persons/property on the ground.

Respondents: 682,959 flight plans.

Frequency: On occasion.

Burden: 263,660 hours annually.

2. *Title:* Part 135—Operating Requirements: Commuter and On-Demand Operation.

Form Number: FAA Form 8070–1—Service Difficulty Report.

Type of Request: Extension of a currently approved collection.

Abstract: The Federal Aviation Administration Act of 1958, Section 604 (49 U.S.C. 1424) authorizes the issuance of air carriers operating certificates. 14 CFR part 135 prescribes requirement for air carriers/commercial operators. Information collected shows compliance and applicant eligibility.

Respondents: The respondents are an estimated 3,760 air carrier and commercial operators.

Frequency: On occasion.

Burden: 1,075,007 hours annually.

3. *Title:* Race and National Origin Identification.

Form Number: SF–181–A.

OMB Control Number: 2120–0545.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The collection of data is necessary for examination of employee selection procedures, enhancement of recruitment programs, and providing equal employment opportunity to all candidates.

Respondents: The respondents are an estimated 60,000 individuals taking the FAA air traffic control specialist examination.

Frequency: On occasion.

Burden: Approximately 1,667 hours annually.

Comments on these collections should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attention: DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on December 16, 1996.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96–32543 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–13–P

Federal Highway Administration

[FHWA Docket No. 97–10]

Highway Performance Monitoring System—Strategic Reassessment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests public comment on issues related to a strategic reassessment of the Highway Performance Monitoring System (HPMS) that the FHWA is initiating. Public comments are solicited at this time on the conceptual plan for the reassessment described in this notice, in addition to comments on other issues that should be considered in planning and conducting the reassessment. The FHWA working papers developed during the conduct of this reassessment will be placed in the docket for review and comment.

DATES: This docket will remain open until the reassessment is complete. However, in order for comments to be considered in the early stages of the reassessment, comments should be submitted on or before February 21, 1997.

ADDRESSES: All signed, written comments should refer to the FHWA Docket Number 97–10, and must be submitted to the Office of the Chief Counsel, Federal Highway Administration, 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: Mr. James Getzewich, Highway System Performance Division, Office of Highway Information, (202) 366–0175, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The HPMS was developed in 1978 as a national highway transportation system data base. In its current configuration, the HPMS includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional systems, and area-wide summary information for urbanized, small urban, and rural areas. The HPMS replaced numerous uncoordinated annual State data reports and biennial special studies conducted by each State for the FHWA. These reports and biennial special studies were conducted to provide information to support requirements of title 23, U.S.C., section 307(h), which calls for a biennial report to Congress on the future highway needs of the Nation. The first report, entitled 1968 National Highway Needs Report, was submitted to Congress in January 1968. The first report to make use of the HPMS data base, entitled The Status of the Nation's Highways: Conditions and Performance, was submitted to Congress in January 1981.

A major purpose of the HPMS has always been to provide data that reflects the extent, condition, performance, use, and operating characteristics of the Nation's highways. In order to meet this primary objective, the HPMS has gone through an evolutionary process that has recognized over time the changing needs for accurate and timely data related to these purposes.

The HPMS was originally implemented in 1978 as a national sample-based monitoring system designed to assess the use and condition of the Nation's highway systems. The sample data was supplemented with area-wide mileage, travel, and other data as a means to provide control total information and for other analytical purposes. In 1980, the HPMS merged with the Mileage Facilities Reporting System (MFRS), which was a basic inventory system that included facility mileage, travel, and accident statistics. After the HPMS and MFRS systems merged, a single system evolved to include the universe data attributes of the MFRS, and the sample and area-wide data attributes of the original HPMS.

In 1988, the HPMS was again enhanced with the addition of more detailed pavement data, including International Roughness Index (IRI) measurements of surface roughness. Most recently, in 1993, the HPMS was again revised to meet needs brought about by changes in the FHWA analysis and simulation models, including the shift to a geographic information system (GIS) environment; the effects of the 1990 Census; the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914; the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399; and the Environmental Protection Agency (EPA) requirements concerning vehicle miles of travel (VMT) tracking data in air quality non-attainment areas. See Section 187, VMT Forecasting and Tracking Guidance, 57 FR 9549 (March 19, 1992). The 1993 revision of the HPMS added nearly a dozen universe data items to be collected for the National Highway System (NHS) and other principal arterials. The amount of sample traffic data for urbanized air quality non-attainment areas was increased, as were the percent truck data requirements. Several pavement data items were deleted in their entirety, as were sample data items for rural minor collectors.

For the most part, changes to the HPMS over its nearly 20 year life reflect an evolutionary process by which the HPMS data base adjusts responsively to legislative changes and other changes in the focus of the highway program. The HPMS has evolved over time to stay responsive to the demands placed upon it.

Purpose

The purpose of the strategic reassessment is to review the HPMS in light of contemporary issues and anticipated future needs, and determine what changes, if any, are necessary at this time. The reauthorization of the ISTEA provides an appropriate opportunity and framework for the FHWA to undertake a reassessment of the HPMS. Also providing an impetus to this strategic review, are constant changes in technology, the development and deployment of Intelligent Transportation Infrastructure (ITI), requirements of the Government Performance and Results Act of 1993 (GPRA), Pub. L. 103–62, 107 Stat. 285, changes to State data requirements, increased State use of management systems, and reassessment of the roles of government and the private sector.

Study Plan

The FHWA will undertake a multi-step approach to complete the strategic reassessment. The first step will focus on the development of an FHWA working paper that will explore several potential alternatives for a future HPMS. The working paper will be placed in the docket noted above for review and comment upon its completion. Completion of the working paper is expected by December 31, 1996. The working paper intends to address alternative HPMS futures including, but not necessarily limited to, the following scenarios:

(a) Redefining the federal role in monitoring highway condition and performance through the HPMS, to a role that concentrates on the NHS;

(b) Establishing a data collection process to replace the HPMS that would focus, primarily, on the federal collection of a nationally significant data sample to assess, and report on, conditions and performance for all non-local functional systems;

(c) Changing the HPMS, while continuing to focus on a State significant HPMS data sample that will serve both Federal and State level policy and planning needs;

(d) Placing greater reliance on other sources for HPMS data, such as State management systems and intelligent transportation system (ITS) deployments; and,

(e) Maintaining the status quo—minor, or no change. Comments on these, or other appropriate, scenarios are invited.

A second step will focus on an outside study of the existing HPMS. This outside study will also include making an assessment on a number of critical issues related to the future form, and direction, of the HPMS. Completion of this step is expected by April 15, 1997. The parameters of the outside study will likely include, but not necessarily be limited to, the following issues:

(a) The purpose, scope and objectives of the existing HPMS;

(b) Whether collection of HPMS data is necessary;

(c) Uses, and users, of HPMS data;

(d) Better integration of the HPMS and the existing State, and local, data processes;

(e) More effective collection of HPMS data; and,

(f) Appropriate alternatives to the current HPMS.

Comments on these, or other appropriate, issues are invited.

The third step will focus on the development, and execution, of a public outreach and involvement program. The objective of this step is to provide maximum opportunity for participation in the strategic reassessment of the HPMS by those customers, stakeholders, partners, and other interests that are impacted by the HPMS. This step is expected to be completed by July 31, 1997. Mechanisms that are being considered for this effort include, but are not limited to, the following elements:

(a) Participation of the general public and interest groups through the review and comment process of working

documents, as well as interim and final products submitted pursuant to this notice and docket;

(b) Participation of the general public and interest groups through attendance at national workshop(s) and/or meeting(s);

(c) Participation of the transportation community at large through the Transportation Research Board (TRB);

(d) Participation of States through the American Association of State Highway and Transportation Officials (AASHTO);

(e) Participation of the metropolitan planning organizations (MPOs) through the Association of Metropolitan Planning Organizations (AMPO);

(f) Participation of organizations which represent non-government users of the HPMS data; and,

(g) Continued participation by the existing HPMS Steering Committee. Comments on the elements of an appropriate outreach program are invited.

The final step will focus upon the synthesis of the working paper on alternatives, the outside study of the HPMS, and the results of the outreach and involvement program to define appropriate changes to the HPMS. The synthesis is expected to be completed by September 30, 1997; and the results will be published for comment. The FHWA is initiating this strategic reassessment with the intention to maximize public input and provide as much flexibility as possible in meeting future HPMS data needs. However, there are a number of principal objectives that will guide the outcome of the reassessment effort. First, the future HPMS will need to support any changes to the FHWA's stewardship responsibilities that may result from the reauthorization of the ISTEA. In addition, the future HPMS will need to continue to support various Congressional requirements, including the Conditions and Performance Reports and those imposed by the GPRA. Finally, the outcome of the strategic reassessment process must recognize the national interest in the NHS and the need to continue to assess highway conditions and performance at the national level.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 12, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–32479 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket Number 96–120; Notice 1]

Proposed Collection; Comment Request for 49 CFR 537

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

ACTION: Request for public comment on proposed collections of information.

SUMMARY: The Department of Transportation, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 United States Code (U.S.C.) 3506 (c)(2)(A)). Currently, NHTSA is soliciting comments concerning 49 Code of Federal Regulations (CFR) 537—Automotive Fuel Economy Reports.

DATES: Comments must be received on or before February 21, 1997.

ADDRESSES: Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh Street, Southwest, Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that one original plus two copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, Southwest, Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2590. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR 537—Automotive Fuel Economy Reports.

OMB Number: 2127–0019.

Form Number: This collection of information uses no standard form.

Abstract: Part 537 requires that automobile manufacturers submit semi-annual reports to NHTSA regarding their efforts to improve fuel economy.

Type of Review: Reinstatement of a previously approved collection.

Affect Public: Business or other for-profit organizations.

Estimated Number of Respondents: 18.

Requested Expiration Date: Three years from approval date.

Summary of the Collection of Information: NHTSA ensures that automobile manufacturers comply with 49 CFR Part 537—Automotive Fuel Economy Reports. Part 537 requires that automobile manufacturers submit reports to NHTSA regarding their efforts to improve automotive fuel economy.

Section 32907 of Chapter 329 of Title 49 of the United States Code requires each automobile manufacturer (other than those low volume manufacturers which were granted an alternative fuel economy standard under section 32902 (d)) to submit semi-annual reports to the agency relating to that manufacturers' efforts to comply with average fuel economy standards. One report is due during the 30-day period preceding the beginning of each model year (the ''pre-model year report'') and the other is due during the 30-day period beginning on the 180th day of the model year (the ''mid-model year report'').

Section 32907 (a)(1) of Chapter 329 provides that each report must contain a statement as to whether the manufacturer will comply with average fuel economy standards for that year, a plan describing the steps the manufacturer took or will take to comply with the standards, and any other information the agency may require. Whenever a manufacturer determines that a plan it has submitted in one of its reports is no longer adequate to assure compliance, it must submit a revised plan.

Description of the Need for the Information and Proposed Use of the Information

This information assists NHTSA in evaluating automobile manufacturers' plans for complying with average fuel economy standards and in preparing an annual review of the average fuel economy standards. The information is collected by NHTSA by having the automobile manufacturers mail their semi-annual automotive fuel economy reports and/or submit a copy on computer diskette to the agency. The required information is used for four basic purposes. These purposes are: (a) to give NHTSA advance indication if any manufacturer will fail to comply with the applicable average fuel economy standards; (b) to give NHTSA necessary information to prepare its annual fuel economy report to Congress, as required by 49 U.S.C. 32916; (c) to assist NHTSA in responding to general

information requests concerning automotive fuel economy, which are routinely received from Congress, other parts of the Executive branch, and the public; and (d) to provide NHTSA with detailed and accurate technical and economic information used to evaluate possible future average fuel economy standards which may be established by NHTSA.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The burden of the proposed collection of information, including the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(v) Estimates of annual hours required to prepare and submit these reports to NHTSA; and

(vi) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information to NHTSA.

Issued on: December 3, 1996.

Noble Bowie,

Acting Director, Office of Planning and Consumer Programs, Safety Performance Standards.

[FR Doc. 96–32482 Filed 12–20–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Finance Docket No. 33303]

Clark County, Washington—Acquisition Exemption—Burlington Northern Santa Fe Railroad

Clark County, Washington (CCW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41: (1) to acquire a total of approximately 3.6 miles of rail line owned by Burlington Northern Santa Fe Railroad and located in Clark County, Washington, between milepost 3.62 at Rye and milepost 0.0 at Vancouver Junction (the Rye Branch). The proposed transaction was to be consummated on December 6, 1996, or as soon thereafter as the selected operator's exemption becomes effective.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33303, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Washington, DC 20036.

Decided: December 16, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32509 Filed 12–20–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32760]

Union Pacific Railroad Company—Control and Merger—Southern Pacific Transportation Company: Wichita Mitigation Study

AGENCY: Surface Transportation Board, DOT.

ACTION: Public information meeting.

SUMMARY: The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) will hold a public meeting concerning its Wichita Mitigation Study. In its decision of August 12, 1996, the Board directed SEA to conduct this study in order to develop further mitigation to address the merger-related environmental impacts of increased railroad traffic on the existing Union Pacific right-of-way that runs through Sedgwick County, KS. The study will include publication of a draft mitigation plan to submit to the public for review and comment and issuance of a final mitigation plan.

The public information meeting will provide an opportunity for the public to meet members of the study team and to ask questions about and comment on the study process to date. The meeting will be held January 28, 1997 at the City Council Chambers, City Hall, 455 North Main St., 1st Floor, Wichita, KS. An informal open house will be held from 6:00 p.m. to 7:00 p.m. during which the public may review maps and graphics illustrating the study area and the mitigation options under consideration by SEA at this time. The open house will be followed by a public meeting from 7:00 p.m. to 9:00 p.m. at which the SEA team will make a brief presentation.

FOR FURTHER INFORMATION CONTACT: Mike Dalton, Section of Environmental Analysis, Rm 3219, Surface Transportation Board, 12th & Constitution Ave., Washington, DC 20423; Phone Number: (202) 927–6197,. TDD for the hearing impaired: (202) 927–5721.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32510 Filed 12–20–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Notice of Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the second meeting of the Community Development Advisory Board (the ''Advisory Board''), which provides advice to the Director of the Community Development Financial Institutions Fund (the ''Fund'').

DATES: The second meeting of the Community Development Advisory Board will be held on Tuesday, January 7, 1997 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC, 20220, (202) 622–8662 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), and with the

[1] CCW is seeking acquisition authority only. The future operator of the Rye Branch, once selected by CCW, will file its own Verified Notice of Exemption for operating authority over the Rye Branch.

approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and that regulatory impact analysis therefore is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The second meeting of the Advisory Board, all of which will be open to the public, will be held at the American Institute of Architects, 1735 New York Avenue, NW, Washington, DC, on Tuesday, January 7, 1997 at 10:00 a.m. The room will accommodate 75 persons. Seats are available on a first-come, first-served basis. Participation in the discussions of the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the For Further Information Contact section, by 4:00 p.m., Friday, January 3, 1997.

At the meeting, the Fund will present information relating to the first round of funding under the Community Development Financial Institutions Program and the Bank Enterprise Award Program, and the Director of the Fund will seek advice from members of the Advisory Board regarding implementation of future rounds of funding under these programs and other proposed initiatives of the Fund.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: December 18, 1996.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 96–32547 Filed 12–20–96; 8:45 am]

BILLING CODE 4810–70–P

Internal Revenue Service

[CO–25–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, CO–25–96 (TD 8678), Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-In Losses and Credits Following an Ownership Change of a Consolidated Group (§ 1.1502–95(c)).

DATES: Written comments should be received on or before February 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-In Losses and Credits Following an Ownership Change of a Consolidated Group.

OMB Number: 1545–1218.

Regulation Project Number: CO–25–96.

Abstract: Internal Revenue Code section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying Code section 382 to groups filing consolidated returns.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 9,125.

Estimated Time Per Respondent: 15 minutes once every six years.

Estimated Total Annual Burden Hours: 380.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32521 Filed 12–20–96; 8:45 am]

BILLING CODE 4380–01–P

Customs Service

[T.D. 96–88]

Recordation of Trade Name: ''A.J.&W.''

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On September 12, 1996, a notice of application for the recordation

under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''A. J. & W. Incorporated,'' was published in the Federal Register (61 FR 48206). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than November 2, 1996. No responses were received in opposition to the notice. Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name ''A.J.&W. INCORPORATED,'' is recorded as the trade name used by A. J. & W. Incorporated, a corporation organized under the laws of Hawaii, located at 565 Kokea Street, Building G2–4, Honolulu, Hawaii 96817. The trade name is used in connection with towels, footwears, bags, luggage, mugs, straw beach mats, kitchen accessory set, luggage accessories, jewelry bags, ornamental wood stands, bath gift sets, pua shell souvenir line, fans, ashtrays and general souvenir items.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229 (202 482–6960).

Dated: December 17, 1996.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 96–32421 Filed 12–20–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

[IA–74–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, IA–74–93 (TD 8623), Substantiation Requirement for Certain Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before February 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Substantiation Requirement for Certain Contributions.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93.

Abstract: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time Per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 51,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32522 Filed 12–20–96; 8:45 am]

BILLING CODE 4830–01–P

[IA–14–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–14–91 (TD 8454), Adjusted Current Earnings (§ 1.56(g)–1).

DATES: Written comments should be received on or before February 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adjusted Current Earnings.

OMB Number: 1545–1233.

Regulation Project Number: IA–14–91.

Abstract: Section 1.56(g)–1(r) of the regulation sets forth rules pursuant to

section 56(g) of the Internal Revenue Code that permit taxpayers to elect a simplified method of computing their inventory amounts in order to compute their alternative minimum tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32523 Filed 12–20–96; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Notice 96–65

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 96–65, Treatment of a trust as domestic or foreign—Changes made by the Small Business Job Protection Act.

DATES: Written comments should be received on or before February 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of a trust as domestic or foreign—Changes made by the Small Business Job Protection Act.

OMB Number: 1545–1506.

Notice Number: Notice 96–65.

Abstract: Notice 96–65 announces that a domestic trust may avoid an involuntary change in status caused by operation of the Small Business Job Protection Act of 1996 by reforming to comply with the new law within a reasonable period of time. The notice also announces how to elect to apply the new trust status rules retroactively.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 28 minutes.

Estimated Total Annual Burden Hours: 550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32524 Filed 12–20–96; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978) and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''Giambattista Tiepolo'' (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan

[1] A copy of this list may be obtained by contacting Paul W. Manning, Assistant General Counsel, at 202/619–5997; the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

Museum of Art, New York, New York, from on or about January 22, 1997, through on or about April 27, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: December 17, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–32511 Filed 12–20–96; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Monday
December 23, 1996

Part II

Department of Energy

10 CFR Part 835

Occupational Radiation Protection; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 835

[Docket No. EH–RM–96–835]

RIN 1901–AA59

Occupational Radiation Protection

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE) is proposing to amend its primary standards for occupational radiation protection. This proposed rule amendment is the culmination of a systematic analysis to identify the elements of a comprehensive radiation protection program and determine those elements of such a program that should be codified. As a result of this analysis, DOE proposes amendments to all of the subparts of 10 CFR part 835. The analysis included a review of the requirements in DOE Notice 441.1, ''Radiological Protection for DOE Activities,'' (extended by DOE N 441.2) that resulted in the proposed codification of certain provisions of that Notice, including requirements for posting of areas where radioactive material is present and for control of sealed radioactive sources. Several additional changes are proposed to ensure continuity in DOE's system of radiation protection standards by codifying in part 835 critical provisions of the ''DOE Radiological Control Manual'' (Manual), which is no longer a mandatory standard. DOE also proposes to explicitly exclude from part 835 radioactive material transportation conducted in compliance with applicable DOE Orders and certain activities conducted on foreign soil.

DATES: Written comments must be received by DOE by February 21, 1997 to ensure consideration. In addition, a computer disk containing the comments in WordPerfect 5.0 or later or as an ASCII file would be greatly appreciated. DOE has scheduled two public hearings to encourage public participation through oral comments on the proposed amendment. (Section III of this notice discusses some of the issues on which DOE would encourage the public to comment.)

1. Las Vegas, NV—January 22, 1997, beginning at 9:00 am (PST)
2. Washington, DC—February 6, 1997, beginning at 9:00 am (EST)

Requests to speak at a hearing should be received no later than 4:00 pm, January 17, for the Las Vegas hearing and February 4 for the Washington, DC hearing, (202) 586–3012.

ADDRESSES: The hearings will be held at the following addresses:

Las Vegas, NV—DOE Nevada Operations Office Auditorium, 2753 South Highland Drive

Washington, DC—U.S. Department of Energy, 1000 Independence Avenue, SW, Room 1E–245

Written comments (5 copies and a computer disk) and requests to speak at a hearing should be submitted to Dr. Joel Rabovsky, U.S. Department of Energy, EH–52, ''EH–RM–96–835 Rulemaking,'' 1000 Independence Avenue, SW, Washington, DC 20585, telephone (202) 586–3012. Comments may also be submitted electronically to the following address—http://tis-nt.eh.doe.gov/wpphm/835/835.htm. Such comments are subject to the same submittal deadline as that provided above for written comments.

Copies of the hearing transcripts, written or electronic comments received, and any other docket material received may be read and copied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The docket file material will be filed under ''EH–RM–96–835.'' DOE's analysis supporting the proposed amendment, including regulatory position papers providing detailed information on certain significant proposed changes, proposed revisions to DOE's Implementation Guides, accreditation program technical standards, a supporting Environmental Assessment, the DOE Radiological Control Standard, copies of the DOE Orders referenced herein, and a side-by side comparison of the existing rule and the proposed amendment may also be examined at this location.

For more information concerning public participation in this rulemaking proceeding, see Section III of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: Dr. Joel Rabovsky, U.S. Department of Energy, Office of Worker Protection Programs and Hazards Management, EH–52, 1000 Independence Avenue, SW, Washington, DC 20585, (301) 903–2135.

For information concerning the public hearings and submission of comments, contact Andi Kasarsky, (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1993, DOE published a final rule, 10 CFR part 835, ''Occupational Radiation Protection'' (56 FR 64334). The rule codified certain requirements previously promulgated in DOE Order 5480.11, ''Radiation Protection for Occupational Workers,'' which implemented the ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure'' (52 FR 2822) (Guidance to Federal Agencies), as well as guidance issued by authoritative organizations, including the National Council on Radiation Protection and Measurements (NCRP) and the International Commission on Radiological Protection (ICRP). In addition, the ''as low as reasonably achievable'' (ALARA) process was codified in 10 CFR part 835 as the primary means of maintaining occupational radiation doses below regulatory limits.

This Notice of Proposed Rulemaking would modify the scope of 10 CFR part 835 to explicitly exclude radioactive material transportation conducted in compliance with applicable DOE Orders and exclude certain activities conducted on foreign soil. DOE also proposes to add standards for area posting and sealed radioactive source control. In addition, DOE would add a removable surface radioactivity value for tritium, to be used to identify the need for area posting and imposition of certain radioactive material controls. DOE also proposes several revisions that would expand and clarify provisions of the rule to address radiation protection issues (1) identified through analysis of operational data and (2) which need to be added because of the elimination of the Manual as a mandatory standard. This proposed amendment would also clarify and correct minor errors in part 835.

The proposed changes to part 835 result from a critical evaluation of DOE's objectives for occupational radiation protection programs, including structured analyses of existing standards for similar programs, operational occurrences within the DOE complex, and provisions in the current rule. DOE also evaluated approaches used by national and international radiation protection organizations and experience DOE has gained since 10 CFR part 835 was issued. The results of

this evaluation are contained in an analysis supporting the proposed changes, ''Development of the 1996 Proposed Amendment to 10 CFR Part 835, *Occupational Radiation Protection*,'' (regulatory development document, November 1996) which may be viewed in the DOE Freedom of Information Reading Room at the address provided above.

In September 1995, DOE canceled DOE Order 5480.11, ''Radiation Protection for Occupational Workers,'' DOE Order 5480.15, ''Department of Energy Laboratory Accreditation Program for Personnel Dosimetry,'' and DOE Notice 5400.13, ''Sealed Radioactive Source Accountability,'' and eliminated the Manual as a mandatory standard. These actions were taken consistent with initiatives to reduce the overall burden of prescriptive and redundant requirements imposed through DOE's system of contractually-implemented directives. DOE selected and updated certain key provisions of the canceled Orders and the Manual and published them in DOE Notice 441.1. At that time, DOE indicated its intent to evaluate the importance of these elements and, based upon that evaluation, to codify those elements considered necessary for achievement of DOE's radiation protection objectives.

In general, the proposed amendments would codify requirements currently used within the DOE complex. DOE has determined that these requirements must be codified to assure that worker health and safety programs are maintained at a level commensurate with workplace hazards. These amendments would establish nuclear safety requirements that, if violated, would provide a basis for assessment by DOE of civil penalties under the Price-Anderson Amendments Act [1] (PAAA) of 1988.

Section 309 of the Department of Energy Organization Act (Pub. L. 95–91), Executive Order 12344, and Pub. L. 98–525 establish the responsibilities and authority of the Director, Naval Nuclear Propulsion Program, over all facilities and activities that comprise the Program, a joint Navy-DOE organization solely responsible for the military application of nuclear energy in connection with naval warship propulsion. Pursuant to the purpose and direction of these actions, the standards, regulations, and requirements prescribed by the Director continue to apply to Program facilities and activities in lieu of the regulations in this part.

[1] Price-Anderson Amendments Act, Pub. L. 100–408, August 20, 1988.

The proposed rule would establish a schedule for implementation of final amendments to 10 CFR part 835 as follows. The final rule would become effective 30 days following publication in the Federal Register. As provided in § 835.101(h), updated radiation protection programs (RPPs) would be due to DOE within 180 days following the effective date of the final rule. Changes that do not decrease the effectiveness of the RPP could be implemented immediately. As further provided in § 835.101(j), DOE would undertake efforts to approve all RPP changes within 180 days of submittal. In § 835.101(f), DOE has proposed provisions requiring full compliance with the regulatory changes (except for radiobioassay program accreditation) within 180 days of RPP approval. Because of the breadth of the joint DOE/DOE contractor effort needed to accomplish the proposed accreditation of radiobioassay programs, DOE proposes an implementation schedule of approximately three years for compliance with radiobioassay program accreditation requirements. Based on the expected duration of the public comment and comment resolution periods, in the proposed rule, DOE has proposed January 1, 2000 as the compliance date for the radiobioassay program accreditation requirements. DOE may change this compliance date in the final rule to reflect unforeseen changes in the rulemaking schedule or public comments addressing this proposal.

II. Proposed Actions and Analysis

A. Exclusions from 10 CFR Part 835

Radioactive Material Transportation

To avoid dual regulation of certain activities, DOE has excluded in § 835.1(b)(1) those activities that are regulated through a license by the U.S. Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, and activities certified by the NRC under section 1701 of the Atomic Energy Act. Although addressed in the preamble to the final rule (see 58 FR 65465), transportation of radioactive material conducted in compliance with applicable DOE requirements was not excluded from the scope of part 835, as originally adopted.

DOE standards for packaging and transporting radioactive material are addressed in various DOE Orders and were never intended to be covered by 10 CFR part 835. DOE Orders 460.1, ''Packaging and Transportation Safety,'' and 460.2, ''Departmental Materials Transportation and Packaging Management,'' provide DOE standards related to packaging and transportation of radioactive material. Requirements for radioactive material transported under DOE's national security mission are provided in DOE Order 5610.12, ''Packaging and Offsite Transportation of Nuclear Components and Special Assemblies Associated with the Nuclear Explosive and Weapon Safety Program,'' and DOE Order 5610.14, ''Transportation Safeguards System Program Operations.'' The requirements of these Orders are consistent with Department of Transportation (DOT) regulatory requirements and provide a more appropriate framework for ensuring transportation safety than 10 CFR part 835. Certain provisions of 10 CFR part 835 complement these transportation safety directives by ensuring that individuals are afforded an adequate level of radiation protection while preparing radioactive materials for, and receiving radioactive materials from, transportation. Consistent with its original intent, as expressed in the preamble to the final rule, DOE proposes to add an exclusion to § 835.1(b) for radioactive material transportation conducted in compliance with applicable DOE Orders.

DOE proposes to add a definition of ''radioactive material transportation'' in § 835.2(a) to clarify the distinction between the process of transporting radioactive materials, which would be excluded from 10 CFR part 835, and those activities leading to or resulting from radioactive material transportation, which are subject to 10 CFR part 835.

DOE recognizes that questions may arise with regard to when a package of radioactive material may be considered to be in transportation and subject to transportation safety requirements. Due to the wide range of affected activities and facilities, DOE does not believe that it can foresee and prescribe detailed requirements for all possible scenarios under which radioactive materials may be shipped from and received at its facilities. The initiation and termination of transportation activities are commonly documented by signature of the transport worker and shipping/receiving facility representative on a shipping manifest or other transportation document. DOE believes that these formal changes of custody ordinarily should be used to determine when material is in transport. DOE has published suitable guidance in the Manual and expects that corresponding facility-specific requirements will be included in the RPPs developed to ensure compliance with the final rule. Many documented RPPs already reflect such facility-specific requirements.

DOE Activities Conducted on Foreign Soil

Questions have arisen regarding the applicability of 10 CFR part 835 to the conduct of certain DOE activities on foreign soil outside the jurisdiction of the United States government. DOE proposes to add an exclusion to § 835.1(b) to recognize the primacy of foreign governments' occupational radiation protection requirements when such requirements have been agreed to by the United States.

Nuclear Explosives and Weapons Safety Program

DOE proposes to clarify the nuclear weapons program exclusion in § 835.1(b)(3) so that it clearly applies only to the extent that compliance with 10 CFR part 835 would compromise the effectiveness of activities essential to prevention of an accidental or unauthorized detonation. This provides the necessary flexibility to ensure implementation of programs that realize the overriding goal of preventing such incidents. The appropriate application of this exclusion is highly dependent upon activity-specific conditions which turn on issues of professional judgment. DOE expects that appropriate measures to implement this exclusion would be included in the RPPs developed to ensure compliance with the rule.

Applicability of Occupational Dose Received from Excluded Activities

DOE proposes to add § 835.1(c) to clearly provide that, even though certain activities are excluded from the scope of the rule, occupational doses received as a result of excluded activities apply toward determination of compliance with the yearly occupational dose limits established in subpart C. However, radiation doses excluded by proposed § 835.1(b)(6) (i.e., radiation doses from background radiation, as a patient for the purposes of medical diagnosis or therapy, and from participation as a subject in medical research programs) are not considered occupational doses and would not be considered in determining compliance with the occupational dose limits. Radiation doses resulting from planned special exposures and authorized emergency actions, whether within DOE facilities or facilities operated under the auspices of other regulatory agencies, also would not be considered in determining compliance with the occupational dose limits. See Section II.E. of this notice, ''Limitation of Occupational Doses,'' for further discussion of this issue.

B. Radiological Hazard Warning and Area Entry Control

Area Posting Requirements

DOE proposes several changes to simplify requirements for area posting and provide additional flexibility in implementing these requirements. Section 835.601(a) would be revised to clearly indicate that posting of radiological areas is required, regardless of the activities taking place in the area. The existing requirement refers to ''working areas,'' which does not clearly establish the need for posting all accessible areas meeting the radiological area and controlled area definitions of § 835.2(a). The requirement in § 835.601(b) for DOE approval of radiological warning signs and labels would be deleted because the nature and content of the prescribed radiological warning signs and labels are adequately described in §§ 835.601, 835.603, and 835.605. DOE proposes to revise § 835.601(b) to include the requirement for the standard radiation warning trefoil (previously referred to less precisely as the ''radiation symbol'') to be included on the required postings and labels. Formats for warning signs and labels that meet the requirements of § 835.601 are described in Implementation Guide G–10 CFR 835/G1, ''Posting and Labeling for Radiological Control.''

DOE also proposes to revise § 835.601(e) (redesignated as § 835.601(d)) to address both posting and labeling in privately-owned homes and businesses and to make the provision applicable to all of subpart G, not only § 835.601. DOE proposes to simplify the language in § 835.602(a) for clarity and to avoid conflict with the flexibility provided in § 835.602(b). In § 835.603, revisions to paragraphs (a) through (f) are proposed to eliminate redundancy with the definitions in § 835.2(a). Consistent with NRC requirements published in § 20.1902 of 10 CFR part 20, ''Standards for Protection Against Radiation,'' DOE proposes to allow use of the words ''Caution'' or ''Danger'' on postings for high radiation, high contamination, radioactive material, and airborne radioactivity areas.

For consistency with the preceding proposed changes, DOE proposes to revise the § 835.2(a) definitions of ''airborne radioactivity area,'' ''contamination area,'' and ''high contamination area'' to include accessibility provisions, consistent with the existing definitions of ''radiation area,'' ''high radiation area,'' and ''very high radiation area.''

DOE also proposes to add § 835.604 delineating specific exceptions to all of the radiological area posting requirements of § 835.603. These exceptions are proposed because DOE recognizes that compensatory measures may be implemented that would obviate the need for area posting. The radiological area posting exceptions would not apply to the radiological area entry controls established in §§ 835.501 and 835.502 or to the training requirements of § 835.901. The exceptions proposed in § 835.604 are similar to those established by the NRC in 10 CFR 20.1903.

Radioactive Material Area Posting

DOE Notice 441.1 (extended by DOE Notice 441.2) requires posting of areas where quantities of radioactive materials exceed specified threshold values. DOE considers this posting important, particularly to provide adequate warning to general employees who do not have the requisite training to enter these areas. DOE also notes that the NRC imposes similar requirements on its licensees in 10 CFR 20.1902. To codify these requirements, DOE proposes to define ''radioactive material area'' and include this term in the definition of ''radiological area'' in § 835.2(a), and to establish requirements for posting radioactive material areas in § 835.603(g). Posting would be required at each access point to any area accessible to individuals where containers or items of radioactive materials are present in quantities exceeding 10 times the values established in the proposed appendix E. Consistent with the requirements for other radiological areas, entry into radioactive material areas would also be subject to the entry control measures established in § 835.501 and the radiation safety training requirements of § 835.901. DOE proposes to add, in § 835.604(b), certain exceptions to the radioactive material area posting requirement.

Contamination Area Postings

Experience in implementing the provisions of the Manual has revealed an opportunity to simplify DOE requirements for posting and control of areas with surface contamination that exceeds the values listed in appendix D to 10 CFR part 835. DOE's primary purpose in establishing requirements for radiological area postings is to provide information sufficient to elicit an appropriate protective response from affected individuals. Under the current provisions of § 835.603, no distinction is made between the required postings for areas having only fixed surface

contamination and those having removable surface contamination, even though the hazards and desired protective responses are quite different. DOE proposes to revise the § 835.2(a) definitions of ''contamination area'' and ''high contamination area'' to be based upon removable surface contamination levels only.

Under § 835.404(d), surfaces located outside of radiological areas bearing total (fixed plus removable) surface contamination in excess of appendix D values, but removable surface contamination less than appendix D values, would continue to be subject to distinct marking and routine survey requirements to minimize the chance of inadvertent removal or disturbance of the radioactive material. However, unless the fixed contamination creates radiation levels sufficient to warrant posting for external radiation hazards, these areas would not be considered radiological areas and would be excepted from the radiological area posting and entry control requirements.

Radioactive Material Labeling

General requirements for radioactive material labeling are currently provided in § 835.601(a). These requirements were supplemented by detailed provisions in the Manual. To ensure that appropriate requirements for radioactive material labeling remain in effect, DOE proposes to add § 835.605 which would impose requirements for labeling items and containers of radioactive materials, with appropriate exceptions being proposed in § 835.606. These provisions are similar to the provisions in the Manual and requirements imposed by the NRC in 10 CFR 20.1904 and 20.1905. Related to this change, DOE proposes to add § 835.1101(d) requiring the removal of labels prior to releasing materials and equipment from radiological areas in accordance with § 835.1101(a). To consolidate recordkeeping requirements, DOE proposes to move the existing requirements of § 835.1101(d) to § 835.703(c). DOE also proposes minor format and language revisions to § 835.1101 to clarify its intent.

Surface Radioactivity Value for Tritium

When 10 CFR part 835 was published for public comment on December 9, 1991, the surface radioactivity values for tritium were not included in appendix D because DOE was in the process of determining appropriate values. An appropriate value for removable tritium surface radioactivity, consistent with the value published in the Manual, was identified during the public comment period of the original proposed rule. Public comments suggested a value consistent with the value now being proposed, but DOE determined that this value should not be included in the final rule because public comments had not been invited on this issue. Reopening the public comment period on this issue would have delayed publication of the final rule.

DOE has determined that a value for total (fixed plus removable) tritium surface contamination is inappropriate. Fixed tritium surface contamination presents no likely occupational exposure hazard and few practical technologies are available to facilitate field measurements. Therefore, DOE is not proposing a total surface radioactivity value for tritium. The basis for this decision is explained in more detail in the Environmental Assessment published concurrent with this proposed rule. To address these issues, DOE proposes to amend appendix D to 10 CFR part 835 by adding a removable surface radioactivity value of 10,000 disintegrations per minute per 100 square centimeters and adding footnote 6 to discuss tritium that has migrated into the surface in question. The tritium surface radioactivity value is used to determine the applicability of the area posting requirements of § 835.603 and the radioactive material control requirements of § 835.1101.

Radiological Area Entry Control

Section 835.501 currently establishes only general requirements for administrative control of radiological work. As documented in the regulatory development document, analysis of operational occurrences throughout the DOE complex indicates that a significant portion of radiation protection-related occurrences result from inadequate work control. Therefore, DOE proposes more detailed provisions for written work authorizations in § 835.501(e). DOE expects that these provisions would be implemented through a system that imposes progressively more specific and limiting written control mechanisms as the potential radiological hazards and complexity of requisite controls increase. For instance, requirements for tours or limited work in low hazard areas may be specified in generally applicable procedures, while requirements for higher hazard work may be specified in short-term technical documents requiring pre-job briefings and worker acknowledgment of specific work controls. This approach is consistent with that previously specified in the Manual. The proposed amendment provides substantial flexibility for implementation on a facility- and hazard-specific basis.

DOE proposes to revise § 835.502 to add measures for control of access to high radiation areas where an individual may receive a deep dose equivalent exceeding 0.1 rem (0.001 sievert) in one hour. These requirements supplement the existing requirements (proposed for redesignation as § 835.502(b)) for areas where an individual might receive a deep dose equivalent exceeding 1 rem in one hour. The proposed control measures include requirements for use of a supplemental dosimetry device and appropriate area surveys. These requirements are similar to those implemented by DOE facilities in accordance with the Manual and are consistent with the DOE ALARA process. The NRC has imposed similar requirements on its commercial reactor facility licensees. DOE proposes to revise the heading of § 835.502(b) to reflect its content. DOE also proposes to revise the text of proposed § 835.502(b) to replace the undefined term ''personnel'' with the defined term ''individual,'' and to delete the reference to the posting requirements for very high radiation areas from proposed § 835.502(c). These conditions are adequately described in the definition of ''very high radiation area'' in § 835.2(a).

C. Control of Sealed Radioactive Sources

In promulgating 10 CFR part 835, DOE stated that it would codify sealed radioactive source control requirements in subsequent rulemakings. DOE Notice 5400.9, ''Sealed Radioactive Source Accountability'' (extended through DOE Notice 5400.13), established requirements for control of sealed radioactive sources. The requirements in DOE Notice 5400.9 were eventually superseded by those in DOE Notice 441.1. DOE now proposes to include certain of the requirements from DOE Notices 5400.9 and 441.1 in 10 CFR part 835.

DOE proposes to add requirements for sealed radioactive source control in §§ 835.1201 and 835.1202. For sealed radioactive sources meeting the definition of ''accountable sealed radioactive source'' proposed in § 835.2(a) and the accountability criteria proposed in appendix E, the proposed amendment would require written procedures for source control, including labeling, inventory, leak testing, and recordkeeping. Accountable sealed radioactive source inventory and leak testing would be required at least every six months, with exceptions from the source leak testing requirements

established for sources that are either inaccessible or out of service.

DOE determined the proposed accountability values as follows. For each radionuclide, DOE calculated two values: (1) the activity that would result in a deep dose equivalent from external radiation of 0.01 rem (0.0001 sievert) in a year assuming an individual was irradiated continuously at a distance of 1 meter from the source; and (2) the activity that would result in a committed effective dose equivalent of 0.01 rem (0.0001 sievert) assuming that an intake of 1% of the material by an individual occurred during the incident. DOE compared the external and internal dose values and selected the more conservative value as the basis for the accountability value. The selected values were subsequently rounded to facilitate grouping in appendix E. The 0.01 rem value supports DOE requirements found in DOE Order 5400.5, ''Radiation Protection of the Public and the Environment,'' for reporting doses to members of the public in excess of that value.

DOE proposes related changes to definitions and recordkeeping requirements in §§ 835.2(a) and 835.704(f), respectively. The terms that would be added to § 835.2(a) are ''accountable sealed radioactive source,'' ''sealed radioactive source,'' and ''source leak test.''

D. Workplace Monitoring and Determination of Individual Doses

Use of the Terms ''Monitor'' and ''Survey''

In reviewing the requirements of 10 CFR part 835, DOE noted that the terms ''monitor'' and ''survey'' are not consistently used. DOE is proposing changes to the definition of the term ''monitoring'' in § 835.2(a) that more clearly establish that ''monitoring'' involves measurement of radiological conditions and the subsequent use of the results of these measurements for evaluation of potential and actual doses. ''Survey,'' on the other hand, is more directly related to assessment of workplace or material radiological conditions through direct measurement, assessment, or calculation for the purposes of hazards assessment. DOE proposes changes throughout the rule to ensure consistent application of these terms.

DOE also noted that the requirements of § 835.403(b) are redundant with those established in § 835.401. Therefore, DOE proposes to delete § 835.403(b) and, consistent with this change, to change the heading of § 835.403 to reflect the content of that section. DOE also proposes to clarify the requirements of §§ 835.401(c) and 835.703(d) by making the calibration requirements apply to both ''instruments'' and ''equipment.'' DOE believes that this clarification is consistent with current field practice with regard to equipment, such as an air sampler, that, although incorporated into or associated with instrumentation systems, does not include any instrumentation.

Individual Monitoring and Dose Determination

In § 835.402 (b) and (d), DOE proposes to clarify the requirements for external and internal dose monitoring programs by providing that such programs must be capable of demonstrating compliance with all of the individual dose limits in subpart C. This revision is consistent with DOE's previously established requirements for records required under § 835.701(a). DOE recognizes that, in some cases, individual monitoring programs (i.e., external dosimetry and radiobioassay) may not be capable of quantifying doses at levels near the monitoring thresholds established in § 835.402. In these instances, DOE expects that a combination of individual and workplace monitoring would be used to assure compliance with these monitoring thresholds. This monitoring may include calculational or statistical methods (such as the conversion of derived air concentration (DAC)-hours to calculated doses).

Recent occurrences have revealed weaknesses in certain radiobioassay programs implemented at DOE facilities. To enhance the integrity of radiobioassay programs and prevent recurrence of these adverse events, DOE proposes to amend § 835.402(d) to require program accreditation through the recently developed DOE Laboratory Accreditation Program (DOELAP) for Radiobioassay or demonstration of equivalent performance. These proposed requirements are analogous to existing DOE requirements for accreditation of external dosimetry programs. Proposed § 835.402(e) provides that the Secretarial Officer responsible for environment, safety and health matters (currently the Assistant Secretary for Environment, Safety and Health) may authorize alternatives to the DOELAP accreditation process for programs whose performance is demonstrated to be equivalent to that of accredited programs.

DOE also proposes in § 835.402(e) to require programs to conform to the most recent revisions of the DOELAP technical standards or be subject to review and approval of the Secretarial Officer responsible for environment, safety and health matters. These provisions will ensure that, to the extent practicable, DOE radiation protection programs continue to reflect the latest advances in the sciences of external and internal dosimetry. Language will be included in the DOELAP technical standards to indicate that changes in the standards become effective only during the next scheduled accreditation cycle. This will prevent the automatic loss of accreditation status as a result of changes to the DOELAP technical standards.

DOE has also proposed to update the external dosimetry program accreditation requirements, provided in § 835.402(b), to reflect the program features for radiobioassay program accreditation discussed above. These proposed changes would not affect the compliance status of dosimetry programs currently accredited, or excepted from accreditation, under the existing DOELAP standards.

Implementing standards for DOELAP are published in a DOE Technical Standard, ''Department of Energy Laboratory Accreditation Program Administration'' (a standard number will be assigned when the standard is completed). This standard provides requirements for administration of DOE's accreditation programs and cites the technical requirements provided in DOE–STD–1095–95 (for accreditation of personnel dosimetry programs) and a separate standard (a standard number will be assigned when the standard is completed) for accreditation of radiobioassay programs. The DOELAP technical standards may be reviewed at the DOE Freedom of Information Reading Room at the address provided above.

DOE also proposes to revise § 835.402 (b) and (d) to clearly indicate that program accreditation requirements apply only to personnel dosimetry and radiobioassay programs implemented to demonstrate compliance with § 835.402 (i.e., monitoring when doses are likely to exceed the stated thresholds). DOE recognizes that many DOE activities conduct stringent monitoring programs for individuals even when those individuals are not expected to receive doses exceeding the applicable monitoring thresholds in §§ 835.402. However, DOE believes that it is inappropriate to impose, through regulation, accreditation requirements upon monitoring programs that are not required by regulation. Existing regulatory provisions in § 835.402 (a) and (c) would continue to require individual monitoring for all individuals likely to receive a dose equivalent exceeding the applicable

thresholds. Measures used to identify individuals likely to receive doses exceeding the thresholds should include comprehensive, documented workplace surveys and could include, if management so chooses, individual monitoring. As required by § 835.701(a), the monitoring and survey results must be documented.

In a related change, because DOELAP for Personnel Dosimetry provides appropriate dosimetry system performance criteria, DOE proposes to delete the dosimeter calibration requirement from § 835.402(b).

DOE proposes to revise the § 835.402(a)(3) and (c)(3) monitoring requirements for minors by expressly stating that these requirements apply to occupationally exposed minors only. Minors who are not occupationally exposed are subject to the member of the public monitoring requirements found in § 835.402(a)(4) and (c)(4). Doses received by a minor as a member of the public entering the controlled area would not be included in any occupational dose received. DOE also proposes to revise the member of the public monitoring requirements by clarifying that these requirements apply only to members of the public while inside the controlled area of a DOE site or facility. Individuals who enter a controlled area without entering radiological areas are not expected to receive a total effective dose equivalent exceeding 0.1 rem in a year.

DOE proposes to delete from § 835.402(c)(1) the individual monitoring threshold for organs and tissues based upon committed dose equivalent. DOE has determined that the threshold based upon committed effective dose equivalent, also provided in § 835.402(c)(1), provides an equivalent or more restrictive basis for monitoring. A technical correction is proposed to § 835.402(a)(1)(i) to require individual monitoring on the basis of deep dose equivalent rather than effective dose equivalent because deep dose equivalent is the parameter actually monitored by existing dosimetry programs. DOE also proposes to delete § 835.402(a)(1)(iv) because any doses meeting this condition are adequately addressed by § 835.402(a)(1)(i).

Use of Appendices

To clarify application of the data presented in the appendices to 10 CFR part 835, DOE proposes to add introductory text to each appendix providing references to those sections of the rule requiring use of the appendix.

DOE has determined that 10 CFR part 835 establishes no substantive requirements for use of the data presented in appendix B, and therefore proposes to delete appendix B. The correlation of chemical form to lung retention class is available directly from Table 3 of Federal Guidance Report Number 11, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion.'' DOE also proposes to delete the absorption factor (f_1) values and the related footnote (Footnote 5) from appendix A to part 835. The absorption factors and alternative absorption factors are neither used nor referenced in the rule.

DOE's review of exemption requests concerning occupational exposure to radon and thoron and their daughter products revealed that air immersion DAC values for Rn-220 and Rn-222 are not appropriate. Therefore, DOE proposes to delete the air immersion DAC values for Rn-220 and Rn-222 from appendix C. Experience in implementing 10 CFR part 835 has proven that the exposure conditions used to determine the appendix C DAC values (immersion in a semi-infinite cloud) often differ from those at DOE facilities (i.e., exposure in relatively small enclosures). Use of the appendix C DAC values under these conditions can result in a gross over-estimation of individual doses. In appendix C, DOE proposes to allow modifications to the DAC values to compensate for immersion in a cloud of finite dimensions and to provide instructions for determining the DAC of a mixture of radionuclides.

Workplace Air Monitoring

Section 835.403 establishes requirements for monitoring the concentrations of radioactive material in the ambient air of the workplace, emphasizing use of real-time air monitors. These requirements are augmented by §§ 835.209 and 835.402 which establish requirements for determining internal doses through radiobioassay except under specific conditions. Despite these codified requirements, DOE has noted a number of recent occurrences indicating significant problems in air monitoring and internal dose evaluation programs. To address these problems, DOE proposes to amend § 835.403 to establish more practical and technically correct criteria for the use of real-time air monitors, based upon potential releases that would exceed defined threshold exposure levels. DOE would also require air sampling when respiratory protective devices are prescribed to protect individuals from exposure to airborne radionuclides. This latter provision addresses recent occurrences at DOE facilities reflecting a need for more stringent controls and is consistent with requirements imposed by both the NRC and the Occupational Safety and Health Administration (OSHA) (see 10 CFR 20.1703(a)(3) and 29 CFR part 1910, ''Occupational Safety and Health Standards,'' § 1910.134(a)(8), respectively).

DOE proposes to base air sampling criteria upon likely exposure to a threshold value of DAC-hours in a year, rather than the existing criterion based upon a percentage of the annual limit of intake. The established values are equivalent; this change would simply reflect the provision of data in the referenced appendices (A and C) in units of DAC values and will eliminate the need for field calculations and inherent mathematical rounding errors. DOE proposes to add to § 835.2(a) definitions for the terms ''derived air concentration-hour (DAC-hour),'' ''real-time air monitoring,'' ''respiratory protective device,'' and ''week,'' which are used in § 835.403. In addition, DOE proposes to delete the definitions of ''ambient air'' and ''continuous air monitor'' because these terms would no longer be used in part 835.

DOE has also determined that the requirements for use of DAC values in § 835.209(b) are redundant and therefore proposes to delete this provision.

Receipt of Radioactive Material Packages

DOE currently establishes no substantive requirements for receipt of packages containing radioactive material and is concerned with the frequency of occurrences involving packages that were not shipped in accordance with DOT requirements and corresponding DOE Orders. DOE proposes to add § 835.405 to ensure adequate protection of individuals, such as warehouse and office workers, who may be exposed to such materials after transport. The proposed provisions include requirements for receiving radioactive material packages from transport and performing radiological surveys of these packages. The proposed requirements are similar to NRC requirements in 10 CFR 20.1906.

E. Limitation of Occupational Doses

Occupational Dose Limits

Section 835.202(b) requires that all occupational doses received during the current year be included when demonstrating compliance with the occupational dose limits in § 835.202(a). This requirement is consistent with the

recommendation made in the Guidance to Federal Agencies. However, the Guidance to Federal Agencies also indicates that the numerical values (dose limits) do not apply to workers responsible for emergency management and response situations and that the cognizant agency may make provisions for exceeding the numerical values during emergencies and other unusual situations. DOE has made such provisions in §§ 835.1301 and 835.1302 for emergency situations and in § 835.204 for planned special exposures. Therefore, DOE proposes to add the phrase ''from all occupational doses'' in § 835.202(a), delete the phrase ''resulting from DOE activities'' in the heading of § 835.203 and clearly state these exceptions in § 835.202(b), to clarify that all occupational doses received during the year, except those resulting from planned special exposures and emergency exposures, shall be included when demonstrating compliance with the occupational dose limits in § 835.202(a).

In § 835.207, DOE proposes to clarify that the limits apply to doses resulting from occupational exposure only and to add deterministic dose limits for minors consistent with the Guidance to Federal Agencies. Non-occupational exposure of minors is subject to the dose limits established in § 835.208 for members of the public entering a controlled area. In a related change, DOE would revise the definition of ''member of the public'' in § 835.2(a) to clearly distinguish members of the public from temporary or transient workers or visiting scientists, who could receive occupational doses. DOE would also revise § 835.208 to unambiguously state that the member of the public dose limit applies to members of the public in the controlled area only.

DOE also proposes to revise the definition of ''cumulative total effective dose equivalent'' (CTEDE) in § 835.2(b). The current definition includes only those total effective dose equivalent (TEDE) values from a specific DOE site or facility from January 1, 1989. The proposed revision would include all available TEDE values from January 1, 1989, whether or not the dose was received at that DOE site or facility. DOE recognizes that records of CTEDE may not be available for all individuals due to differences between DOE requirements and those of other regulatory agencies. However, it is DOE's expectation that, consistent with the requirements previously imposed through DOE Order 5480.11 and the Manual, TEDE values will be available for all individuals who have received occupational dose at DOE and DOE contractor facilities since January 1, 1989.

Planned Special Exposures

Section 835.204 establishes requirements for authorizing, conducting, and reporting planned special exposures which result from planned operations and may result in doses exceeding the occupational dose limits established in § 835.202. Upon reexamination of these requirements, DOE notes that, unlike NRC requirements, no provisions have been made for authorizing planned special exposures in excess of the deterministic dose limits established in § 835.202. To provide for the maximum reasonable flexibility on the part of its contractors, DOE proposes to amend § 835.204 to establish such provisions consistent with the NRC's requirements at 10 CFR 20.1206.

DOE also proposes to amend §§ 835.2(a) (definition of the term ''occupational dose'') and 835.202(a) to clearly indicate that doses resulting from planned special exposures are considered occupational doses which would be documented in an individual's occupational dose record, but would not apply toward determination of compliance with the occupational dose limits in § 835.202. In a related change, DOE proposes to change the word ''and'' to ''or'' in § 835.204(c)(1) to clarify that the annual and cumulative dose limitations apply independently. DOE also proposes to revise § 835.204(c) to indicate that doses resulting from planned special exposures may exceed the numerical values established in § 835.202 without actually exceeding the occupational dose limits. Finally, DOE proposes to clarify the § 835.204(d) documentation requirements for planned special exposures.

Design and Control

Experience in implementing the provisions of 10 CFR 835 has revealed that the design objectives currently included in § 835.1002 (b) and (c) may not be practical in development of modifications to existing facilities. Because the provisions of § 835.1001 adequately address DOE's facility design objectives, DOE proposes to delete § 835.1002 (b) and (c). DOE expects that these performance objectives would be utilized to the extent practical in the design and modification of facilities and DOE will include these objectives in guidance documents. DOE also proposes to move the remaining requirements in paragraphs (a) and (d) of § 835.1002 to § 835.1001.

The design criteria established in § 835.1003(a) do not include the lens of the eye dose limit established in § 835.202(a)(3). This omission creates an inference that the design of new facilities or modification of existing facilities can include design features that would result in doses exceeding the lens of the eye dose equivalent limit of 15 rem. DOE proposes to correct this omission by including all applicable occupational dose limits in this section.

Accident and Emergency Exposures

DOE proposes several corrections and clarifications of the requirements for accident and emergency exposures to individuals. DOE proposes to correct § 835.1301(a), (b), and (d) by deleting the references to § 835.205, which provides no dose limits. Consistent with the proposed changes to § 835.204, DOE proposes to revise § 835.1301(a) to indicate that doses resulting from emergency exposures may exceed the numerical values established in § 835.202 without violating the occupational dose limits. Both accident and emergency doses would be considered occupational doses and included in a general employee's occupational dose record, but emergency doses would be explicitly excluded from consideration in determining compliance with the occupational dose limits in § 835.202(a).

Section 835.1302 provides guidelines for control of individual doses under emergency conditions. Although the heading of the table currently in § 835.1302 indicates that the stated values are ''guidelines,'' the text of the rule and the column heading in the table indicate that the dose values are regulatory limits. To eliminate this contradiction and allow for the uncertainties involved in emergency operations, DOE proposes to remove § 835.1302(d). These issues are adequately addressed in related DOE Orders and emergency management guides.

In § 835.1304, DOE proposes to substitute the defined term ''individual'' for the term ''personnel'' to eliminate confusion regarding the coverage of the personal nuclear accident dosimetry provisions. DOE also proposes to remove the reference to ''all personnel'' to provide flexibility in implementing the personal nuclear accident dosimetry provisions. The approach taken must be technically justifiable and documented accordingly.

F. Radiation Safety Training

Radiation safety training requirements for general employees, radiological workers, and radiological control

technicians are provided in subpart J of 10 CFR part 835. These requirements were previously augmented by the Manual, which established detailed training requirements based upon the hazards present in posted areas to which an individual might have unescorted access. DOE proposes to reformat §§ 835.901, 902, and 903 into one section to incorporate an approach similar to that previously published in the Manual and to eliminate redundancy.

The Manual required the use of standardized radiological control core courses [2] developed for training general employees, radiological workers, and radiological control technicians. DOE Notice 441.1 established a requirement to use those portions of these courses appropriate to facility hazards and operations. After considering public comments on the original rule, DOE determined that the detailed radiation safety training requirements in the Manual obviated the need to specify minimum training course content in 10 CFR part 835. Since the Manual has become non-mandatory, DOE now proposes to specify the minimum training course content requirements in § 835.901(b). In § 835.901(b), DOE also proposes to more broadly allow acceptance of previous radiation safety training received by an individual. These proposed provisions would ensure that all occupationally exposed individuals and unescorted individuals attain an appropriate level of radiation safety knowledge. The level of training required would be based upon the individual's prior training, potential for exposure to radiological hazards, and actual and anticipated assignments. DOE believes that this hierarchal approach will result in the appropriate level of knowledge for general employees, with a progressively higher level of knowledge required for radiological workers and radiological control technicians. This approach is consistent with field experience and feedback from DOE operating contractors and is similar to the approach taken by the NRC in 10 CFR part 19, ''Notices, Instructions and Reports to Workers: Inspection and Investigations.''

Field experience in implementing the existing training requirements of § 835.901 shows that little benefit is derived from requiring an examination upon completion of general employee radiological training. This is due to the limited training content and occupational exposure expectations for general employees who are not classified as radiological workers. Therefore, DOE proposes to eliminate the examination requirement for general employees who are not permitted unescorted access to radiological areas. Examinations would still be required for general employees who are permitted unescorted access to radiological areas and for radiological workers prior to performing unescorted assignments. DOE also proposes to add in § 835.901(f) specific requirements for individuals who may act as escorts of individuals who have not completed required training.

DOE proposes to add a definition of ''radiological control technician'' to § 835.2(a) to specifically identify the class of individuals subject to the radiological control technician training requirements. DOE also proposes to clarify in § 835.901(g) the requirements for retraining, which include examinations for radiological workers and radiological control technicians.

G. Individual Dose Records and Reports

Section 835.402 establishes requirements for monitoring individuals' exposures to radiation and radioactive materials. In concert with these requirements, § 835.702 establishes requirements for maintaining individual dose records, including records of doses that were determined, but not required to be monitored under § 835.402. To reduce the burden of recordkeeping and in keeping with the recommendations in the Guidance to Federal Agencies, DOE proposes to revise §§ 835.203(a) and 835.702(b) to provide that when monitoring is performed, but not required by § 835.402, internal and external doses must be summed and records must be maintained only if the doses determined by the non-mandatory monitoring exceed the thresholds of § 835.402. However, adequate records of workplace conditions, obtained through area monitoring and surveys, should be maintained to provide assurance that doses to unmonitored individuals remain below the monitoring thresholds. These records could be supplemented by records of individual monitoring performed, but not required by § 835.402. DOE is also proposing to revise § 835.702(c)(1) to provide that records must be sufficient to demonstrate compliance with all of the subpart C dose limits. This provision is consistent with § 835.701(a). DOE proposes to delete the words ''caused by contamination on the skin'' in § 835.702(b) to ensure consistency with the referenced requirements in § 835.205.

In § 835.702(c)(4)(iii), DOE proposes to eliminate the requirement to record the estimated intake associated with internal dose assessments. This change is proposed because determination of the estimated intake is not necessary for all radionuclides, such as tritium. The requirement for recording of the estimated intake was originally intended to facilitate reevaluation of internal doses at a later date. However, DOE has concluded that § 835.702(g) requires recording of sufficient information to allow future verification or reassessment of recorded doses.

Section 835.702(d) establishes requirements for obtaining records of an individual's previous occupational doses during the current year to facilitate demonstration of compliance with the occupational dose limits in § 835.202(a). Section 835.702(e) establishes similar requirements for records of prior years doses to facilitate compliance with requirements for determining each affected individual's cumulative total effective dose equivalent. DOE proposes to revise § 835.702 (d) and (e) such that acceptance of written estimates of an individual's prior occupational dose would be based upon an inability to obtain formal records, rather than the absence of those records. DOE also proposes to amend § 835.702(e) to clarify its requirements for obtaining records of previous years doses. Consistent with the Guidance to Federal Agencies, which discourages implementation of burdensome recordkeeping requirements for tracking of trivial doses, in § 835.702(e), DOE proposes to require historical record searches only for radiological workers monitored in accordance with § 835.402.

DOE proposes other technical and editorial changes to clarify the recordkeeping provisions and to ensure consistency with other changes proposed in subparts J and M of 10 CFR part 835. DOE also proposes to revise § 835.704(d) to require documentation of revocations of declarations of pregnancy.

Based on field experience and feedback from DOE operating contractors, DOE proposes to delete from § 835.4 the prohibition on use of the international radiological units. These units are commonly used for calculational and reference purposes and are included in records related to workplace conditions and individual doses. Except for these calculations or references, records required by 10 CFR part 835 would continue to be

[2] DOE/EH–0258T–1, General Employee Radiological Training and Radiological Worker Training, Program Management Manual, and DOE/EH–0262T–1, Radiological Control Technician, Training Program Management Manual, 1992.

maintained using the special units. Consistent with its historical endorsement of the special radiological units of curie, rad, and rem, DOE also proposes to specifically allow for use of subunits and multiples of the unit ''roentgen.''

Section 835.801(a) requires that individual dose reports contain the individual's social security number or employee number. Some individuals may not have a social security or employee number; therefore, DOE proposes to modify the text of the reporting requirements to allow the use of another unique identification number in these situations.

H. Corrections and Clarifications

DOE proposes editorial corrections and technical clarifications that do not change the requirements of the rule or the measures necessary to ensure regulatory compliance. Editorial changes correct the structure and format of certain sections of the rule. Technical clarifications improve the accuracy of certain provisions in the rule. These changes include: clarification of the definition and explanation of occupational dose in §§ 835.1(b)(6), 835.2(a), and 835.202(c); deletion of the definition of ''collective dose'' (§ 835.2(b)); and correction of the definitions of ''airborne radioactive material'', and ''year'' (§ 835.2(a)) and ''external dose or exposure,'' and ''quality factor'' (§ 835.2(b)). The definition of ''controlled area'' (§ 835.2(a)) has been modfied by deleting the second sentence ''Individuals who enter only the controlled area without entering radiological areas are not expected to receive a total effective dose equivalent of more than 100 mrem (0.001 sievert) in a year''. This sentence is not appropriate for the definition section and now follows the first sentence of § 835.602(a).

DOE proposes to clarify application of the mean quality factors for neutrons provided in § 835.2(b) by indicating that, when the neutron energy falls between the values provided in the table, the more conservative value must be used. DOE proposes to delete § 835.2(d) since the convention stated in that paragraph for the use of singular, plural, masculine, and feminine terms is not used in part 835.

Paragraphs (f) and (g) of § 835.101 include provisions for the initial development and approval of documented radiation protection programs. Because the operative dates in those paragraphs have passed, DOE proposes to revise paragraph (f) and to delete paragraph (g) to remove the obsolete requirements.

DOE proposes to clarify the required frequency of internal audits (§ 835.102), instrument calibration (§ 835.401), and radiation safety retraining (§ 835.901) from an established number of years to an equivalent number of months to avoid confusion caused by the dose limit-based definition of ''year'' provided in § 835.2(a). DOE also proposes to revise the requirements of § 835.102 for clarity.

DOE proposes to change the heading of § 835.202 to ''Occupational dose limits for general employees'' to accurately reflect the content of that section.

DOE proposes to delete from § 835.203(a) and the § 835.2(b) definition of ''total effective dose equivalent'' the provision related to substitution of deep dose equivalent for effective dose equivalent from external exposure. This provision is redundant with the revised definition of ''effective dose equivalent'' proposed in § 835.2(b).

DOE proposes to delete § 835.203(c), which allows the use of a weighting factor of unity (1) for determination of the effective dose equivalent under conditions of uniform external irradiation. This provision is redundant with the notes accompanying the weighting factor table in § 835.2(b).

DOE proposes to clarify the language in § 835.404(f) to more clearly address the role of contamination monitoring in the occupational radiation protection program.

DOE has also proposed a correction to the appendix D values for uranium surface radioactivity to indicate that these values apply to emitted alpha radiation only. This correction is consistent with the requirements previously imposed through the Manual. DOE is also proposing several minor clarifications of the footnotes to appendix D.

III. Public Comment Procedures

A. Participation in Rulemaking

DOE encourages the maximum level of public participation possible in this rulemaking. DOE urges interested parties to submit written comments and also encourages individuals to participate in the public hearings to be held at the times and places indicated at the beginning of this notice.

DOE has established a period of 60 days following publication of this notice for individuals to comment on this notice of proposed rulemaking. All public comments and the transcripts of public hearings and other docket material will be available for review in the DOE Freedom of Information Reading Room at the address given at the beginning of this notice. The docket file material will be filed under ''EH–RM–96–835.''

DOE is requesting comments on the proposed amendments to 10 CFR part 835, particularly with regard to the potential impact of the proposed amendments on the level of radiation protection afforded individuals affected by DOE activities. Where appropriate, comments should be supported by substantive technical and/or financial analyses and justifications to facilitate DOE's evaluation of the submitted comments. DOE particularly invites comments on the following issues and alternatives; however, comments need not be limited to these issues.

1. Transportation

DOE is proposing clarifications to the scope of 10 CFR part 835 with respect to activities involving transportation of radioactive materials, as discussed in Section II of this Supplementary Information section. DOE seeks public comment on the proposal and any other alternatives that members of the public would like DOE to consider.

2. Planned Special Exposures

DOE is proposing changes to the § 835.204 requirements for conduct of planned special exposures, including provisions for planned special exposures exceeding the values of the deterministic dose limits in § 835.202. Addition of deterministic dose limits would be consistent with provisions established by the NRC at 10 CFR 20.1206. However, DOE notes that planned special exposures have not been conducted and, in light of current activities and doses within the DOE complex, may not be warranted. DOE is therefore seeking comments on the possible impact of eliminating all of the planned special exposure provisions in § 835.204.

3. Sealed Radioactive Source Control

DOE invites comments regarding the sealed radioactive source accountability values proposed for inclusion as appendix E to 10 CFR part 835. The basis for these values is explained in detail in Section II.C. DOE has also selected a multiple of these values as the basis for identifying radioactive material areas as defined in § 835.2(a). DOE is interested in receiving public comments regarding other options for determining appropriate values and the technical bases supporting any proposed alternatives.

4. Radiation Safety Training

DOE is proposing changes to the radiation safety training requirements in subpart J. Due to the limited course content and exposure restrictions in controlled areas, DOE is proposing to eliminate the § 835.901 requirement for general employees to complete written examinations upon completion of general employee radiological training. DOE is interested in receiving comments regarding the impact of this change and possible benefits of retaining the requirement.

Consistent with the current requirements of 10 CFR part 835, DOE would retain radiation safety training requirements for three classes of individuals. The proposed requirements of § 835.901 (c) and (d) (analogous to current requirements of §§ 835.901 and 835.902, respectively) are based upon the radiological hazards in the areas to which unescorted access is permitted and the activities to be undertaken by individuals in these areas. However, the proposed requirements, while appropriate to the needs of general employees and radiological workers, may not adequately address the duties and responsibilities of radiological control technicians (RCTs). DOE is concerned about the efficacy of the proposed rule, as it would apply to RCTs, because: (1) the education, training, and responsibilities of RCTs throughout the DOE complex vary greatly; (2) the training course subject matter requirements proposed for inclusion in § 835.901(b) may not always be specifically related to the responsibilities of RCTs at the varied DOE facilities; (3) specification of explicit training requirements for RCTs may establish an inferred primacy for that position that is unwarranted in relation to the responsibilities of other individuals who fill various technical support, supervisory, and management positions; and (4) there are no requirements for any DOE activity to actually employ RCTs. Therefore, DOE is seeking public comment on the following alternative approaches and invites comments on any other viable approaches for ensuring that radiation safety training is provided in a manner sufficient to ensure adequate implementation of the radiation protection program.

4a. Alternative Approach 1

The first alternative approach under consideration would be to add to § 835.901 a separate paragraph that establishes specific RCT training course content requirements that reflect the wide range of duties and responsibilities of RCTs employed by DOE activities. This approach would, in effect, codify training course content distinctions that are currently established in the standardized core training courses distributed by DOE. For example such requirements might expand the training course content requirements of § 835.901(b) to more clearly indicate that, for RCTs, ''basic radiological fundamentals'' (§ 835.901(b)(2)) includes fundamentals of radiation detection and measurement theory and techniques and that ''individual responsibilities for implementing ALARA measures'' (§ 835.901(b)(5)) includes provisions for providing job-site radiation protection coverage for general employees.

4b. Alternative Approach 2

The second alternative approach under consideration would be to add to § 835.901 separate paragraphs that establish specific training requirements for RCTs and other key positions in the radiological control organization, e.g., radiological control manager, RCT supervisor, ALARA engineer, and radiological control support personnel.

4c. Alternative Approach 3

The third alternative approach under consideration would be to remove from 10 CFR part 835 all requirements for RCT training. This approach is based upon a presumption that compliance with the performance requirements established in 10 CFR part 835 provides for an adequate degree of radiation protection, regardless of the training provided to RCTs.

4d. Alternative Approach 4

The fourth alternative approach under consideration would be to remove the RCT training requirements from subpart J and add to § 835.101 a general requirement for individuals responsible for implementing the requirements of 10 CFR part 835 to have the appropriate education, training, and skills to effectively discharge these responsibilities.

5. Written Procedures

In reviewing the requirements of 10 CFR part 835 and the proposed amendment, DOE noted that various requirements for written procedures have been established without consistent consideration of the hazards involved in the wide range of DOE activities (see §§ 835.404(d), 835.405(f), 835.501(d), 835.1001(b), 835.1003(a), 835.1101 (b) and (c) and 835.1201(a)). For instance, proposed § 835.1201(a) establishes requirements for written procedures for control of accountable sealed radioactive sources, regardless of their activity, but there is no parallel requirement for control of planned special exposures. DOE is concerned that this inconsistency, while historically present under DOE Order 5480.11, may divert resources from active management of high-risk activities to administrative control of low-risk activities. DOE is seeking public comment on the proposed amendment, on the alternative approaches that follow, and on any other viable approaches.

5a. Alternative Approach 1

The first alternative approach under consideration would be to remove from 10 CFR part 835 most or all of the specific requirements for written procedures. Such requirements would be left to the discretion of cognizant DOE line management in discharging their responsibilities for approval of documented radiation protection programs.

5b. Alternative Approach 2

The second alternative approach under consideration would be to replace most or all of the specific requirements for written procedures in 10 CFR part 835 with a general requirement, added to § 835.101, requiring written procedures to be developed and implemented consistent with the potential hazards created by the activity and the education, training, and skills of the individuals who might be exposed to these hazards.

6. Lung Retention Factors

As explained in ''Use of Appendices'' in Section II.D. of this preamble, DOE is proposing to delete appendix B to 10 CFR part 835 and place the data into a guidance document. Although DOE is proposing to delete appendix B because it does not contain substantive requirements, DOE is seeking public comment on the possible impact of removing the alternative absorption factors and lung retention classes from 10 CFR part 835.

7. Emergency Situations

DOE is proposing revisions to §§ 835.1301 and 835.1302 to clarify requirements for applying the emergency dose guidelines. In light of the uncertainties involved in emergency operations and the fact that the numerical dose values provided are guidelines rather than limits, DOE is proposing to delete the table containing these values from 10 CFR part 835 and relegate them to appropriate emergency management documents. DOE is seeking comments regarding the impact of this

proposal and other alternatives for ensuring adequate radiation protection during emergency operations.

8. Implementation Schedule

In § 835.101(f), DOE has established its proposed schedule for implementing the revised regulatory requirements (approximately three (3) years for the radiobioassay program accreditation requirements and six (6) months after RPP approval for all other requirements). DOE is seeking comments on any possible benefits or drawbacks associated with adhering to this proposed schedule.

B. Written Comment Procedures

Interested parties are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice. Written comments (5 copies and a computer disk) should be labeled on the envelope, computer disk, and the documents, ''EH–RM–96–835,'' and must be received by the date specified at the beginning of this notice. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 3 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its own determination.

C. Public Hearings

1. Procedures for Submitting Requests To Speak

The dates, times, and locations of the public hearings are indicated at the beginning of this notice. DOE invites any individual who has an interest in these proceedings to make a request for an opportunity to make an oral presentation at the public hearings. Requests may be submitted by telephone at (202) 586–3012. The individual making the request should provide a telephone number where he or she may be contacted. Individuals will be notified as to the approximate time they will be speaking. Each individual who will be speaking is requested to submit 5 copies of his or her statement at the registration desk prior to the beginning of the hearing. In the event any individual wishing to testify cannot meet this request, that individual may make alternate arrangements by calling (202) 586–3012 in advance or by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to select the individuals to be heard at the hearings, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to 10 minutes.

A DOE official will be designated to preside at the hearings. The hearings will not be judicial- or evidentiary-type hearings, but will be conducted in accordance with 5 U.S.C. 533 and section 501 of the DOE Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations. Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking including the transcript will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any individual may purchase a copy of the transcript from the transcribing reporter.

IV. Review Under the National Environmental Policy Act

DOE has reviewed the promulgation of this proposed amendment to 10 CFR part 835 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). DOE has completed an Environmental Assessment and on the basis of that information has issued a Finding of No Significant Impact (FONSI) for this proposed amendment. The Environmental Assessment and FONSI are available for inspection at the DOE Freedom of Information Reading Room, 1E–190, 1000 Independence Ave. SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments on this finding should be provided to DOE at the address listed for all other comments.

V. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis and publish it at the time of publication of general notice of 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(b).

The proposed rule would amend DOE's regulations governing programs established at DOE facilities to protect individuals from ionizing radiation resulting from DOE activities. The contractors who manage and operate DOE facilities are responsible for implementing the occupational radiation protection program. DOE has considered whether management and operating (M&O) contractors are ''small businesses,'' as that term is defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of ''small business concern'' in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. Small businesses are business concerns which, together with their affiliates, have no more than 500 to 1500 employees, varying by SIC category, and annual receipts of between $0.5 million to $25 million, again varying by SIC category. See Small Business Administration, Final Rule on ''Small Business Size Standards,'' 61 FR 3280, at 3289–94 (January 31, 1996). DOE's M&O contractors exceed SBA's size standards for small businesses. In addition, it is noted that M&O contractors are reimbursed through their contracts with DOE for the costs of complying with DOE occupational radiation protection requirements. They will not, therefore, be adversely impacted by the requirements in the proposed rule. For these reasons, DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

VI. 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, today's action was not subject to review under the Executive Order by the Office of Information and

Regulatory Affairs within the Office of Management and Budget.

VII. 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 National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This proposed rule would not have a substantial direct effect on the institutional interests or traditional functions of States.

VIII. 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: (a) 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 amendments to 10 CFR part 835 meet the relevant standards of Executive Order 12988.

IX. Review Under Paperwork Reduction Act

The information and reporting requirements in this part would not be substantially different from existing reporting requirements provided in DOE contracts with DOE prime contractors covered by this rule. This proposed amendment would codify recordkeeping and reporting requirements currently provided in Departmental standards implemented by DOE contractors through contractual commitments. DOE will submit the collection of any new information requests concerning this rule to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

X. Review Under the Unfunded Mandates Reform Act

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. 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.'' 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 proposed rule published today does not contain any Federal mandate. The provisions on 10 CFR part 835 apply only to activities conducted by or for DOE. Any costs resulting from implementation of DOE's occupational radiation protection program are ultimately borne by the Federal government. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 10 CFR Part 835

Emergency radiation exposures, Nuclear material, Occupational safety and health, Radiation exposures, Radiation protection, Radioactive material, Reporting and recordkeeping requirements, Safety during emergencies, Training.

Issued in Washington, DC, on December 12, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

For the reasons set forth in the preamble, Title 10, Code of Federal Regulations, Part 835 is proposed to be amended as set forth below:

10 CFR PART 835—OCCUPATIONAL RADIATION PROTECTION

1. The authority citation for Part 835 continues to read as follows:

Authority: 42 U.S.C. 2201; 7191.

Subpart A—General Provisions

2. Section 835.1 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3), redesignating paragraph (b)(4) as (b)(6), and revising it, and by adding paragraphs (b)(4), (b)(5), and (c) as follows:

§ 835.1 Scope.

* * * * *

(b) *Exclusion.* Except as discussed in paragraph (c) of this section, the requirements in this part do not apply to: * * *

(3) Activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations to the extent a requirement under this part cannot be implemented without compromising the effectiveness of such activities;

(4) Radioactive material transportation conducted in compliance with DOE Orders for such transportation;

(5) DOE activities conducted outside the United States on territory under the jurisdiction of a foreign government to the extent governed by occupational radiation protection requirements agreed to between the United States and the cognizant government; or

(6) Background radiation, radiation doses received as a patient for the purposes of medical diagnosis or therapy, or radiation doses received from participation as a subject in medical research programs.

(c) Occupational doses received as a result of excluded activities and radioactive material transportation, as listed in paragraphs (b)(1) through (b)(5) of this section, shall be considered when determining compliance with the occupational dose limits in §§ 835.202 and 835.207. Occupational doses resulting from authorized emergency exposures and planned special exposures shall not be considered when determining compliance with the dose limits in §§ 835.202 and 835.207.

3. In § 835.2, paragraph (a) is amended by removing definitions of the terms ''ambient air'' and ''continuous air monitor''; ''DOE activities'' and ''occupational exposure'' by adding in alphabetical order definitions for the terms ''accountable sealed radioactive source'', ''derived air concentration-hour'', ''DOE activity'', ''occupational dose'', ''radioactive material area'', ''radioactive material transportation'', ''radiological control technician'', ''real-time air monitoring'', ''respiratory protective device'', ''sealed radioactive source'', ''source leak test'', and ''week'' as follows; and revising the definitions of the terms ''airborne radioactive material or airborne radioactivity'', ''airborne radioactivity area'', ''contamination area'', ''controlled area'', ''declared pregnant worker'', ''high contamination area'', ''member of the public'', ''monitoring'', ''radiological area'', and ''year'' to read as follows. In § 835.2, paragraph (b), the definition of ''collective dose'' is removed and the definitions of the terms ''cumulative total effective dose equivalent'', ''effective dose equivalent'', ''external dose or exposure'', ''quality factor'', ''total effective dose equivalent'', and ''weighting factor'' are revised as follows. Paragraph (d) of § 835.2 is removed.

§ 835.2 Definitions.

(a) As used in this part:

Accountable sealed radioactive source means a sealed radioactive source having a half-life equal to or greater than 30 days and an isotopic activity equal to or greater than the corresponding value provided in appendix E to this part.

Airborne radioactive material or airborne radioactivity means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

Airborne radioactivity area means any area, accessible to individuals, where the concentration of airborne radioactivity, above natural background, exceeds or is likely to exceed 10 percent of the derived air concentration (DAC) values listed in appendix A or appendix C to this part.

* * * * *

Contamination area means any area, accessible to individuals, where removable contamination levels exceed or are likely to exceed the surface radioactivity values specified in appendix D to this part, but do not exceed 100 times those values.

* * * * *

Controlled area means any area to which access is managed by or for DOE to protect individuals from exposure to radiation and/or radioactive material.

Declared pregnant worker means a woman who has voluntarily declared to her employer, in writing, her pregnancy for the purpose of being subject to the occupational dose limits to the embryo/fetus as provided in § 835.206. This declaration may be revoked, in writing, at any time by the declared pregnant worker.

* * * * *

Derived air concentration-hour (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the DAC for each radionuclide) and the time of exposure to that radionuclide, in hours.

DOE activity means an activity taken for or by DOE in a DOE operation or facility that has the potential to result in the occupational exposure of an individual to radiation or radioactive material. The activity may be, but is not limited to, design, construction, operation, or decommissioning. To the extent appropriate, the activity may involve a single DOE facility or operation or a combination of facilities and operations, possibly including an entire site or multiple DOE sites.

* * * * *

High contamination area means any area, accessible to individuals, where removable contamination levels exceed or are likely to exceed 100 times the surface radioactivity values specified in appendix D to this part.

* * * * *

Member of the public means an individual who is not a general employee. An individual is not a ''member of the public'' during any period in which the individual receives an occupational dose.

* * * * *

Monitoring means the measurement of radiation levels, airborne radioactivity concentrations, radioactive contamination levels, or quantities of radioactive material and the use of the results of these measurements to evaluate potential and actual exposures to ionizing radiation.

* * * * *

Occupational dose means an individual's ionizing radiation dose (external and internal) as a result of that individual's work assignment. Occupational dose does not include doses received as a medical patient or doses resulting from background radiation or participation as a subject in medical research programs.

* * * * *

Radioactive material area means any area, accessible to individuals, in which items or containers of radioactive material exist and the total activity of radioactive material exceeds ten times the applicable values provided in appendix E to this part.

Radioactive material transportation means the movement of radioactive material having a specific activity in excess of 0.002 microcurie per gram by aircraft, rail, vessel, or highway vehicle outside of a controlled area. Radioactive material transportation does not include preparation of material or packagings for transportation, conduct of surveys required by this part, or application of markings and labels required for transportation.

Radiological area means any area(s) within a controlled area defined as a ''radioactive material area,'' ''radiation area,'' ''high radiation area,'' ''very high radiation area,'' ''contamination area,'' ''high contamination area,'' or ''airborne radioactivity area'' in accordance with this section.

Radiological control technician means a radiological worker whose primary job assignment involves monitoring of workplace radiological conditions, specification of protective measures, and provision of assistance and guidance to other individuals in implementation of radiological controls.

* * * * *

Real-time air monitoring means measurement of the concentrations or quantities of airborne radioactive materials on a continuous basis.

* * * * *

Respiratory protective device means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

Sealed radioactive source means a radioactive source manufactured, obtained, or retained for the purpose of utilizing the emitted radiation. The sealed radioactive source consists of a known or estimated quantity of radioactive material contained within a sealed capsule, sealed between layer(s) of non-radioactive material, or firmly fixed to a non-radioactive surface by electroplating or other means intended to prevent leakage or escape of the radioactive material.

Source leak test means a test to determine if a sealed radioactive source is leaking radioactive material.

* * * * *

Week means a period of seven consecutive days beginning on Sunday.

Year means the period of time beginning on or near January 1 and ending on or near December 31 of that same year used to determine compliance with the provisions of this part. The starting and ending date of the year used to determine compliance may be changed provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(b) * * *

Cumulative total effective dose equivalent means the sum of all total effective dose equivalent values recorded for an individual, where available, for each year occupational exposure was received, beginning January 1, 1989.

* * * * *

Effective dose equivalent (H_E) means the summation of the products of the dose equivalent received by specified tissues of the body (H_T) and the appropriate weighting factor (w_T)—that is, $H_E=\Sigma w_T H_T$. It includes the dose from radiation sources internal and/or external to the body. For purposes of compliance with this part, deep dose equivalent to the whole body may be used as effective dose equivalent for external exposures. The effective dose equivalent is expressed in units of rem (or sievert).

External dose or exposure means that portion of the dose equivalent received from radiation sources outside the body (i.e., ''external sources'').

* * * * *

Quality factor (Q) means the principal modifying factor used to calculate the dose equivalent from the absorbed dose; the absorbed dose (expressed in rad or gray) is multiplied by the appropriate quality factor.

(i) The quality factors to be used for determining dose equivalent in rem are shown below:

QUALITY FACTORS

Radiation type	Quality factor
X-rays, gamma rays, positrons, electrons (including tritium beta particles)	1
Neutrons, ≤10 keV	3
Neutrons, >10 keV	10
Protons and singly-charged particles of unknown energy with rest mass greater than one atomic mass unit	10

QUALITY FACTORS—Continued

Radiation type	Quality factor
Alpha particles and multiple-charged particles (and particles of unknown charge) of unknown energy	20

When spectral data are insufficient to identify the energy of the neutrons, a quality factor of 10 shall be used.

(ii) When spectral data are sufficient to identify the energy of the neutrons, the following mean quality factor values may be used:

QUALITY FACTORS FOR NEUTRONS

[Mean quality factors, $\bar{Q}$ (maximum value in a 30-cm dosimetry phantom), and values of neutron flux density that deliver in 40 hours, a maximum dose equivalent of 100 mrem (0.001 sievert). Where neutron energy falls between listed values, the more restrictive mean quality factor shall be used.]

Neutron energy (MeV)	Mean quality factor	Neutron flux density ($cm^{-2}s^{-1}$)
2.5×10^{-8} thermal	2	680
1×10^{-7}	2	680
1×10^{-6}	2	560
1×10^{-5}	2	560
1×10^{-4}	2	580
1×10^{-3}	2	680
1×10^{-2}	2.5	700
1×10^{-1}	7.5	115
5×10^{-1}	11	27
1	11	19
2.5	9	20
5	8	16
7	7	17
10	6.5	17
14	7.5	12
20	8	11
40	7	10
60	5.5	11
1×10^{2}	4	14
2×10^{2}	3.5	13
3×10^{2}	3.5	11
4×10^{2}	3.5	10

* * * * *

Total effective dose equivalent (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

Weighting factor (w_T) means the fraction of the overall health risk, resulting from uniform, whole body irradiation, attributable to specific tissue (T). The dose equivalent to tissue, H_T, is multiplied by the appropriate weighting factor to obtain the dose equivalent to that tissue. The weighting factors are as follows:

WEIGHTING FACTORS FOR VARIOUS ORGANS AND TISSUES

Organs or tissues, T	Weighting factor, w_T
Gonads	0.25
Breasts	0.15
Red bone marrow	0.12
Lungs	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder[1]	0.30
Whole body[2]	1.00

[1] ''Remainder'' means the five other organs or tissues with the highest dose (e.g., liver, kidney, spleen, thymus, adrenal, pancreas, stomach, small intestine, and upper large intestine). The weighting factor for each remaining organ or tissue is 0.06.

[2] For the case of uniform external irradiation of the whole body, a weighting factor (w_T) equal to 1 may be used in determination of the effective dose equivalent.

* * * * *

§ 835.4 [Amended]

4. Section 835.4 is amended by adding ''roentgen,'' after ''rad,'' in the first sentence and removing the last sentence.

Subpart B—Radiation Protection Programs

5. Section 835.101 is amended by revising paragraph (f) to read as follows, removing paragraph (g), and redesignating paragraphs (h), (i), and (j) as (g), (h), and (i) respectively; in paragraph (d), the reference to ''§ 835.101(i)'' is changed to ''§ 835.101(h)''.

§ 835.101 Radiation protection programs.

* * * * *

(f) The RPP shall include plans, schedules, and other measures for achieving compliance with regulations of this part. Unless otherwise specified, compliance with amendments to this part shall be achieved no later than 180 days following approval of the revised RPP by DOE. Compliance with the requirements of § 835.402(d) for radiobioassay program accreditation must be achieved no later than January 1, 2000.

* * * * *

6. Section 835.102 is revised to read as follows:

§ 835.102 Internal audits

Internal audits of the radiation protection program, including examination of program content and implementation, shall be conducted through a process that ensures that all functional elements are reviewed no less frequently than every 36 months.

7. Section 835.202 is amended by revising the section heading, revising

the introductory text of paragraph (a), and revising paragraphs (b) and (c) to read as follows:

§ 835.202 Occupational dose limits for general employees.

(a) The occupational exposure to general employees resulting from DOE activities, other than planned special exposures under § 835.204 and emergency exposures conducted in compliance with DOE Orders for emergency operations, shall be controlled so the following limits from all occupational doses are not exceeded in a year:

* * * * *

(b) All occupational doses received during the current year, except doses resulting from planned special exposures under § 835.204 and emergency exposures conducted in compliance with DOE Orders for emergency operations, shall be included when demonstrating compliance with §§ 835.202(a) and 835.207.

(c) Exposures from background, therapeutic and diagnostic medical radiation, and participation as a subject in medical research programs shall not be included in dose records or in the assessment of compliance with the occupational dose limits.

8. Section 835.203 is amended by revising the section heading and paragraph (a) to read as follows and by removing paragraph (c):

§ 835.203 Combining internal and external dose equivalents.

(a) For individuals monitored in accordance with § 835.402 (a) and (c), the total effective dose equivalent during a year shall be determined by summing the effective dose equivalent from external exposures and the committed effective dose equivalent from intakes during the year. For individual monitoring that is performed, but not required by either § 835.402(a) or § 835.402(c) (non-mandatory monitoring), summing of the external and internal doses is required only when the dose determined by the non-mandatory monitoring exceeds the associated monitoring threshold established in § 835.402(a) or § 835.402(c).

* * * * *

9. Section 835.204 is amended by revising paragraphs (a)(3), (c)(1), (c)(2) and (d) to read as follows:

§ 835.204 Planned special exposures.

(a) * * *

(3) Joint written approval is received from the appropriate DOE Headquarters program office and the Secretarial Officer responsible for environment, safety and health matters.

* * * * *

(c) * * *

(1) In a year, the numerical value of the dose limits established in § 835.202; or

(2) Over the individual's lifetime, five times the numerical value of the dose limits established in § 835.202.

(d) Prior to a planned special exposure, written consent shall be obtained from each individual involved. Each such written consent shall include:

(1) The purpose of the planned operations and procedures to be used;

(2) The estimated doses and associated potential risks and specific radiological conditions and other hazards which might be involved in performing the task; and

(3) Instructions on the measures to be taken to keep the dose ALARA considering other risks that may be present.

* * * * *

10. Section 835.207 is revised to read as follows:

§ 835.207 Occupational dose limits for minors.

No minor shall be occupationally exposed to radiation and/or radioactive material during direct on-site access at a DOE site or facility in excess of 0.1 rem (0.001 sievert) total effective dose equivalent or be occupationally exposed in excess of 10 percent of the limits for general employees specified in § 835.202(a) (2), (3), and (4) in a year.

11. Section 835.208 is revised to read as follows:

§ 835.208 Limits for members of the public entering a controlled area.

No member of the public shall be exposed to radiation and/or radioactive material during access to the controlled area at a DOE site or facility in excess of 0.1 rem (0.001 sievert) total effective dose equivalent in a year.

§ 835.209 [Amended]

12. Section 835.209 is amended by removing paragraph (b) and redesignating paragraph (c) as (b).

Subpart E—Monitoring in the Workplace

13. Section 835.401 is amended by revising the introductory text of paragraphs (a) and (c) and paragraph (c)(1) to read as follows:

§ 835.401 General requirements.

(a) Monitoring and surveys shall be performed to:

* * * * *

(c) Instruments and equipment used for monitoring and surveys shall be:

(1) Periodically maintained and calibrated on an established frequency of at least once every twelve months;

* * * * *

14. Section § 835.402 is revised to read as follows:

§ 835.402 Individual monitoring.

(a) For the purpose of monitoring individual exposures to external radiation, personnel dosimeters shall be provided to and used by:

(1) Radiological workers who, under typical conditions, are likely to receive one or more of the following:

(i) A deep dose equivalent to any portion of the whole body of 0.1 rem (0.001 sievert) or more in a year;

(ii) A shallow dose equivalent to the skin or to any extremity of 5 rems (0.05 sievert) or more in a year;

(iii) A lens of the eye dose equivalent of 1.5 rems (0.015 sievert) or more in a year;

(2) Declared pregnant workers who are likely to receive from external sources a dose equivalent to the embryo/fetus in excess of 10 percent of the applicable limit in § 835.206;

(3) Occupationally exposed minors likely to receive a dose in excess of 50 percent of the applicable limits in § 835.207 in a year from external sources;

(4) Members of the public entering a controlled area likely to receive a dose in excess of 50 percent of the limit in § 835.208 in a year from external sources; or

(5) Individuals entering a high or very high radiation area.

(b) External dose monitoring programs shall be adequate to demonstrate compliance with the dose limits established in subpart C of this part. Except as provided in paragraph (e) of this section, personnel dosimetry programs implemented to demonstrate compliance with § 835.402(a) shall:

(1) Be accredited in accordance with the DOE Laboratory Accreditation Program for Personnel Dosimetry; or,

(2) Be excepted from accreditation in accordance with the DOE Laboratory Accreditation Program for Personnel Dosimetry.

(c) For the purpose of monitoring individual exposures to internal radiation, internal dosimetry programs (including routine bioassay programs) shall be conducted for:

(1) Radiological workers who, under typical conditions, are likely to receive 0.1 rem (0.001 sievert) or more committed effective dose equivalent from all occupational radionuclide intakes in a year;

(2) Declared pregnant workers likely to receive an intake resulting in a dose equivalent to the embryo/fetus in excess of 10 percent of the limit stated in § 835.206;

(3) Occupationally exposed minors who are likely to receive a committed effective dose equivalent in excess of 50 percent of the applicable limit stated in § 835.207 from all radionuclide intakes in a year; or

(4) Members of the public entering a controlled area likely to receive a committed effective dose equivalent in excess of 50 percent of the limit stated in § 835.208 from all radionuclide intakes in a year.

(d) Internal dose monitoring programs shall be adequate to demonstrate compliance with the dose limits established in subpart C of this part. Except as provided in paragraph (e) of this section, radiobioassay programs implemented to demonstrate compliance with § 835.402(c) shall:

(1) Be accredited in accordance with the DOE Laboratory Accreditation Program for Radiobioassay; or

(2) Be excepted from accreditation in accordance with the DOE Laboratory Accreditation Program for Radiobioassay.

(e) Personnel Dosimetry or Radiobioassay Programs implemented to demonstrate compliance with § 835.402(a) or § 835.402(c) respectively, that do not comply with the DOE Laboratory Accreditation Program Administration Technical Standard (latest version) require the approval of the Secretarial Officer responsible for environment, safety and health matters. Approval may be given if such programs demonstrate performance equivalent to that of programs accredited under the applicable DOE Laboratory Accreditation Program.

15. Section 835.403 is revised to read as follows:

§ 835.403 Air monitoring.

Monitoring of airborne radioactivity concentrations shall be performed in accordance with the provisions of this section.

(a) Air sampling shall be performed:

(1) Where an individual is likely to receive an exposure of 40 or more DAC-hours in a year. Samples representative of air inhaled by workers shall be taken as necessary to detect and evaluate the level or concentration of airborne radioactive material at work locations; or

(2) Where respiratory protective devices for protection against airborne radionuclides have been prescribed.

(b) Real-time air monitoring shall be performed where unexpected increases in airborne radioactivity levels are likely to result in an exposure to an individual exceeding 40 DAC-hours in one week.

(c) For the airborne radioactive material that could be encountered, real-time air monitors shall have alarm capability and sufficient sensitivity to alert potentially exposed individuals that immediate action is necessary in order to minimize or terminate inhalation exposures.

16. Section 835.404 is amended by revising paragraphs (d) and (f) to read as follows:

§ 835.404 Radioactive contamination control and monitoring.

* * * * *

(d) Areas accessible to individuals where the measured total contamination levels exceed the total surface radioactivity values specified in appendix D to this part, but the removable contamination levels are less than the removable surface radioactivity values specified in appendix D to this part, shall be controlled as follows when located outside of radiological areas:

(1) The area shall be routinely surveyed to ensure the removable contamination level remains below the values specified in appendix D to this part;

(2) The area shall be conspicuously marked to warn individuals of the contaminated status; and

(3) Written procedures shall be established and implemented to prevent unplanned or uncontrolled removal of the radioactive material.

* * * * *

(f) Appropriate monitoring to detect the presence of contamination shall be performed by individuals exiting radiological areas established to control removable contamination and/or airborne radioactivity.

* * * * *

17. Section 835.405 is added to subpart E to read as follows:

§ 835.405 Receipt of radioactive packages.

(a) If packages containing quantities of radioactive material in excess of a Type A quantity (as defined in 10 CFR 71.4) are expected to be received, arrangements shall be made to either:

(1) Take possession of the package when the carrier offers it for delivery; or

(2) Receive notification as soon as practicable after arrival of the package at the carrier's terminal and to take possession of the package expeditiously after receiving notification.

(b) External surfaces of packages known to contain radioactive material shall be surveyed for radioactive contamination if the package:

(1) Is labeled with a Radioactive White I, Yellow II, or Yellow III label (as specified in 49 CFR 172.403 and 172.436–440); or

(2) Has been transported as low specific activity material on an exclusive use vehicle (as these terms are defined in 10 CFR 71.4); or

(3) Has evidence of degradation, such as packages that are crushed, wet, or damaged.

(c) External surfaces of packages known to contain radioactive material shall be surveyed for radiation levels if the package:

(1) Is labeled with a Radioactive White I, Yellow II, or Yellow III label (as specified 49 CFR 172.403 and 172.436–440) and contains a Type A (as defined in 10 CFR 71.4) or greater quantity of radioactive material; or

(2) Has been transported as low specific activity material on an exclusive use vehicle (as these terms are defined in 10 CFR 71.4); or

(3) Has evidence of degradation, such as packages that are crushed, wet, or damaged.

(d) The surveys required by paragraphs (b) and (c) of this section shall be performed as soon as practicable after receipt of the package, but not later than 3 hours after the package is received if it is received during normal working hours, or not later than 3 hours from the beginning of the next working day if it is received after working hours.

(e) Surveys of received packages for radioactive contamination are not necessary if the package contains only special form (as defined in 10 CFR 71.4) or gaseous radioactive material.

(f) Written procedures for safely opening packages in which radioactive material is received shall be established and implemented. These procedures shall give due consideration to special instructions for the type of package being opened.

Subpart F—Entry Control Program

18. Section 835.501 is amended by revising paragraph (d), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 835.501 Radiological areas.

* * * * *

(d) Written procedures shall be established and implemented as necessary to demonstrate compliance with the provisions of this subpart. The procedures shall include actions required to ensure the effectiveness and operability of barricades, devices, alarms, and locks.

(e) Written authorizations shall be required to control entry into and perform work within radiological areas. These authorizations shall specify radiation protection measures commensurate with the existing and potential hazards.

* * * * *

19. In § 835.502, paragraphs (a), (b), and (c) are redesignated as paragraphs (b), (c), and (d) respectively; the paragraph heading of redesignated paragraph (b) is revised to read ''Physical controls''; and new paragraph (a) is added and redesignated paragraph (c) is revised as follows:

§ 835.502 High and very high radiation areas.

(a) The following measures shall be implemented for each entry into a high radiation area:

(1) The area shall be surveyed as necessary during access to determine the exposure rates to which the individual is exposed; and

(2) Each individual shall be provided a supplemental dosimetry device capable of providing an immediate indication of the individual's integrated dose during the entry.

* * * * *

(c) *Very high radiation areas.* In addition to the above requirements, additional measures shall be implemented to ensure individuals are not able to gain access to very high radiation areas.

Subpart G—Posting and Labeling

20. Section 835.601 is revised to read as follows:

§ 835.601 General requirements.

(a) Areas shall be posted in accordance with this subpart to provide warning to individuals of the presence, or potential presence, of radiation or radioactive materials.

(b) Except as provided in § 835.602(b), postings and labels required by this subpart shall include the standard radiation warning trefoil in black or magenta imposed upon a yellow background.

(c) Signs required by this subpart shall be clearly and conspicuously posted and may include radiological protection instructions.

(d) The posting and labeling requirements in this subpart may be modified to reflect the special considerations of DOE activities conducted at private residences or businesses. Such modifications shall provide the same level of protection to individuals as the existing provisions in this subpart.

21. Section 835.602 is amended by revising paragraph (a) to read as follows:

§ 835.602 Controlled areas.

(a) Each access point to a controlled area (as defined in § 835.2) shall be posted whenever radiological areas exist in the area. Individuals who enter only the controlled area without entering radiological areas are not expected to receive a total effective dose equivalent of more than 100 mrem (0.001 sievert) in a year.

* * * * *

22. Section 835.603 is revised to read as follows:

§ 835.603 Radiological areas.

Each access point to a radiological area (as defined in § 835.2) shall be posted with conspicuous signs bearing the wording provided in this section.

(a) *Radiation Area.* The words ''Caution, Radiation Area'' shall be posted at each radiation area.

(b) *High Radiation Area.* The words ''Caution, High Radiation Area'' or ''Danger, High Radiation Area'' shall be posted at each high radiation area.

(c) *Very High Radiation Area.* The words ''Grave Danger, Very High Radiation Area'' shall be posted at each very high radiation area.

(d) *Airborne Radioactivity Area.* The words ''Caution, Airborne Radioactivity Area'' or ''Danger, Airborne Radioactivity Area'' shall be posted at each airborne radioactivity area.

(e) *Contamination Area.* The words ''Caution, Contamination Area'' shall be posted at each contamination area.

(f) *High Contamination Area.* The words ''Caution, High Contamination Area'' or ''Danger, High Contamination Area'' shall be posted at each high contamination area.

(g) *Radioactive Material Area.* The words ''Caution, Radioactive Material(s)'' or ''Danger, Radioactive Material(s)'' shall be posted at each radioactive material area.

23. Section 835.604 is added to subpart G to read as follows:

§ 835.604 Exceptions to posting requirements.

(a) Areas may be excepted from the posting requirements of § 835.603 for periods of less than 8 continuous hours when placed under continuous observation and control of an individual knowledgeable of, and empowered to implement, required access and exposure control measures.

(b) The following areas are excepted from the radioactive material area posting requirements of § 835.603(g):

(1) Areas posted in accordance with § 835.603(a) through (f); and

(2) Areas in which each item or container of radioactive material is clearly and adequately labeled such that individuals entering the area are made aware of the hazard.

(c) Areas containing only packages received from radioactive material transportation need not be posted in accordance with § 835.603 until the packages are surveyed in accordance with § 835.405.

24. Section 835.605 is added to subpart G to read as follows:

§ 835.605 Labeling items and containers.

Except as provided in § 835.606, each item or container of radioactive material shall bear a durable, clearly visible label bearing the standard radiation warning trefoil and the words ''Caution, Radioactive Material'' or ''Danger, Radioactive Material.'' The label shall also provide sufficient information to permit individuals handling or using the items or containers, or working in the vicinity of the items or containers, to take precautions to avoid or minimize exposures.

25. Section 835.606 is added to subpart G to read as follows:

§ 835.606 Exceptions to labeling requirements.

Items and containers are excepted from the radioactive material labeling requirements of § 835.605 when:

(a) Used, handled, or stored in areas posted and controlled in accordance with §§ 835.603 and 835.604 and sufficient information is provided to permit individuals to take appropriate protective actions; or

(b) The quantity of radioactive material is below the values specified in appendix E to this part; or

(c) Packaged, labeled, and marked in accordance with the regulations of the Department of Transportation or corresponding DOE Orders; or

(d) Accessible only to individuals authorized to handle or use them, or to work in the vicinity; or

(e) Installed in manufacturing or process equipment, such as reactor components, piping, and tanks.

Subpart H—Records

26. Section 835.702 of subpart H, paragraphs (b), (c), (d), and (e) are revised to read as follows:

835.702 Individual monitoring records.

* * * * *

(b) The results of individual external and internal dose monitoring that is performed, but not required by § 835.402, shall be recorded if the resulting doses exceed the monitoring thresholds of § 835.402(a) or

§ 835.402(c). Recording of the non-uniform shallow dose equivalent to the skin as determined under § 835.205 is not required if the dose is less than 2 percent of the limit specified for the skin in § 835.202(a)(4).

(c) The records required by this section shall:

(1) Be sufficient to evaluate compliance with subpart C of this part;

(2) Be sufficient to provide dose information necessary to complete reports required by subpart I of this part and by DOE requirements for occurrence reporting and processing;

(3) Include the following quantities for external dose received during the year:

(i) The effective dose equivalent from external sources of radiation (deep dose equivalent may be used as effective dose equivalent for external exposure);

(ii) The lens of the eye dose equivalent;

(iii) The shallow dose equivalent to the skin; and

(iv) The shallow dose equivalent to the extremities.

(4) Include the following information for internal dose resulting from intakes received during the year:

(i) Committed effective dose equivalent;

(ii) Committed dose equivalent to any organ or tissue of concern; and

(iii) Identity of radionuclides.

(5) Include the following quantities for the summation of the external and internal dose:

(i) Total effective dose equivalent in a year;

(ii) For any organ or tissue assigned an internal dose during the year, the sum of the deep dose equivalent from external exposures and the committed dose equivalent to that organ or tissue; and

(iii) Cumulative total effective dose equivalent.

(6) Include the dose equivalent to the embryo/fetus of a declared pregnant worker.

(d) Documentation of all occupational doses received during the current year, except for doses resulting from planned special exposures under § 835.204 and emergency exposures conducted in compliance with DOE Orders for emergency operations, shall be obtained to demonstrate compliance with § 835.202(a). If complete records documenting previous occupational dose during the year cannot be obtained, a written estimate signed by the individual may be used to demonstrate compliance.

(e) For radiological workers whose occupational exposure is monitored in accordance with § 835.402, efforts shall be made to obtain complete records of prior years occupational internal and external doses. If complete records documenting prior years occupational doses cannot be obtained, a written estimate signed by the individual may be accepted.

* * * * *

27. In § 835.703, paragraphs (b), (c) and (d)(1) are revised to read as follows:

§ 835.703 Monitoring and workplace records.

* * * * *

(b) Monitoring and survey results used to determine individual occupational dose from external and internal sources;

(c) Results of surveys for the release and control of material and equipment as required by § 835.1101. These records shall describe the property, date on which the survey was performed, identity of the individual who performed the survey, type and identification number of the survey instrument used, and results of the survey; and

(d) * * *

(1) Instruments and equipment used for surveys and monitoring as required by § 835.401; and

* * * * *

28. Section 835.704, paragraph (a) is amended by removing the reference to ‘‘, 835.902, and 835.903’’; paragraph (b) is amended by removing the reference to ‘‘, 835.1002,’’; paragraph (d) is revised and a new paragraph (f) is added as follows:

§ 835.704 Administrative records.

* * * * *

(d) Written declarations of pregnancy and revocations of declarations of pregnancy shall be maintained.

* * * * *

(f) Records shall be maintained as necessary to evaluate compliance with the requirements of §§ 835.1201 and 835.1202 for sealed radioactive source written procedures, inventory, and source leak tests.

Subpart I—Reports to Individuals

29. Section 835.801, paragraph (a) is revised to read as follows:

§ 835.801 Reports to individuals.

(a) Radiation exposure data for individuals monitored in accordance with § 835.402 shall be reported as specified in this section. The information shall include the data required under § 835.702(c). Each notification and report shall be in writing and include: the DOE site or facility name, the name of the individual, and the individual's social security number, employee number, or other unique identification number.

* * * * *

Subpart J—Radiation Safety Training

30. In subpart J, § 835.901 is revised to read as follows:

§ 835.901 Radiation safety training.

(a) Radiation safety training programs shall be established as necessary to ensure compliance with the requirements of this section.

(b) Radiation safety training shall include the following topics, to the extent appropriate to each individual's prior training, anticipated and actual assignments, and degree of exposure to potential radiological hazards:

(1) Risks of exposure to radiation and radioactive materials, including prenatal radiation exposure;

(2) Basic radiological fundamentals and radiation protection concepts;

(3) Controls, limits, policies, procedures, alarms, and other measures implemented at the facility to minimize exposures to radiation and radioactive materials, including both routine and emergency actions;

(4) Individual rights and responsibilities as related to implementation of the facility radiation protection program;

(5) Individual responsibilities for implementing ALARA measures required by § 835.101; and

(6) Individual exposure reports that may be requested in accordance with § 835.801.

(c) Individuals shall complete radiation safety training before being permitted unescorted access to controlled areas and prior to receiving occupational exposure during access to controlled areas at a DOE site or facility.

(d) Each individual shall demonstrate knowledge of the radiation safety training topics established in § 835.901(b), commensurate with the hazards in the area and required controls, by successful completion of an examination and performance demonstrations prior to being permitted unescorted access to radiological areas and prior to performing unescorted assignments as a radiological worker.

(e) Each radiological control technician shall demonstrate knowledge of the radiation safety training topics established in § 835.901(b), commensurate with the hazards and required controls, by successful completion of an examination and performance demonstrations prior to performing unescorted assignments.

(f) Where an escort is required in accordance with paragraph (c), (d), or (e) of this section, the escort shall:

(1) Have completed required training, examinations, and performance demonstrations for the area to be entered and the work to be performed; and

(2) Ensure that all escorted individuals comply with the documented radiation protection program.

(g) Retraining shall be provided to individuals when there is a significant change to radiation protection policies and procedures that may affect the individual and at intervals not to exceed 24 months. Retraining provided for individuals subject to the requirements of § 835.901(d) and (e) shall include successful completion of an examination.

§§ 835.902 and 835.903 [Removed and Reserved]

31. Sections 835.902 and 835.903 of subpart J are removed and reserved.

Subpart K—Design and Control

32. In § 835.1001, paragraph (a), the phrase in the first sentence ''facility and equipment design'' is revised to read ''physical design features'' and paragraph (c) is added as follows:

§ 835.1001 Design and control.

* * * * *

(c) During the design of new facilities or modification of existing facilities:

(1) Optimization methods shall be used to assure that occupational dose is maintained ALARA in developing and justifying facility design or modification and physical controls; and

(2) The design or modification of a facility and the selection of materials shall include features that facilitate operations, maintenance, decontamination, and decommissioning.

33. Section 835.1002 is removed and reserved.

§ 835.1002 [Removed and Reserved]

34. Section 835.1003 is amended by revising paragraph (a)(1); removing paragraph (a)(2); and redesignating paragraph (a)(3) as paragraph (a)(2):

§ 835.1003 Control procedures.

(a) * * *

(1) The anticipated occupational dose to general employees shall not exceed the limits established in § 835.202; and

* * * * *

Subpart L—Releases of Materials and Equipment From Radiological Areas

35. Section 835.1101 is revised to read as follows:

§ 835.1101 Releases of materials and equipment from radiological areas.

The following requirements apply to the release of materials and equipment from radiological areas for use in controlled areas:

(a) Except as provided in paragraphs (b) and (c) of this section, in radiological areas established to control surface or airborne radioactive material, material and equipment shall be treated as radioactive material and shall not be released from radiological areas to controlled areas if either of the following conditions exist:

(1) Surveys of accessible surfaces show that either the total or removable contamination levels exceed the values specified in appendix D to this part; or

(2) Prior use suggests that the contamination levels on inaccessible surfaces are likely to exceed the values specified in appendix D to this part.

(b) Material and equipment exceeding the total or removable surface radioactivity values specified in appendix D to this part may be conditionally released for movement on-site from one radiological area for immediate placement in another radiological area only if appropriate surveys are performed and appropriate procedures to control the movement are established and exercised.

(c) Material and equipment with fixed contamination levels that exceed the values specified in appendix D to this part may be released for use in controlled areas outside of the radiological areas only under the following conditions:

(1) Removable contamination levels are below the values specified in appendix D to this part; and

(2) Materials are routinely surveyed and clearly marked, labeled, or tagged to alert individuals of the contaminated status; and

(3) Appropriate written procedures are established and exercised to maintain control of these items.

(d) Prior to removal of materials and equipment from radiological areas in accordance with paragraph (a) of this section, all radioactive material markings and labels shall be removed or defaced.

Subpart M—Sealed Radioactive Source Control

36. Subpart M is amended by adding sections 835.1201 and 835.1202 as follows:

§ 835.1201 General provisions.

(a) Written procedures shall be established and implemented to control accountable sealed radioactive sources.

(b) Accountable sealed radioactive sources, or their storage containers or devices, shall be labeled in accordance with § 835.605. Such labels are exempt from the design and color specifications of § 835.601(b).

§ 835.1202 Inventories and leak tests.

(a) Each accountable sealed radioactive source shall be inventoried at intervals not to exceed six months. This inventory shall:

(1) Establish the physical location of each accountable sealed radioactive source;

(2) Verify the presence and adequacy of associated postings and labels; and

(3) Establish the adequacy of storage locations, containers, and devices.

(b) Except for sealed sources consisting solely of gaseous radioactive material or tritium, each accountable sealed radioactive source having an activity in excess of 0.005 μCi shall be subject to a source leak test upon receipt, when damage is suspected, and at intervals not to exceed six months. Source leak tests shall be capable of detecting radioactive material leakage equal to or exceeding 0.005 μCi.

(c) Notwithstanding the requirements of paragraph (b) of this section, an accountable sealed radioactive source is not subject to periodic source leak testing if that source has been removed from service. Such sources shall be stored in a controlled location, subject to periodic inventory as required by paragraph (a) of this section, and subject to source leak testing prior to being returned to service.

(d) Notwithstanding the requirements of paragraph (b) of this section, an accountable sealed radioactive source is not subject to periodic inventory and source leak testing if that source is located in an area that is unsafe for human entry.

(e) An accountable sealed radioactive source found to be leaking radioactive material shall be controlled in a manner that prevents the escape of radioactive material to the workplace.

37. In § 835.1301, paragraphs (b) and (d) are amended by removing the phrase ''or 835.205'' and the introductory text of paragraph (a) is revised as follows:

§ 835.1301 General provisions.

(a) A general employee whose occupational dose has exceeded the numerical value of any of the limits specified in § 835.202 as a result of an accident or emergency may be permitted to return to work in radiological areas

during the current year providing that all of the following conditions are met:

* * * * *

38. Section 835.1302, paragraph (c) is revised to read as follows, paragraph (d) is removed, and paragraph (e) is redesignated as (d) and revised to read as follows:

§ 835.1302 Emergency exposure situations.

* * * * *

(c) No individual shall be required to perform rescue action that might involve substantial personal risk.

(d) Each individual selected shall be trained in accordance with § 835.901(d) and briefed beforehand on the known or anticipated hazards to which the individual will be subjected.

§ 835.1304 [Amended]

39. In § 835.1304, paragraphs (a) and (b)(1), the word ''personnel'' is revised to read ''individuals''; in paragraph (b)(4), the phrase ''all personnel'' is revised to read ''individuals''.

40. Appendix A to Part 835 is amended by removing footnote 5 and adding the following paragraph at the beginning of the introductory text:

Appendix A to Part 835—Derived Air Concentrations (DAC) for Controlling Radiation Exposure to Workers at DOE Facilities

The data presented in appendix A are to be used for determining individual internal doses in accordance with § 835.209, identifying the need for air monitoring in accordance with § 835.403, and identifying airborne radioactivity areas as defined in § 835.2(a).

* * * * *

41. Appendix B to Part 835 is removed and reserved.

42. Appendix C to Part 835 is amended by removing the entries for the radionuclides Rn-220 and Rn-222 and their corresponding half-lives and air immersion DACs from the table and revising the introductory text preceding the table as follows:

Appendix C to Part 835—Derived Air Concentration (DAC) for Workers From External Exposure During Immersion in a Contaminated Atmospheric Cloud

a. The data presented in appendix C are to be used for identifying airborne radioactivity areas as defined in § 835.2(a), determining individual internal doses in accordance with § 835.209, and identifying the need for air monitoring in accordance with § 835.403.

b. The air immersion DAC values shown in this appendix are based on a stochastic dose limit of 5 rems (0.05 Sv) per year or a nonstochastic (organ) dose limit of 50 rems (0.5 Sv) per year. Four columns of information are presented: (1) radionuclide; (2) half-life in units of seconds (s), minutes (min), hours (h), days (d), or years (yr); (3) air immersion DAC in units of μCi/ml; and (4) air immersion DAC in units of Bq/m^3. The data are listed by radionuclide in order of increasing atomic mass. The air immersion DACs were calculated for a continuous, nonshielded exposure via immersion in a semi-infinite atmospheric cloud. The DACs listed in this appendix may be modified to allow for submersion in a cloud of finite dimensions.

c. The DAC value for air immersion listed for a given radionuclide is determined either by a yearly limit on effective dose equivalent, which provides a limit on stochastic radiation effects, or by a limit on yearly dose equivalent to any organ, which provides a limit on nonstochastic radiation effects. For most of the radionuclides listed, the DAC value is determined by the yearly limit on effective dose equivalent. Thus, the few cases where the DAC value is determined by the yearly limit on shallow dose equivalent to the skin are indicated in the table by an appropriate footnote. Again, the DACs listed in this appendix account only for immersion in a semi-infinite cloud and do not account for inhalation or ingestion exposures.

d. Three classes of radionuclides are included in the air immersion DACs as described below.

(1) *Class 1.* The first class of radionuclides includes selected noble gases and short-lived activation products that occur in gaseous form. For these radionuclides, inhalation doses are negligible compared to the external dose from immersion in an atmospheric cloud.

(2) *Class 2.* The second class of radionuclides includes those for which a DAC value for inhalation has been calculated, but for which the DAC value for external exposure to a contaminated atmospheric cloud is more restrictive (i.e., results in a lower DAC value). These radionuclides generally have half-lives of a few hours or less, or are eliminated from the body following inhalation sufficiently rapidly to limit the inhalation dose.

(3) *Class 3.* The third class of radionuclides includes selected isotopes with relatively short half-lives. These radionuclides typically have half-lives that are less than 10 minutes, they do not occur as a decay product of a longer lived radionuclide, or they lack sufficient decay data to permit internal dose calculations. These radionuclides are also typified by a radioactive emission of highly intense, high-energy photons and rapid removal from the body following inhalation.

e. The DAC values are given for individual radionuclides. For known mixtures of radionuclides, determine the sum of the ratio of the observed concentration of a particular radionuclide and its corresponding DAC for all radionuclides in the mixture. If this sum exceeds unity (1), then the DAC has been exceeded. For unknown radionuclides, the most restrictive DAC (lowest value) for those isotopes not known to be absent shall be used.

* * * * *

43. Appendix D to part 835 is revised as follows:

Appendix D to Part 835—Surface Radioactivity Values

The data presented in appendix D are to be used in identifying contamination and high contamination areas as defined in § 835.2(a), identifying the need for surface contamination monitoring and control in accordance with § 835.404, identifying the need for radioactive material controls in accordance with § 835.1101.

SURFACE RADIOACTIVITY VALUES [1]

[In dmp/100 cm^2 [2]]

Radionuclide	Removable [2, 4]	Total (fixed + removable) [2, 3]
U-nat, U-235, U-238, and associated decay products.	1,000	5,000
Transuranics, Ra-226, Ra-228, Th-230, Th-228, Pa-231, Ac-227, I-125, I-129.	20	500.
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133.	200	1,000.
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above [5].	1,000	5,000.
Tritium and tritiated compounds [6].	10,000	N/A.

[1] The values in this appendix, with the exception noted in footnote 6, apply to radioactive contamination deposited on, but not incorporated into the interior of, the contaminated item. Where surface contamination by both alpha- and beta-gamma-emitting nuclides exists, the limits established for alpha- and beta-gamma-emitting nuclides apply independently.

[2] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[3] The levels may be averaged over one square meter provided the maximum surface activity in any area of 100 cm^2 is less than three times the value specified. For purposes of averaging, any square meter of surface shall be considered to be above the surface radioactivity value if: (1) from measurements of a representative number of sections it is determined that the average contamination level exceeds the applicable value; or (2) it is determined that the sum of the activity of all isolated spots or particles in any 100 cm^2 area exceeds three times the applicable value.

[4] The amount of removable radioactive material per 100 cm^2 of surface area should be determined by swiping the area with dry filter or soft absorbent paper, applying moderate pressure, and then assessing the amount of radioactive material on the swipe with an appropriate instrument of known efficiency. (Note—The use of dry material may not be appropriate for tritium.) When removable contamination on objects of surface area less than 100 cm^2 is determined, the activity per unit area shall be based on the actual area and the entire surface shall be wiped. It is not necessary to use swiping techniques to measure removable contamination levels if direct scan surveys indicate that the total residual surface contamination levels are within the limits for removable contamination.

[5] This category of radionuclides includes mixed fission products, including the Sr-90 which is present in them. It does not apply to Sr-90 which has been separated from the other fission products or mixtures where the Sr-90 has been enriched.

[6] Tritium contamination may diffuse into the volume or matrix of materials. Evaluation of surface contamination shall consider the extent to which such contamination may migrate to the surface in order to ensure the surface radioactivity value provided in this appendix is not exceeded. Once this contamination migrates to the surface, it may be removable, not fixed, therefore a ''Total'' value does not apply.

44. Appendix E to Part 835 is added as follows:

Appendix E to part 835—Values for Establishing Sealed Radioactive Source Accountability and Radioactive Material Posting and Labeling Requirements

The data presented in appendix E are to be used for identifying accountable sealed radioactive sources and radioactive material areas as those terms are defined in § 835.2(a) and establishing the need for radioactive material labeling in accordance with §§ 835.605 and 835.606.

Note: The data in this table are listed in order of increasing atomic weight.

Less than 300 μCi (10 MBq)

H-3
Be-7
C-14
S-35
Ca–41
Ca-45
V-49
Mn-53
Fe-55
Ni-59
Ni-63
As-73
Se-79
Rb-87
Tc-99
Pd-107
Cd-113
In-115
Te-123
Cs-135
Ce-141
Gd-152
Tb-157
Tm-171
Ta-180
W-181
W-185
W-188
Re-187
Tl-204

Less than 30 μCi (1 MBq)

Cl-36
K-40
Fe-59
Co-57
Se-75
Rb-84
Sr-85
Sr-89
Y-91
Zr-95
Nb-93m
Nb-95
Tc-97m
Ru-103
Ag-105
In-114m
Sn-113
Sn-119m
Sn-121m
Sn-123
Te-123m
Te-125m
Te-127m
Te-129m
I-125
La-137
Ce-139
Pm-143
Pm-145
Pm-147
Sm-145
Sm-151
Eu-149
Eu-155
Gd-151
Gd-153
Dy-159
Tm-170
Yb-169
Lu-173
Lu-174
Lu-174m
Hf-175
Hf-181
Ta-179
Re-184
Re-186m
Ir-192
Pt-193
Au-195
Hg-203
Pb-205
Np-235
Pu-237

Less than 3 μCi (100 kBq)

Be-10
Na-22
Al-26
Si-32
Sc-46
Ti-44
Mn-54
Fe-60
Co-56
Co-58
Co-60
Zn-65
Ge-68
Rb-83
Y-88
Zr-88
Zr-93
Nb-94
Mo-93
Tc-95m
Tc-97
Tc-98
Ru-106
Rh-101
Rh-102
Rh-102m
Ag-108m
Ag-110m
Cd-109
Sn-126
Sb-124
Sb-125
Te-121m
I-129
Cs-134
Cs-137
Ba-133
Ce-144
Pm-144
Pm-146
Pm-148m
Eu-148
Eu-150
Eu-152
Eu-154
Gd-146
Tb-158
Tb-160
Ho-166m
Lu-176
Lu-177m
Hf-172
Ta-182
Re-184m
Os-185
Os-194
Ir-192m
Ir-194m
Hg-194
Pb-202
Bi-207
Bi-210m
Cm-241

Less than 0.3 μCi (10 kBq)

Sr-90
Cd-113m
La-138
Hf-178m
Hf-182
Po-210
Ra-226
Ra-228
Pu-241
Bk-249
Es-254

Less than 0.03 μCi (1 kBq)

Sm-146
Sm-147
Pb-210
Np-236
Cm-242
Cf-248
Fm-257
Md-258

Less than 0.003 μCi (100 Bq)

Gd-148
Th-228

Th-230
U-232
U-233
U-234
U-235
U-236
U-238
Np-237
Pu-236
Pu-238
Pu-239
Pu-240
Pu-242
Pu-244
Am-241
Am-242m
Am-243
Cm-243
Cm-244
Cm-245
Cm-246
Cm-247
Bk-247
Cf-249
Cf-250
Cf-251
Cf-252
Cf-254

Less than 0.0003 μCi (10 Bq)

Ac-227
Th-229
Th-232
Pa-231
Cm-248
Cm-250

Any alpha emitting radionuclide not listed above and mixtures of alpha emitters of unknown composition have a value of 0.001 μCi.

Any radionuclide other than alpha emitting radionuclides not listed above and mixtures of beta emitters of unknown composition have a value of 0.01 μCi.

Note: Where there is involved a combination of radionuclides in known amounts, derive the value for the combination as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the value otherwise established for the specific radionuclide when not in combination. If the sum of such ratios for all radionuclides in the combination exceeds unity (1), then the accountability criterion has been exceeded.

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Monday
December 23, 1996

Part III

Department of Agriculture

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980, et al.

Business and Industrial Loan Program; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1980, 4279 and 4287

RIN 0570–AA09

Business and Industrial Loan Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is the successor to the Rural Business and Cooperative Development Service, which was the successor to the Rural Development Administration (RDA), which was the successor to the Farmers Home Administration (FmHA).

RBS is issuing new Business and Industry (B&I) Guaranteed Loan Program regulations to replace the FmHA regulations for the program. This action is needed to streamline and update the program. The intended effect is to shorten, simplify, and clarify the regulation; shift some responsibility for loan documentation and analysis from the Agency to the lenders; make the program more responsive to the needs of lenders and businesses; and provide for smoother and faster processing of applications.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Business Programs Processing Division Director, RBS, U.S. Department of Agriculture, Stop 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, Telephone (202) 690–4100.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be a ''significant regulatory action'' and was reviewed by OMB under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Intergovernmental Review

As set forth in the final rule related Notice to 7 CFR, part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industry (previously ''Industrial'') Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. RBS has conducted intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities.''

Civil Justice Reform

The final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR, part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR, part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives or the rule.

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

Background

This action replaces the Business and Industrial (B&I) loan program regulations at 7 CFR, part 1980, with regulations published at 7 CFR, parts 4279 and 4287, and significantly departs from the previous program of loan guarantees for businesses in rural areas. The new Business and Industrial Guaranteed Loan Program will be more flexible and will place more reliance on lenders. There are fewer specific requirements for lenders and businesses. Eligible loan purposes are broader. The lender has added responsibility for analyzing credit quality; for making, securing, and servicing the loan; and monitoring construction. The priority system will give increased priority to underserved communities. Application processing procedures will be more efficient, less burdensome for borrowers, lenders, and RBS staff and will provide for more rapid decisions in making, servicing, and liquidating loans.

The B&I loan program is authorized by the Rural Development Act of 1972. The loans are made by private lenders to rural businesses for the purpose of creating new businesses, expanding existing businesses, and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes businesses located in cities of up to 50,000 population, but priority is given to areas outside cities of 25,000 or fewer population.

Loans can be made for a variety of purposes including business acquisition, expansion, or improvement; purchase of land, easements, or buildings; purchase of equipment, machinery, or supplies; repair and modernization; pollution control; transportation services; start up and working capital; and feasibility studies. The rate and term of the loan is negotiated between the business and the lender.

The Agency is promulgating these regulations to make the program more usable by lenders and borrowers. More importantly, the Agency recognizes the changes are necessary to make the program more effective in creating jobs and stimulating economic activity, particularly in chronically low income rural areas. Under these B&I regulations, the material that must be submitted to and reviewed by the Agency before approval of the guarantee is reduced and responsibilities for credit analysis and application processing tasks will be shifted from the Agency's National Office to field offices and from the Agency to the lender where feasible.

Following is a discussion of some of the most significant policy revisions included in the new regulations.

Automatic eligibility to be a lender under the program is limited to certain types of organizations. This regulation allows the Agency to approve additional lenders when they are determined by the Agency to have sufficient legal authority, lending expertise, and financial strength. Currently, most lenders participating in the B&I program are commercial banks.

The Agency is reducing the loan guarantee fee if it is determined that the business seeking the guarantee provides high impact business development and is located in a community experiencing long term population decline and job deterioration, a community that has remained persistently poor over the past 60 years, or a community experiencing economic trauma due to natural disaster or fundamental economic structural change. The intent of this provision is to encourage businesses to locate in areas with persistent economic problems.

During the preparation of this rule, it was proposed that loans could be guaranteed to businesses with a majority ownership by a foreign entity. During the comment period, no one responded to the proposed rule concerning this issue. Because of uncertainty of how this provision may relate to the provisions of the Welfare Reform Act, the Agency has determined to remove this provision so as to provide an opportunity to further examine this relationship. This will avoid a delay in implementation of this rule that could be caused by conducting a potentially lengthy investigation.

Presently, agricultural-production loans are not eligible for B&I guarantees. This new regulation will allow guarantees for agricultural production, but limit eligibility to integrated businesses involved in both production and processing.

Previous regulations would not allow a lender to bring loans it had previously made under a guarantee through refinancing unless the percentage of guarantee was adjusted to maintain the previous unguaranteed exposure. The new regulations will allow the previous exposure to be guaranteed, provided the refinancing is a secondary part of the loan and the rates and terms will be restructured to improve cash flow.

Eligible loan purposes are expanded to include hotels, motels, and other tourism and recreational facilities which have been ineligible for the past several years. Loans for such facilities will be evaluated on the merits and financial feasibility of each proposal, except for racetracks, golf courses, and gambling facilities which will remain ineligible.

Previous regulations limited the size of loans considered for guarantee to $10 million. The new regulations will give the Administrator the authority to approve exceptions to the $10 million ceiling for high-priority projects of up to $25 million. The regulations limit the guarantee percentage to 80 percent for loans of $5 million or less, 70 percent for loans between $5 million and $10 million, and 60 percent for loans exceeding $10 million. Authority is provided for the Administrator to approve exceptions so that up to 90-percent of loans of $10 million may be guaranteed when the higher percentage is necessary to approve a high-priority project as specified in the regulation. The State Director has the authority to approve exceptions so that up to a 90 percent guarantee may be approved for loans of up to $2 million (within the State Director's loan approval authority) when the higher percentage is necessary to approve a high-priority project.

In conjunction with implementation of the new regulations, the Agency intends to provide a new application form that will serve the function of 10 forms now in use. The application form will be supplemented by additional information provided by the lender.

The regulations provide for certain experienced lenders to apply for status as certified lenders. Certified lenders will submit significantly less information for Agency review as regular lenders.

Agency staff will be authorized to rely on an acceptable written credit analysis prepared by the lender rather than the Agency completing its own complete credit analysis.

Usually, the lender will determine the frequency of financial statements to be required from the business after the loan is closed and whether or not the statements must be audited.

The lender and its legal counsel will be responsible for loan closing without a required review by the Office of the General Counsel.

Loan servicing is simplified. Loans will be classified by the lender. Lenders will be able to release collateral with a cumulative value of up to 20 percent of the original loan amount, over the life of the loan, if the proceeds will be used to reduce the loan amount due or buy replacement collateral. Lenders may make protective advances of up to $5,000 without prior Agency approval. If unsecured personal or corporate guarantees cannot be settled promptly, a final loss report may be filed and paid and the guarantees treated as future recovery.

RBS believes the streamlining of the regulations for this program will enhance the use of the program's effect by improving the prosperity of rural residents through guarantees of targeted investments that enhance rural competitiveness, facilitate industrial conversion, and enable rural residents to profit from private sector activity. The revisions are consistent with the Administration's efforts to streamline Government functions, improve efficiency and the effectiveness of Government activities, and be more customer friendly. The changes will enable the Agency to deliver a larger program with less staff resources and simultaneously meet the objectives of the National Performance Review concerning the Regulatory Reinvention Initiative dated March 4, 1995, as related to the President's initiative to improve customer service, provide for less regulations, and streamline Agency operations.

Incorporation of the changes will provide more flexibility for both lenders and Agency staff. Many errors will be reduced because the guidelines and requirements are clearer and items are more easily found in a reduced and better organized volume of regulations. Lenders will be more interested in using the program because the procedures are simpler and more direct. The ultimate benefit of these changes will be increased lending activity resulting in the expansion of business opportunities and the creation of more jobs in rural areas, particularly in those areas that have historically experienced economic distress.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575–0168, 0575–0170, 0575–0171, 0575–0029, and 0575–0024 and in accordance with the Paperwork Reduction Act of 1995. This final rule does not impose any new information collection requirements from those approved by OMB.

1996 Farm Bill Initiatives

The Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–

127) requires the Agency to include language in the B&I regulations that will expand eligible loan purposes to allow the purchase of startup capital stock in a cooperative to allow family-sized farmers be eligible if selling their products to the cooperative. The definition of a family-sized farmer will be the same as used by the Farm Service Agency (FSA).

In addition, the Agency will include language to allow B&I loan guarantees to assist agriculture-related industries adjusting to the terminated Federal agricultural programs or increased competition from foreign competitors.

Discussion of Revision and Comments

The proposed rule was published in the Federal Register on February 2, 1996 (61 FR 3853), and provided for a comment period ending April 2, 1996.

In response to the proposed rule, 86 respondents provided comments to the Agency. Of the 86 comments, 18 comments were considered late because they were received after April 2, 1996. However, the Agency reviewed and addressed all issues raised by all of the comments.

Of the 86 commenters that responded to various sections of the proposed rule, 34 were lenders, mortgagors or related to the lending industry, 15 were Agency employees, 7 were various Government officials, 5 were housing authorities, chambers of commerce or planning commissions, 1 was a railroad association, 2 or more businesses, 2 cooperatives, and the remaining were a combination of council members and others.

Of the 86 respondents, 24 respondents provided general comments supporting the regulation. Several respondents provided editorial changes that indicated a personal preference which were not adopted. These changes included changes in sentence structure, wording, etc., that do not improve the regulation.

The Agency requested comments from the public concerning the paperwork burden of the streamlined regulations and the loan priority system. Several respondents responded favorably to the changes, supporting the reduction in the paperwork, the streamlining of the regulations, moving more of the credit decisions to the lender, and increasing the enterprises that would be eligible under these streamlined regulations. Five comments suggested the proposed loan priority system is too complicated, time consuming, and difficult to explain to potential customers. The commenters further suggested that the criteria are too subjective, vague, difficult as a tool of measurement, and should be revised. The priority system has been modified to be more user friendly, however, the integrity of the system still meets the goal of reaching high-impact areas.

Of the 86 respondents, 45 respondents provided comments on § 4279.113, ''Eligible loan purposes,'' and § 4279.114, ''Ineligible loan purposes.'' Of the 45 respondents, 20 respondents were in favor of recreation and tourism and agricultural production as eligible loan purposes. There were no adverse comments concerning recreation and tourism. One of the respondents in favor of recreation and tourism suggested that the Agency require a minimum of 25–35 percent tangible balance sheet equity because of the risk involved with these types of businesses. This comment was not adopted. The Agency feels that the regulations (§ 4279.131(d)) sufficiently address this concern.

Another respondent felt that agricultural production as defined under § 4279.113(h)(2) should be expanded to allow the agricultural-production portion of any loan up to 50 percent of the total loan and that the Agency should not restrict it to integrated processing. This suggestion was not adopted. The Agency feels that to adopt such a broad change in the coverage of agricultural production without processing would result in the Agency competing with other farm lender organizations.

One respondent felt that the guaranteed mortgage should be exempt from taxes like the FSA programs. Congress and the Internal Revenue Service control tax questions. The Agency has no authority to implement this proposal.

One respondent is in favor of racetracks and gambling being included as eligible loan purposes. Under § 4279.114(h), the Agency does not allow any business that derives more than 10 percent of annual gross revenue from gambling activities to be included as an eligible purpose. The Agency will not adopt the proposed change. Gambling is not a high priority loan purpose. Racetracks will continue to be an ineligible loan purpose as noted under § 4279.114(g) because professional racetracks are not a high priority loan purpose. However, slicktracks and related amusement park entertainment, in which a participant is not receiving a cash award exceeding $500 for performance, will be considered eligible under the guaranteed loan program covered in § 4279.113(u).

Several respondents recommended that golf courses be an eligible loan purpose. This program is intended to provide long-term economic development to all segments of rural area populations. It has not been demonstrated that golf courses would provide the benefits intended. Therefore, the Agency will not adopt the recommendation to allow golf courses to be an eligible loan purpose.

Several respondents recommended that § 4279.114(n) be revised to allow multiple-family housing and residential housing. The Agency agrees and has adopted this change to allow all housing to be an eligible loan purpose, except guaranteed funds being used for owner-occupied housing or any types of projects that would be eligible for the Rural Rental Housing and Rural Cooperative Housing loans under Sections 515, 521 and 538 of the Housing Act of 1949, as amended. Mobile home parks are considered eligible under this section.

One respondent recommended that the Agency revise the definition of a rural area under § 4279.108(c) to allow guaranteed funds to be utilized in urban areas which are not presently allowed under the current definition. The statutory authority prohibits a broader definition.

Several respondents suggested that § 4279.113(q), debt refinancing, be revised to eliminate the requirement in the proposed rule that the existing lender debt being refinanced only be a secondary part of the overall loan. It was also suggested that the Agency include language that would allow guaranteed funds to be offered on long-term rates to customers just as freely as other bank customers. One respondent recommended that the ''secondary part'' be defined as less than 50 percent of the debt being refinanced. The Agency will provide more clarification concerning ''secondary part'' adopting the 50 percent requirement. However, the other comment concerning long-term rates being freely offered will not be adopted because the Agency wants flexibility to match interest rates or loan term adjustments to the individual loan.

One respondent suggested that § 4279.113(r), Interim Financing, be revised to allow the guaranteed lender to provide the appropriate documentation by a credit memorandum that the intent of the lender was that interim financing be considered as a take-out loan, and not to making this request a part of the preapplication or application request thereby reducing paperwork burden. This comment was not adopted because the request is not considered to be an excessive paperwork burden. It is a reasonable request for a credit review. The Agency feels that proper documentation should be included as

part of the preapplication and application to support the justification for using loan funds for this purpose.

One respondent asked for a clarification of § 4279.113(u), education and training, as an eligible loan purpose as compared to § 4279.114(d), prohibition of funding for charitable institutions, churches, or church-controlled or fraternal organizations. Guarantees for education and training would not be available to any charitable institutions, churches, or church-controlled or fraternal organization, either directly or indirectly, even without any religious affiliation. The Agency has adopted the position that guaranteed funds will not be utilized for the above organizations because they are not cash generating business institutions.

One respondent stated facilities constructed for lease to Government agencies, including USDA Rural Development, should be eligible. This comment will not be adopted because such a guarantee could lead to a perception of a conflict of interest.

One comment asked ''what determines not being eligible for Farm Credit Programs'' under § 4279.113(h). The Agency relies upon the referenced regulations as published by the FSA concerning what constitutes a customer not being eligible for farm credit programs.

One comment suggested that the Agency limit guaranteed funds for housing-related loans due to the excessive demand that may be placed on our funds in future years. This comment will not be adopted. The Agency feels that the priority scoring system set up in the regulations will limit funding for housing-related loans to a manageable level.

One respondent suggested that the definition under § 4279.114(o) be clarified to note that guaranteed funds are eligible for taxable bond issues. The Agency will not adopt this comment because the regulation is clear as currently written.

One respondent recommended that a ''line of credit'' be determined as an eligible loan purpose under § 4279.113. This change will not be considered until further research can be concluded to determine the actual need for a line of credit guarantee.

Twenty respondents provided comments on § 4279.43, Certified Lender Program (CLP). Four comments requested clarification whether the CLP approval determination is made at the State or National level. The intent of the regulation is that the State Office will be point of approval.

Two comments suggested establishing a turnaround time for application processing ranging from 3 to 20 working days. At this point in time, no turnaround time is established but the comments will be considered in our customer service activities.

A comment suggested the CLP designation be made available only to active lenders, recognized in the area instead of in the State as a commercial lender, who has made at least two B&I loans in the last 24 months. The lender who is recognized as a commercial lender in the area will also meet the requirement of being recognized in the State as a commercial lender. The intent of the regulation is to expand lender participation; therefore, the suggestion of only issuing a CLP designation to an active recognized lender is not adopted.

Two comments suggested the requirements to become a CLP lender be waived for a lender already designated as a Small Business Administration (SBA) Certified or FSA Approved or Certified lender. The Agency will not adopt the proposed change because the requirements with which the lender must comply for this program are, to some extent, unique to this program.

Two comments were received concerning Agency funding reserves. One was concerned that the CLP designation and the associated ability to reserve funds for 30 days will defeat the priority scoring system since a CLP lender with a low-priority project could reserve funds over a non-CLP lender with a high-priority project. This is a valid concern. Therefore, the rule has been changed to provide that there will be no reservation of funds during the last 60 days of the fiscal year in an effort to ensure full utilization of program funding authority. While this solution may not entirely eliminate the comments' concern, it should reduce the problem perceived, at least at the end of the year.

The other comment wanted to establish a mechanism to create and operate a sufficiently funded National Reserve account to ensure adequate funds are available when requested, especially in smaller States. This concern will be addressed by a National Office reserve in an amount of not less than 10 percent of the total yearly allocation.

A comment was made that the CLP feature should be eliminated altogether because of the excessive paperwork, complexity of the requirements, revocation of CLP status could appear to be onerous and punitive in nature, and because use of the CLP designation would be minimal due to lack of repeat lenders. This comment was not adopted because the Agency believes that with sufficient safeguards, the concept is workable.

A comment suggested that CLP lenders be required to repurchase loans for servicing rather than having the ''option'' as is now the case. The Agency does not wish to place such a requirement on CLP lenders because the objective of the program is to improve customer service and encourage use of the program.

A comment suggested Form 4279–2 be completed by the borrower not the lender. The Agency is relying on the lender to process most aspects of a loan. Therefore it is appropriate for the lender to complete and submit the form.

A comment suggested basing the CLP designation on lender ratings available from examiner reports instead of published guidelines. The Agency did not adopt this suggestion because it believes the published guidelines are sufficient to allow the Agency to decide which lenders have requisite expertise to fulfill CLP responsibilities.

A comment asked (1) if lenders could utilize their forms instead of Rural Development forms; and (2) whether approval authority is held by the lender or the Agency. The Agency agrees. The lenders can utilize their own forms as long as the form includes all of the information of the approved Agency forms, is approved by the Regional OGC and State Offices, and will not add additional burden to the public.

Fourteen respondents submitted comments on § 4279.137, Financial Statements. Nine of the comments were favorable. Two comments suggested eliminating loan size as the overriding factor while two other comments suggested different levels of CPA-developed statements based on loan size. One comment suggested having the principals (and their financial strength) provide a personal guarantee as the determining factor regarding the loan threshold size audited statement requirement. The Agency determines the application of this option on a case-by case-basis due to individual circumstances. This section will remain the same.

Nine respondents provided comments on § 4279.155, Loan priorities, that ranged from short statements of support to substantial regulation rewrites. Five comments stated the proposed system is too complicated, time consuming, and difficult to explain to potential customers. The criteria are subjective, vague, difficult to determine, complex, defy measurement or are overly exacting. The Agency considered the concerns and the following sections were changed:

Section 4279.155(b)(1)(ii) was eliminated because, as suggested by the comments, the language was unclear and the factors not measurable.

Sections 4279.155(b)(5)(i) (A) and (B) were eliminated because the criteria requested was not measurable or not available. Sections 4279.155(b)(5)(i)(C) and (D) were changed to (A) and (B) because of the elimination of the above items. These changes added clarity to this section and will be more measureable in determining priority points. The words ''potential to achieve'' were eliminated under the new (A), and the points changed from 3 to 5 to place more weight on this category. Under the new (B), the sentence was amended to end after the word ''community'', deleting the balance of the sentence because the information required was not measureable. The points in new (B) were changed from 3 to 4 to place more weight on the category.

Section 4279.155(b)(5)(ii)(A) revises the sentence to end after the word ''prices''. This change provided more clarity to the sentence, and the points were reduced from 3 to 2 to place less weight on this category because of the criteria measured.

Section 4279.155(b)(5)(ii)(B) is changed to eliminate the words ''has a significant potential to stimulate the development of a broader complex of business activities that provide inputs to or serve as the market for the initial business''. The words ''provides an additional market for existing local business'' will be inserted. This change was adopted to clarify this category.

As one commenter noted, proposed § 4279.155(b)(5)(ii)(D) eliminated the current language which favors the cooperative form of organization. The comment suggested that the wording be changed to refer to a business that produces a natural resource value-added product which is more measureable. The Agency agrees and has changed the language to read: ''Business that will produce a natural resource value-added product.'' Points were changed from 3 to 2, to add less weight to this category as compared to other categories.

Section 4279.155(b)(5)(iii)(A) is deleted as recommended by one comment which suggested that this category was not measureable and should be removed.

As a result of another comment, § 4279.155(b)(5)(iii)(B) is modified to read: ''average wage exceeding 125 percent of the Federal minimum wage'', instead of ''150 percent of minimum wage'' to allow more points to be scored at lower minimum wage categories, and more weight will be placed on this category. With the deletion of (A) under this section, this category becomes (A). The points increased from 4 to 5. The Agency adopted the recommended change.

One comment suggested § 4279.155(b)(5)(iii)(C) be modified to read: ''average wage exceeding 150 percent of the Federal minimum wage'', instead of ''200 percent of the minimum wage'' to allow more points to be scored at lower minimum wage categories. The Agency adopted the change and placed more weight on the category. The points increased from 4 to 10.

One comment suggested developing points for improving the environmental climate in rural communities or eliminating this objective from B&I program purposes. This comment was not adopted by the Agency because ''improving the environmental climate'' is one purpose of the program and no other program purposes are given priority points. The Agency does not feel one program purpose is more valuable than another.

One comment suggested that the phrase ''persistently poor'' in § 4279.155(b)(2)(ii), Community Priority, be defined. Instead, a list of eligible communities will be made available through State Offices.

One comment suggested increasing the points in § 4279.155(b)(4), Loan features, points to 20. The Agency feels that this category should receive more emphasis and adopted the suggestion.

Two comments requested a clarification for the secondary market rate in §§ 4279.155(b)(4) (i) and (ii). It was also noted that there is no point difference between these two criteria. The words ''secondary market'' are changed to ''Wall Street Journal published Prime Rate''. This change provides a reference that is readily available for comparison with the rate proposed by the lender. While there is no difference in points between the two criteria, if an interest rate is low enough, it can qualify for the points awarded in each subsection.

Two comments pointed out that there is no priority point differentiation between §§ 4279.155(b)(5)(iii) (A) and (B) regarding the wages of jobs created with assistance. These criteria are cumulative which means a project that creates higher wage jobs can obtain points for both. No change is made.

Two comments suggesting the elimination of §§ 4279.155(b)(3) (i) and (ii) will not be adopted since the initiatives were included to provide emphasis on the location of businesses in EZ/EC communities where job creation is important.

One respondent suggested that the priority system be amended to include points for transportation improvement and infrastructure safety. The Agency did not adopt this recommendation. The Agency has determined that specific emphasis should be directed to the areas already included. While these areas are important, we do not believe they promote program purposes to the extent as the included areas. Transportation improvement and infrastructure safety remain eligible purposes and desirable goals.

One comment suggested eliminating § 4279.155(b)(1)(i) regarding the 25,000 population limit while another comment suggested giving 10,000 population communities priority. The section retains the 25,000 population guideline because previous Congressional guidance has indicated 25,000 population is a reasonable application of the priority rule.

One respondent provided a comment on § 4279.165(b), Evaluation of application, suggesting the words, ''the Agency's'' prior to the last two words in the sentence, ''environmental requirements''. This section was rewritten to provide clarity concerning the evaluation process.

Thirteen respondents provided comments on § 4279.161, ''Filing preapplications and applications,'' and of the 13 respondents, eight comments were favorable. One comment suggested eliminating the requirement for the lender to submit any item beyond those mentioned in §§ 4279.161(a)(1) (i)–(iv). This comment was not adopted because the Agency needs this information to evaluate the proposal and to determine if the proposal is feasible and reasonable.

One comment suggested eliminating written subjective information and data that are intended for the lender's internal reference and guidance and always requiring instead that the lender include only ratios and comparisons with industrial standards. The Agency needs the lender's complete written analysis and requested associated material in order to determine whether the lender is exercising due diligence and meeting the intent of this regulation which places more reliance on lenders for analyzing credit quality.

Two comments suggested changes in proposed forms which were not a part of this regulation. They will be considered in the form development process.

One comment suggested the need to specify that the business plan include economic, market, technical, financial and management information to ensure uniformity. This suggestion is not

adopted. The Agency feels that the requirements in §§ 4279.150 and 4279.161(b)(12) are sufficient for the intended purposes.

One comment suggested changing the word ''must'' to ''should'' in § 4279.161(b)(11) regarding items to be addressed in the Loan Agreement. These are minimal requirements. The Agency will not adopt this change because the items are mandatory.

One comment suggested eliminating the intergovernmental consultation requirement to expedite loan processing and protect the applicant's privacy. Executive Order 12372 requires this action on all projects. The suggestion is not implemented.

One comment proposed the adoption of another agency's application. The instant program focuses entirely on rural development. This comment was not adopted because this application is better suited to this program's missions and objectives.

One respondent provided a comment on § 4279.126, Loan terms, suggesting that the term of the loan for refinancing purposes be determined based on the weighted average of the underlying collateral's life. The regulation already provides for this.

Five respondents provided comments on § 4279.131, Credit quality. Four comments identified a need for the Agency to establish objective, minimum standards for tangible balance sheet equity to avoid abuse of the program and vulnerability in the appeals process. Suggested minimum standards ranged from 10 percent to 20 percent tangible balance sheet equity at time of issuance of the Loan Note Guarantee based on a variety of subjective criteria. The Agency adopts these suggestions changing the regulation to indicate that the minimum tangible balance sheet equity required at the time of issuance of the Loan Note Guarantee will be 10 percent for existing and 20 percent for new businesses. An exception to this requirement may be granted by the Administrator or designee based upon the objective standard delineated in the section.

One comment supported establishing written discounting standards for collateral to ensure consistency but also recommended that an exception authority provision be developed. The regulation requires lenders to discount collateral consistent with sound loan-to-value policy. The Agency believes that this requirement is sufficient to protect the Agency and yet provide needed flexibility. Therefore, the suggestion is not adopted.

Sixteen respondents provided comments on § 4279.108, Eligible borrowers, and of the sixteen comments, four were favorable. Nine comments requested the Freely Associated States be determined eligible for program assistance. Under § 4279.2, Definitions, ''State'' encompasses this area making it eligible. The Agency added language under § 4279.108, Eligible borrowers, to amend the citizenship and residence requirements in § 4279.108(b)(3). Under this section, citizens and residents of the United States include citizens and residents of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Two comments suggested that the college student population not be included in determining population limits because student populations are seasonal and truly do not add to the industrial and tax base of a community. The Agency will not adopt this change since it cannot determine U.S. decennial census methodology upon which a statutory provision requires the determination to be made.

One comment questioned whether communities under 25,000 population, § 4279.155(b)(1)(i), population priority, is consistent with the preamble to the proposed rule. The Agency was unable to locate any such inconsistency and no change was made.

Seven respondents provided comments on § 4279.150, Feasibility studies. Three comments suggested establishing a dollar threshold for determining when to require a study. This suggestion was not adopted because, in the Agency's view, the business, not loan size, should be the determining factor in deciding whether to require a feasibility study.

Two comments suggested adding the five elements of a feasibility study as outlined in the current program regulation, FmHA Instruction 1980–E. It was suggested that the term ''significantly affect'' is vague and should be defined to limit appeal situations. The five elements of a feasibility study will be added; however, ''significantly affect'' was purposefully not defined to allow for determination on a case-by-case basis.

One comment suggested feasibility studies are important only in start-up businesses. The Agency disagrees with this suggestion. There may be occasions when a significant impact on an existing business needs to be discussed via a feasibility study.

Two respondents provided comments on § 4279.75, Sale or assignment of guaranteed loan. One respondent was concerned that allowing lenders to sell the guaranteed portion for premium prices will allow the lender to cover its risk and encourage aggressive, high risk lending practices. The Agency does not dictate lender asset management practices. A prudent lender will work with the secondary market to achieve maximum benefits for its customer. Furthermore, the guarantee by its terms does not cover any premium an investor may pay.

One comment suggested a provision be added which, at the lender's request, would require the Agency to purchase the loan at default. The Agency will not adopt this suggestion. It neither has the staff nor the resources to conduct liquidations of defaulted loans. The program requires the lender to make and service the loan. The Agency is to ensure a fair and equitable loss management is made to the lender.

Four respondents provided comments on § 4279.181, Conditions precedent to issuance of Loan Note Guarantee. Two comments proposed the creation of a single, standard form like FSA is developing containing all of the required lender certifications. The Agency does not agree because we guarantee different loans than FSA does. This mission of this Agency is to enhance the ability of rural citizens to create, build, and sustain non-farming ventures and communities.

One comment suggested modifying the certification language to allow lenders to make determinations based on third party representations. This suggestion is not adopted because the lender is the one the Agency relies upon to ascertain the representations it makes in the certifications are true. Both the regulations and the Lender's Agreement make it clear that the lender must act as a reasonable and prudent lender.

Two comments supported the elimination of lender's legal counsel certifying to the sufficiency of loan and security instruments and the efficacy of liens. Section 4279.181 requires certain lender certifications including this. The Agency has limited its internal legal review and feels the lender's legal counsel is needed. No change is made.

One comment proposed changing § 4279.181(1) from ''the Conditional Commitment Form 4279–1'' to ''Form 4279–1 as amended by the Conditional Commitment''. The regulation is correct as written, Form 4279–1 is the Conditional Commitment.

Two comments proposed expanding § 4279.173, Loan approval and obligating funds, to explain that when the guarantee is approved and funding authority is available, the guarantee will be obligated and the Conditional Commitment issued on the obligation date. No change can be made since FmHA Instruction 2015–C (available in any RBS field office) provides for a

reservation period that is not covered by this Instruction. The 6 day reservation period gives political leaders an opportunity to announce projects which have a positive impact on the program. The recommendation is not adopted.

Two respondents provided comments on § 4279.161(b)(11), Filing preapplications and applications, suggesting either eliminating certain subsections or the Agency allowing lender discretion to modify the requirements. The sections that the respondents suggested be eliminated for preapplication submissions include the amount of borrower's equity and description of collateral; for existing businesses, a current balance sheet and a profit and loss statement; and for start-up businesses, a preliminary business plan. The respondents felt that this is excessive paperwork for a preapplication submission and suggested that only the application, environmental information, and a personal credit report be submitted. In addition, one respondent suggested that the lender has the ability to modify financial ratios for businesses and other requirements for an application submission and should not have to share internal bank information concerning the credits with the Agency. The suggestions will not be adopted by the Agency because these items requested from the lender under § 4279.161 for a preapplication or application are items required to meet the standards of good prudent lending practices (see § 4279.161).

One respondent provided a comment on § 4279.126, Loan terms, which supported § 4279.131, Credit quality, paragraph (b)(2), which allows less than normal loan-to-value coverage for predominately cash flow oriented businesses. It proposed that the ''useful life or 15 year loan limit, whichever is less'' standard in § 4279.126 not apply on certain equipment which has clear useful life beyond 15 years. The Agency disagrees because the established criteria outlined in this section are standard prudent lending criteria used by financial institutions to determine the term of the loan. The suggestion is not adopted.

A comment on § 4279.144, Appraisals, recommended that language be added discharging lenders from responsibility for assuring that appraisal values adequately reflect the actual value of all collateral if appraisals meet the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Uniform Standards of Professional Appraisal Practices (USPAP), and generally accepted methods of determining value. The suggestion is not adopted because a reasonable, prudent lender will ensure that appraisal values reflect actual values.

Four respondents provided comments on § 4279.125, Interest rates. Two comments support the regulation which allows different interest rates on the unguaranteed and guaranteed portion of the loan; however, they want the restriction that the rate on the guaranteed portion cannot exceed the rate on the unguaranteed portion eliminated. This suggestion will not be adopted because the lender is already receiving the benefit of a guarantee on the guaranteed portion and allowing a higher rate on that portion causes the Agency to exceed its stated percentage.

One comment recommended allowing daily changes in variable interest rate loans. The Agency will not adopt this suggestion because the quarterly adjustment limitation provides borrowers with a financial planning tool in that they have at least some assurance of these costs for the quarter.

One comment suggested combining fixed and variable rates on the same loan to allow a fixed rate for the guaranteed portion and a variable rate for the unguaranteed portion. The regulation allows this as long as the guaranteed portion rate is not higher.

Seven respondents provided generally supportive comments for the entire regulation. Several individual items raised included the hope that RBS staff will maintain involvement regarding due diligence. The Farm Credit System requested any reference on farm credit programs anywhere in the rule be in lower case to prevent misinterpretation by the reader. The Agency complied with that request. The Agency will continue to maintain the oversight needed to protect the taxpayer.

Four respondents provided comments about § 4279.113(r), Eligible loan purpose, regarding construction and interim loans. Comments suggested consideration be given to developing a mechanism for partial interim advances, making construction loans an eligible purpose, and issuing the guarantee at closing instead of at project completion. Additionally, two other comments suggested such a change so that in those instances the guaranteee could be sold sooner in the secondary market. The time period in which material adverse changes could occur would be reduced. The Agency agrees and has adopted the comments to allow the Loan Note Guarantee to be issued at closing on the interim financing based on certain conditions as set forth in the final regulations instead of when the project is substantially complete.

Four respondents provided comments on § 4279.186, Issuance of the guarantee. One comment suggested adding ''unless a valid lender's agreement already exists per § 4279.72'' after Executed Lender's Agreement in § 4279.186(a)(2). This comment is adopted because a valid Lender's Agreement may already be in existence.

One respondent provided a comment on § 4279.78(c), Purchase for servicing, disagreeing with not allowing the repurchase from the holder for arbitrage or other purposes to further its own financial gain. The secondary market option provides a risk management tool for the lender; however, it is also necessary to consider financial stability for the business. The language will not be changed.

One respondent provided a comment on § 4279.101, Introduction, recommending ''field office'' replace ''district, regional or area office''. This change is adopted.

Five respondents provided comments on § 4279.107, Guarantee fee, supporting the 1 percent option. Two of those comments requested clarification of the term ''high impact''. Section 4279.155, Loan priorities, paragraph (b)(5), was changed to provide clarification.

One respondent felt § 4279.107(a)(4) allowing a reduction in the guarantee fee in certain circumstances was too general. The Agency feels the language provides flexibility to respond to unique and unusual situations. This comment is not adopted.

Seven respondents provided comments suggesting other guarantee fee structures. Four comments supported the determination of lower fees being made at the State Office level. This regulation provides that the Agency will have the authority to reduce the guarantee fee if the business meets the criteria in § 4279.107. In writing this provision, budget considerations and OMB limitations must be considered since the program loan level is affected adversely if the guarantee fee is reduced. The National Office must monitor the loan level to ensure funds are available to provide the greatest benefit to rural customers that utilize this program. However, the State Director does have the authority to reduce guarantee fees if it is determined that the business meets the criteria in § 4279.107.

A commenter was concerned that the reduced fee option provided the Agency an unfair marketing advantage over another agency. It is not the intent to compete with any other agency for loans. The focus is on rural development and the intent of the lower

fee option is to help lenders assist business development in the areas that need it the most.

One comment recommended elimination of a lower guarantee fee because the amount does not matter to the lender or business. The Agency will not adopt this change because the lower guarantee fee will benefit businesses located in high-priority areas.

One comment suggested changing the § 4270.107(a)(3) requirement that a community be persistently poor for 60 years or more to a requirement of 60 years and eliminate the words ''or more''. The Agency agrees nothing is added by the use of the phrase ''or more.'' The phrase has been deleted.

One comment suggested an editorial change to § 4279.113(r) regarding removing the hyphen between the words ''take-out''. The regulation will be conformed to the Government Style Manual which says the term used as a noun is ''takeout'' but if it were used as an adjective, for example ''take-out financing'', it would be two words with a hyphen.

One comment recommends packager fees be limited in amount but still be considered eligible. The regulation already allows packager fees as an eligible purpose, provided it is an amount that is reasonable and customary in the local area. See § 4279.120(b), fees and charges.

One respondent provided comments on § 4279.115, Prohibition under Agency programs, recommending this entire section be eliminated. This is a statutory requirement and cannot be eliminated.

Twenty-three respondents provided comments on § 4279.119, Loan guarantee limits.

Two comments recommended the percentage of guarantee determined by the Agency not be subject to the appeal process. The comment was not adopted because the Agency does not determine the appealability of any decision.

Six comments suggested alternative options for issuing guarantee percentages. No change is made because the Agency is satisfied that as written it provides sufficient flexibility in providing program benefits.

One comment suggested determining the percentage of guarantee based on the size of the lender. The comment was not adopted because such a requirement is already inherent in the regulation. Variations in loan sizes, lender capitalization, and lender loan size limits established by lender regulators limit the sizes of lenders and the loans they can make.

One comment suggested that increasing the guarantee percentage is more important than reducing the guarantee fee. The Agency prefers to retain the latitude to allow both options.

Five respondents recommended the State Director be able to grant an exception to allow 90 percent guarantees. The respondents; suggestion is already in effect because the regulation has been changed to give the State Director limited authority to approve projects with a decreased guarantee fee for high-priority projects not exceeding $2 million when it is within the State Director's approval authority to do so. If not within the State Director's approval authority, the loan request will be submitted to the National Office for review.

One comment suggested the guarantee percentage be stairstepped versus a single rate to provide more increased coverage for loan requests that exceed the $5 million and $10 million thresholds. This was not adopted for a variety of loan servicing considerations involving variations in lender payment applications and effective maximum percentage of loss payments which would not make application of program regulations consistent.

One comment wants the Agency to determine whether a loan is eligible for a 90 percent guarantee without submitting an application. The Agency can make this determination from a preapplication.

Three comments did not support loans over $10 million being eligible because of possible funding concerns and credit quality issues. The commenters' concerns were considered. The Agency believes the revised regulations will provide measures through the priority scoring system, by reducing the guarantee percentage to 60 percent or less, and oversight of the Under Secretary's office for loans exceeding $10 million to control credit quality and aggressive use of funding.

One comment suggested the State Director's loan approval authority be increased to $5 million based on staff expertise. This is internal management and is not a regulatory requirement.

One comment suggested an exception authority be established for 7 CFR, subpart B of parts 4279 and 4287. This comment has been adopted to include the exception authority language in subpart B of parts 4279 and 4287.

One comment expressed a concern for development of a standardized application software package for lenders. Such a package is being developed but it will not be part of this regulation.

Nine respondents provided comments on § 4279.29, Eligible lenders. Of the nine comments, three comments were from existing non-lenders that desire consideration be given to eligibility under § 4279.29. The Agency will not make any changes to the regulation since the current language will allow any lender the right to request an eligibility determination under the regulations.

One comment suggested that ''adequately'' be removed from § 4279.29(c). The Agency agrees and the word will be removed.

Four comments support expanding eligible lender determination; however, two of the comments contained qualifying criteria. Of the four comments, two contained qualifying criteria such as audits by State or Federal Government auditing bodies at least every 12 months and non-bank lenders be limited by their past experience in other Government guaranteed programs. The Agency feels that a change is not necessary because the proposed regulations provide the flexibility to make a determination of eligibility.

Two comments objected to nonbanks being considered possible eligible lenders. The Agency does not agree. The program offers a variety of lenders an opportunity to participate and provide credit in rural areas so as to provide a greater availability of credit to rural residents.

Two respondents provided editorial change comments on § 4279.2, Definitions. The Agency adopted the comment that for the definition of ''Deficiency balance,'' the words ''including the personal guarantee'' be eliminated.

One respondent suggested reducing the State allocation of guarantee authority only by the guaranteed portion of the loan. Federal budget procedures require scoring the entire amount of a loan against the allocation regardless of the percentage of guarantee.

Two comments recommended § 4279.84, Replacement of document, be changed to indicate that the notarized certificate of loss should include limited information since the Agency has copies of the noted documents. This proposal is not adopted because the information requested is necessary to ensure the legal sufficiency of the replacement documents.

One comment requested § 4279.113, Eligible loan purposes, be changed to allow the growing of seed crops. Production of agriculture alone is not an eligible purpose. Section 4279.113(b)(h) addresses eligible agricultural production in a manner to ensure that no one area of business receives a disproportionate amount of funding.

One comment recommended the adverse change period be changed to

cover from the date the application is submitted to the Agency to the date of the issuance of the Loan Note Guarantee. The Agency will not adopt this change since the final conditions are established at the time the Agency issues the Conditional Commitment.

Two respondents provided comments on § 4279.149, Personal and corporate guarantees. One supported the section, the other comment raised a concern that the language would appear to require a guarantee from significant customers. This concern is valid and the section language was revised to clarify intercompany relationships.

Twelve respondents provided comments on 7 CFR, part 4287, subpart B—Servicing Business and Industry Guaranteed Loans.

One comment on § 4287.106, Routine servicing, suggested that the Agency establish internal monitoring of account servicing requirements. These are the lender's loans and as such the lender is accountable for its actions. The Agency is to pay the appropriate loss to those lenders which have exercised due diligence.

One comment on § 4287.106(d), Financial reports, proposed relaxing the requirement that lenders must obtain and provide the borrower's financial statements to the Agency within 120 days of the borrower's fiscal yearend.

The lenders requested specific actions they are to use when they are unable to comply with these regulations due to uncooperative borrowers. Current regulations are appropriate and conform with industry standards so no change was made.

One comment questioned § 4287.106(e), Additional expenditures, asking why the Agency requires concurrence for additional expenditures if the loans security position is not altered. Additional expenditures may deplete operating capital which could cause default. The Agency has an interest to see that a loan is repaid by the borrower rather than the Agency having to provide funds pursuant to its guarantee.

Five respondents provided comments on § 4287.113(a), Release of collateral, stating they did not support the requirement that all releases of collateral must be supported by a current appraisal on the remaining collateral. They proposed several alternatives including prorating values established at loanmaking and documenting by means other than appraisal. The Agency agrees, and the language in this section has been revised.

One respondent provided a comment about §§ 4287.113 (a)(4), (b), and (c) regarding whether the 20-percent figure is for each instance or cumulative over the life of the loan. Lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence. The regulation has been changed to make this clear.

One respondent provided a comment about § 4287.156(a), Protective advances, pointing out that it does not reference a dollar amount. A ceiling will not be established because each case is unique and flexibility is desired.

Two respondents made comments on § 4287.157, Liquidation, suggesting the authority to approve liquidation plans be at the State Office and not the National Office level. This comment is adopted and the authority to approve liquidation plans will be at the State Office based on the State's delegated loan servicing authority without National Office concurrence.

Two comments stated paragraphs (b)(2) and (c) of § 4287.158, Determination of loss and payment, are in direct conflict. It appears that the writer may have felt there was a conflict concerning interest accrual. Under certain circumstances, interest accrual may continue. The language will not change as noted in the proposed rule.

One comment suggested retaining the existing option which allows the Agency to permit the lender to calculate the final loss settlement using net proceeds received from the collateral at the time of ultimate disposition rather than at liquidation. Lenders feel it is unfair to settle when they acquired the collateral as it reflects what is actually received for the collateral. The Agency feels settlement at ultimate disposition is preferable because it reflects what is actually received for the collateral.

One respondent provided a comment on § 4287.170, Bankruptcy, expressing displeasure with the Agency's position that Chapter 11 reorganization legal expenses are not considered liquidation costs. Reorganization legal expenses are not incurred in contemplation of liquidation. Therefore, they should not be treated as a liquidation expense which by definition is only deductible during a liquidation when there are adequate proceeds from collateral liquidation to cover the expense. This provision was not changed.

One respondent provided editorial changes for the entire section. The editorial changes were not substantive and reflected a preference of the respondent. To ensure no confusion concerning the meaning of the regulation and to ensure consistency of language, the editorial changes were not adopted with the exception of the following items:

In § 4287.157, Liquidation, paragraph (c), Submission of liquidation plan, the third sentence which reads, ''State Directors have no authority to exercise the option to liquidate by the Agency without National Office approval'' is changed to state under what authority liquidation is carried out by the Agency, not the lender. The Agency clarified the language to indicate that in cases where the Agency carries out liquidation of the loan, the State Director must request approval from the National Office; and

In § 4287.157, Liquidation, paragraph (j), Abandonment of collateral, the words, ''National Office'' are replaced by ''Agency''.

Those sections of the regulation that are administrative in nature and apply only to procedures within the Agency have been removed from the document. These procedures are available from any Agency office upon request.

List of Subjects

7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Loan programs—Community programs—Rural development assistance, Rural areas.

7 CFR Part 4279

Loan programs—Business and Industry—Rural development assistance, Rural areas.

7 CFR Part 4287

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, chapters XVIII and XLII, title 7 of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE.

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C 1480.

Subpart A—General

2. Section 1980.6(a) is amended by removing the definitions for ''Borrower,'' ''Disaster Assistance for Rural Business Enterprises,'' and ''Drought and Disaster Guaranteed

loans;'' in the heading for the definition of ''Assignment Guarantee Agreement,'' removing '', 1980–70 or 1980–73;'' in the third sentence of the definition of ''Holder,'' removing the parenthetical phrase ''(or 1980–70 or 1980–73);'' in the heading for the definition of ''Lender's Agreement,'' removing the comma and adding the word ''or'' in its place immediately following ''449–35''; removing '', 1980–68, or 1980–71'' immediately following ''1980–38;'' in the heading for the definition of ''Loan Note Guarantee,'' removing the parenthetical phrase '', (or 1980–69, 1980–72)''; and revising the definition of ''Guaranteed loan'' to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Guaranteed loan. A loan made and serviced by a lender for which FmHA or its successor agency has entered into a Form FmHA 449–35 or Form FmHA 1980–38, ''Lender's Agreement,'' and for which FmHA or its successor agency has issued a Form FmHA 449–34, ''Loan Note Guarantee.''

* * * * *

§ 1980.6 [Amended]

3. Section 1980.6(b) is amended by removing the entries for ''B&I,'' ''DARBE,'' and ''D&D'' from the list of abbreviations.

§ 1980.13 [Amended]

4. Section 1980.13 is amended in the introductory text of paragraph (a) in the second sentence by revising the reference ''paragraphs (a) (1), (2) and (3)'' to read ''paragraphs (a) (1) and (2);'' in paragraph (a)(2) by removing ''; or'' and adding a period at the end of the paragraph; by removing paragraph (a)(3); and in paragraph (c) by removing the parenthetical phrase ''(See subpart E of this part.)''.

§ 1980.20 [Amended]

5. Section 1980.20 is amended in the introductory text of paragraph (a) by removing the third and fourth sentences; in the fifth sentence, by removing the words ''for all other loans covered by this section;'' and in the sixth sentence by removing the words ''in regards to D&D and DARBE guaranteed loans (see Subpart E of this part) or''.

§ 1980.41 [Amended]

6. Section 1980.41 is amended in the first sentence of paragraph (b)(3)(iii)(A) by removing the parenthetical phrase ''(State Director for B&I)''.

§ 1980.46 [Amended]

7. Section 1980.46 is amended in paragraph (a)(2) by removing the parenthetical phrase ''(State Director for B&I)'' at the end of the paragraph.

§ 1980.47 [Amended]

8. Section 1980.47 is amended in the first sentence of paragraph (d) by removing the words ''and Business''.

9. Section 1980.60 is amended by revising paragraph (a)(2) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) * * *

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans and specifications. All costs have not exceeded the amounts approved by the lender and the Agency.

* * * * *

§ 1980.61 [Amended]

10. Section 1980.61 is amended in the first sentence of paragraph (b)(3) by revising the words ''Forms FmHA or its successor agency under Public Law 103–354 449–35'' to read ''Form FmHA 449–35'' and removing the words ''FmHA or its successor agency under Public Law 103–354 1980–68, and FmHA or its successor agency under Public Law 103–354 1980–71;'' in paragraph (b)(4) by revising the word ''request'' to read ''requests,'' revising ''Forms FmHA or its successor agency under Public Law 103–354 449–35'' to read ''Form FmHA 449–35'' removing, ''FmHA or its successor agency under Public Law 103–354 1980–68, and FmHA or its successor agency under Public Law 103–354 1980–71;'' and removing the parenthetical phrase ''(State Director for B&I);'' and in paragraph (h) by removing the words '', except for B&I where the State Director and State B&I or C&BP Chief will execute these forms.''

§ 1980.63 [Amended]

11. Section 1980.63 is amended in paragraph (b) by removing the parenthetical phrase ''(State Director for B&I)'' from the second and fourth sentences and removing the parenthetical phrase ''(except for B&I)'' from the third sentence.

§ 1980.67 [Amended]

12. Section 1980.67 is amended in the first sentence of paragraph (a) by removing the reference ''E,''.

§ 1980.68 [Amended]

13. Section 1980.68 is amended by revising the reference ''paragraph 5'' to read ''paragraph 6'' in the second sentence and removing the parenthetical phrase ''(State Director for B&I)'' from the third and fourth sentences.

Subpart E—Business and Industrial Loan Program

14. Section 1980.401 is amended by revising paragraph (a) to read as follows:

§ 1980.401 Introduction.

(a) Direct Business and Industry (B&I) loans are disbursed by the Agency under this subpart. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 and subpart B of part 4287 of this title. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of part 1900 subpart D of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

* * * * *

15. A new part 4279, consisting of 4279.1 through 4279.200, is added to chapter XLII to read as follows:

PART 4279—GUARANTEED LOANMAKING

Subpart A—General

Sec.

Subpart B—Business and Industry Loans

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—General

§ 4279.1 Purpose.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) It is the responsibility of the lender to ascertain that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by Agency or ''Rural Development'' as applicable.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry). Form 4279–6, the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Borrower. All parties liable for the loan except for guarantors.

Conditional Commitment (Business and Industry). Form 4279–3, the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Finance office. The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

High-impact business. A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of Form 4279–6 or predecessor form.

Interim Financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing, and collecting the loan which is guaranteed under the provisions of the appropriate subpart.

Lender's Agreement (Business and Industry). Form 4279–4 or predecessor form between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee (Business and Industry). Form 4279–5 or predecessor form issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Natural resource value-added product. Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

Negligent Servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a *pro rata* basis.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory Note. Evidence of debt. ''Note'' or ''Promissory Note'' shall also be construed to include ''Bond'' or other evidence of debt where appropriate.

Rural Development. The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS, and RUS.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in section 101(12) of title 38, United States Code.

(b) *Abbreviations.*

B&I—Business and Industry
CF—Community Facilities
CLP—Certified Lender Program
FSA—Farm Service Agency
FMI—Forms Manual Insert
NAD—National Appeals Division
OGC—Office of the General Counsel
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
SBA—Small Business Administration
USDA—United States Department of Agriculture

§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law provided, the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§ 4279.16 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with 7 CFR, part 11. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§§ 4279.17–4279.28 [Reserved]

§ 4279.29 Eligible lenders.

(a) *Traditional lenders.* An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

(b) *Other lenders.* Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the Agency for eligibility to become a guaranteed lender provided, the Agency determines that they have the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

(1) Such a lender must:

(i) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned, or when the proposed lender can demonstrate that it has personnel with equivalent previous experience and where the commercial loan portfolio was of a similar quantity and quality; and

(ii) Have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

(2) A lender not eligible under paragraph (a) of this section that wishes consideration to become a guaranteed lender must submit a request in writing to the State Office for the State where the lender's lending and servicing activity takes place. The National Office will notify the prospective lender, through the State Director, whether the lender's request for eligibility is approved or rejected. If rejected, the reasons for the rejection will be indicated to the prospective lender in writing. The lender's written request must include:

(i) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(ii) Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's opinion to this effect must be submitted.

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending area; and proposed rates and fees, including loan

origination, loan preparation, and servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(iv) An estimate of the number and size of guaranteed loan applications the lender will develop.

(c) *Expertise.* Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect B&I loans.

§ 4279.30 Lenders' functions and responsibilities.

(a) *General.* (1) Lenders have the primary responsibility for the successful delivery of the B&I loan program. All lenders obtaining or requesting a B&I loan guarantee are responsible for:

(i) Processing applications for guaranteed loans,

(ii) Developing and maintaining adequately documented loan files,

(iii) Recommending only loan proposals that are eligible and financially feasible,

(iv) Obtaining valid evidence of debt and collateral in accordance with sound lending practices,

(v) Supervising construction

(vi) Distribution of loan funds,

(vii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary,

(viii) Following Agency regulations, and

(ix) Obtaining Agency approvals or concurrence as required.

(2) This subpart, along with subpart B of this part and subpart B of part 4287 of this chapter, contain the regulations for this program, including the lenders' responsibilities.

(b) *Credit evaluation.* This is a key function of all lenders during the loan processing phase. The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures.

(c) *Environmental responsibilities.* Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare Form FmHA 1940–20, ''Request for Environmental Information'' (when required by subpart G of part 1940 of this title); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(d) *Loan closing.* The lender will conduct loan closings.

§§ 4279.31–4279.42 [Reserved]

§ 4279.43 Certified Lender Program.

(a) *General.* This section provides policies and procedures for the Certified Lender Program (CLP) for loans guaranteed under this part. The objectives are to expedite loan approval, making, and servicing.

(b) *CLP eligibility criteria.* The lender must meet established eligibility criteria as follows:

(1) Be an ''eligible lender'' as defined in 4279.29 of this subpart and authorized to do business in the State in which CLP status is desired.

(2) Demonstrate to the Agency's satisfaction that it has a thorough knowledge of commercial lending. The lender will demonstrate such knowledge by providing a summary of its guaranteed and unguaranteed business lending activity. At a minimum, the summary must include the dollar amount and number of loans in the lender's portfolio, unguaranteed and guaranteed by any Federal agency, with information on delinquencies and losses and, if applicable, the performance of the lender as a Small Business Administration (SBA) certified or preferred lender. A certified lender must be recognized throughout the State as a commercial lender and have a track record of successfully making at least five commercial loans per year for at least the most recent 5 years, with delinquent commercial loans outstanding not exceeding 6 percent of commercial loans outstanding and historic losses not exceeding 6 percent of dollars loaned, or it must demonstrate that it has personnel with equivalent previous experience where the commercial loan portfolio was of a similar quantity and quality. The lender will provide a written certification to this effect along with a statistical analysis of its commercial loan portfolio for the last 3 of its fiscal years.

(3) The percentage of guarantee will not exceed 80 percent.

(4) If the lender is a bank or savings and loan, it must have a financial strength rating in the upper half of possible ratings as reported by a lender rating service selected by the Agency.

(5) Possess loan officers and other appropriate personnel who have received training conducted by the Agency. Additional training may be required if the lender's contact person changes or if the Agency determines further instruction is needed.

(6) Have committed no action within the most recent 2 years prior to requesting CLP status which would be considered cause for revoking CLP status under paragraph (e) of this section.

(c) *CLP approval.* The Agency may grant CLP status for a period not to exceed 5 years by executing Form 4279–8, ''Certified Lender, Business and Industry Program,'' with the lender. CLP status will not apply to branches or suboffices of the lender unless so specified in the agreement. Such branches or suboffices may submit loans as regular lenders or apply for their own CLP status. Any lender who desires CLP status must prepare a written request to the State Director where it desires CLP status. The request must address each of the required criteria outlined in paragraph (b) of this section, except paragraph (b)(3), and should be accompanied by any other information the lender believes will be helpful. The request will also include Form 4279–8 completed and executed by the lender and an executed Lender's Agreement if it does not already have a valid Lender's Agreement on file with the Agency. Loans made by the lender and guaranteed by the Agency prior to the lender receiving CLP status shall continue to be governed by the forms and agreements executed between the lender and the Agency for those loans.

(d) *Renewal of CLP status.* Renewal of CLP status is not automatic. CLP status will lapse upon the expiration date of Form 4279–8 unless the lender obtains a renewal. A lender whose CLP status has lapsed may continue to submit loan guarantee requests as a regular lender. A new Form 4279–8 completed and executed by the lender must be provided, along with a written update of the eligibility criteria required by this section for CLP approval. This information must be supplied at least 60 days prior to the expiration of the existing agreement to be assured of uninterrupted status. The information must address how the lender is complying with each of the required criteria described in paragraph (b) of this section. It must include any proposed changes in the designated

persons for processing guaranteed loans or operating methods used in processing and servicing Agency guaranteed loans.

(e) *Revocation of CLP status.* The lender's CLP status may be revoked at any time for cause. The debarment of a lender is an additional alternative the Agency may consider. A lender which has lost its CLP status, but has not been debarred and still meets the requirements of § 4279.29 of this subpart may continue to submit loan guarantee requests as a regular lender. Cause for revoking CLP status includes:

(1) Failure to maintain status as an eligible lender as set forth in § 4279.29 of this subpart;

(2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;

(3) Making a guaranteed loan with deficiencies which may cause losses not to be covered by the Loan Note Guarantee;

(4) Conviction for acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(5) Violation of usury laws in connection with any loan guaranteed by the Agency;

(6) Failure to obtain the required security for any loan guaranteed by the Agency;

(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment;

(8) Violation of any term of the Lender's Agreement;

(9) Failure to correct any cited deficiency in loan documents in a timely manner;

(10) Failure to submit reports required by the Agency in a timely manner;

(11) Failure to process Agency guaranteed loans in a reasonably prudent manner;

(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;

(13) Repetitive recommendations for guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;

(14) Repetitive recommendations for servicing actions that do not comply with Agency requirements;

(15) Negligent servicing; or

(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan.

(f) *General loan processing and servicing guidelines.* All requests for guaranteed loans will be processed and serviced under subparts A and B of this part and subpart B of part 4287 of this chapter except as modified by this section. When determining whether or not to request a guarantee for a proposed loan, lenders must consider the priorities set forth in § 279.155 of subpart B of this part.

(1) Prior to processing an application, the CLP lender may give written notice to the State Director of its intention to submit an application. Upon receipt of such written notice, the Agency will notify the CLP lender whether or not there is sufficient guarantee authority for the loan. Such guarantee authority will be held for 30 days pending receipt of the application. If a complete application for which guarantee authority is being held is not received within 30 days of the notice of intent to file or is rejected, the guarantee authority for this application will no longer be held in reserve. Notwithstanding the preceding, no guarantee authority will be held in reserve the last 60 days of the Agency's fiscal year.

(2) Refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be permitted without prior Agency approval.

(3) CLP lenders will process all guaranteed loans as a ''complete application'' by obtaining and completing all items required by § 4279.161(b) of subpart B of this part. The CLP lender must maintain all information required by § 4279.161(b) in its loan file and determine that such material complies with all requirements.

(4) CLP lenders will make all material relating to any guarantee application available to the Agency upon request.

(5) At the time of the Agency's issuance of the Loan Note Guarantee, the CLP lender will provide the Agency with copies of the following documents:

(i) Executed Loan Agreement;

(ii) Executed Promissory Notes; and

(iii) Executed security documents including personal and corporate guarantees.

(g) *Unique characteristics of the CLP.* A proposed loan by a CLP lender requires a review by the Agency of the information submitted by the lender, plus satisfactory completion of the environmental review process by the Agency. The Agency may rely on the lender's credit analysis.

(1) The following will constitute a complete application submitted by a CLP lender:

(i) Form 4279–1, ''Application for Loan Guarantee (Business and Industry),'' (marked with the letters ''CLP'' at the top) completed in its entirety and executed by the borrower and CLP lender;

(ii) Copy of the proposed Loan Agreement or a list of proposed requirements;

(iii) Form FmHA 1940–20, completed and signed, with attachments;

(iv) The lender's complete written analysis of the proposal, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must include the borrower's management, repayment ability including a cash flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary;

(v) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V; and

(vi) If the loan will exceed $1 million and will increase direct employment by more than 50 employees, Form 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' must be completed by the lender. For such loans, the Agency will submit Form 4279–2 to the Department of Labor and obtain clearance before a Conditional Commitment may be issued.

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and approval of the Agency's completed environmental analysis, if required, except that refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be approved without a credit analysis by the Agency of the borrower's complete financial statements; and completion by the Agency of the environmental analysis. The Agency may request such additional information as it determines is needed to make a decision.

(h) *Lender loan servicing responsibilities.* CLP lenders will be fully responsible for all aspects of loan servicing and, if necessary, liquidation as described in subpart B of part 4287 of this chapter.

§ 4279.44 Access to records.

The lender will permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to the Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency.

§§ 4279.45–4279.57 [Reserved]

§ 4279.58 Equal Credit Opportunity Act.

In accordance with title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

§ 4279.59 [Reserved]

§ 4279.60 Civil Rights Impact Analysis

The Agency is responsible for ensuring that all requirements of FmHA Instruction 2006–P, ''Civil Rights Impact Analysis'' are met and will complete the appropriate level of review in accordance with that instruction.

§§ 4279.61–4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB Circulars A–128 or A–133 or successor regulations or circulars must provide an audit in accordance with the applicable circular or regulation for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circulars A–128 or A–133 or their successors will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. The provisions of this part and part 4287 of this chapter will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, the regulations will control.

(a) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its *pro rata* share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§§ 4279.73–4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender shall not sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 (interest on State and local banks) or any successor section will not be guaranteed.

(a) *Single note system.* The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using the Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form 4279–6, the assignee shall succeed to all rights and obligations of the holder thereunder. If

this option is selected, the lender may not at a later date cause any additional notes to be issued.

(b) *Multinote system.* Under this option the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to the note. An Assignment Guarantee Agreement will not be used when the multinote option is utilized.

(c) *After loan closing.* If a loan is closed using the multinote option and at a later date additional notes are desired, the lender may cause a series of new notes, so that the total number of notes issued does not exceed the total number provided for in paragraph (b) of this section, to be issued as replacement for previously issued guaranteed notes, provided:

(1) Written approval of the Agency is obtained;

(2) The borrower agrees and executes the new notes;

(3) The interest rate does not exceed the interest rate in effect when the loan was closed;

(4) The maturity date of the loan is not changed;

(5) The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;

(6) There is adequate collateral securing the notes;

(7) No intervening liens have arisen or have been perfected and the secured lien priority is better or remains the same; and

(8) All holders agree.

(d) *Termination of lender servicing fee.* The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and, when applied to the guaranteed loan, will be applied on a pro rata basis.

§ 4279.76 Participation.

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Agency purchase.* (1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. (This is in addition to the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

(c) *Repurchase for servicing.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold USDA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multinote system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

§§ 4279.85–4279.99 [Reserved]

§ 4279.100 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0171. Public reporting burden for this collection of information is estimated to vary from 1 hour to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart B—Business and Industry Loans

§ 4279.101 Introduction.

(a) *Content.* This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations.

(b) *Purpose.* The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans.

(c) *Documents.* Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office.

§ 4279.102 Definitions.

The definitions and abbreviations in § 4279.2 of subpart A of this part are applicable to this subpart.

§§ 4279.103 Exception Authority.

Section 4279.15 of subpart A of this part applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 of subpart A of this part applies to this subpart.

§ 4279.105–4279.106 [Reserved]

§ 4279.107 Guarantee fee.

The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Except as provided in this section, the guarantee fee will be 2 percent multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(a) The guarantee fee may be reduced to 1 percent if the Agency determines that the business meets the following criteria:

(1) High impact business development investment (It is the goal of this program to encourage high impact business investment in rural areas. The weight given to business investments will be in accordance with § 4279.155(b)(5) of this subpart); and

(2) The business is located in a community that is experiencing long term population decline and job deterioration; or

(3) The business is located in a rural community that has remained persistently poor over the last 60 years; or

(4) The business is located in a rural community that is experiencing trauma as a result of natural disaster or that is experiencing fundamental structural changes in its economic base.

(b) Each fiscal year, the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee fee for all additional loans obligated during the remainder of that fiscal year will be 2 percent.

§ 4279.108 Eligible borrowers.

(a) *Type of entity.* A borrower may be a cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

(1) Provide employment;

(2) Improve the economic or environmental climate;

(3) Promote the conservation, development, and use of water for aquaculture; or

(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems.

(b) *Citizenship.* Individual borrowers must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. Citizens and residents of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands shall be considered U.S. citizens. Corporations or other nonpublic body organization-type borrowers must be at least 51 percent owned by persons who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(c) *Rural area.* The business financed with a B&I Guaranteed Loan must be located in a rural area. Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(1) Rural areas include all territory of a State that is:

(i) Not within the outer boundary of any city having a population of 50,000 or more; and

(ii) Not within an area that is urbanized or urbanizing as defined in this section.

(2) All density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census in the latest decennial census of the U.S. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, cemeteries, office parks, shopping malls, or land set aside for such purposes will be excluded.

(3) An urbanized area is an area immediately adjacent to a city with a population of 50,000 or more, that for general social and economic purposes forms a single community with such a city. An urbanizing area is an area immediately adjacent to a city with a population of 50,000 or more with a population density of more than 100 persons per square mile or is an area with a population density of less than 100 persons per square mile which appears likely, based on development and population trends, to become urbanized in the foreseeable future. The corporate status of an urbanized or urbanizing area is not material. An area located in recognizable open country or separated from any city of 50,000 or more population by recognizable open country or by a river, will be assumed to be not urbanized or urbanizing.

(d) *Other credit.* All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

§§ 4279.109–4279.112 [Reserved]

§ 4279.113 Eligible loan purposes.

Loan purposes must be consistent with the general purpose contained in § 4279.101 of this subpart. They include but are not limited to the following:

(a) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(b) Business conversion, enlargement, repair, modernization, or development.

(c) Purchase and development of land, easements, rights-of-way, buildings, or facilities.

(d) Purchase of equipment, leasehold improvements, machinery, supplies, or inventory.

(e) Pollution control and abatement.

(f) Transportation services incidental to industrial development.

(g) Startup costs and working capital.

(h) Agricultural production, when not eligible for Farm Service Agency (FSA) farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products.

(1) Examples of potentially eligible production include but are not limited to: An apple orchard in conjunction with a food processing plant; poultry buildings linked to a meat processing operation; or sugar beet production coupled with storage and processing. Any agricultural production considered for B&I financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Independent agricultural production operations, even if not eligible for FSA farmer programs assistance, are not eligible for the B&I program.

(2) The agricultural-production portion of any loan will not exceed 50 percent of the total loan or $1 million, whichever is less.

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers. Purchase of startup cooperative stock for family-sized farms where commodities are produced to be processed by the cooperative.

(j) Aquaculture, including conservation, development, and utilization of water for aquaculture.

(k) Commercial fishing.

(l) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

(m) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.

(n) The growing of mushrooms or hydroponics.

(o) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(p) Feasibility studies.

(q) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt), the lender is providing better rates or terms, and the refinancing is a

secondary part (less than 50 percent) of the overall loan.

(r) Takeout of interim financing. Guaranteeing a loan after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application which proposes such interim financing prior to completing the interim loan. A lender that is considering an interim loan should be advised that the Agency assumes no responsibility or obligation for interim loans advanced prior to the Conditional Commitment being issued.

(s) Fees and charges for professional services and routine lender fees.

(t) Agency guarantee fee.

(u) Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments, except as prohibited under ineligible purposes.

(v) Educational or training facilities.

(w) Community facility projects which are not listed as an ineligible loan purpose such as convention centers.

(x) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(y) The financing of housing development sites provided that the community demonstrates a need for additional housing to prevent a loss of jobs in the area or to house families moving to the area as a result of new employment opportunities.

(z) Community antenna television services or facilities.

(aa) Provide loan guarantees to assist industries adjusting to terminated Federal agricultural programs or increased foreign competition.

§ 4279.114 Ineligible purposes.

(a) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the borrower.

(b) Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees.

(c) Projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

(d) Charitable institutions, churches, or church-controlled or fraternal organizations.

(e) Lending and investment institutions and insurance companies.

(f) Assistance to Government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

(g) Racetracks for the conduct of races by professional drivers, jockeys, etc., where individual prizes are awarded in the amount of $500 or more.

(h) Any business that derives more than 10 percent of annual gross revenue from gambling activity.

(i) Any illegal business activity.

(j) Prostitution.

(k) Any line of credit.

(l) The guarantee of lease payments.

(m) The guarantee of loans made by other Federal agencies.

(n) Owner-occupied housing. Bed and breakfasts, storage facilities, et al, are allowed when the pro rata value of the owner's living quarters is deleted.

(o) Projects that are eligible for the Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(p) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(q) The guarantee of loans where there may be, directly or indirectly, a conflict of interest or an appearance of a conflict of interest involving any action by the Agency.

(r) Golf courses.

§ 4279.115 Prohibition under Agency programs.

No B&I loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric service from any particular utility, supplier, or cooperative.

§§ 4279.116–4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) *Loan amount.* The total amount of Agency loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, must not exceed $10 million. The Administrator may, at the Administrator's discretion, grant an exception to the $10 million limit under the following circumstances:

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved; and

(3) Under no circumstances will the total amount of guaranteed loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, exceed $25 million;

(4) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding $10 million; and

(5) Any request for a guaranteed loan exceeding the $10 million limit must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National Office for review and concurrence before encouraging a full application.

(b) *Percent of guarantee.* The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of $5 million or less, 70 percent for loans between $5 and $10 million, and 60 percent for loans exceeding $10 million. Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of $10 million or less under the following circumstances:

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in 4279.155 of this subpart;

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the higher guarantee percentage is not approved; and

(3) The State Director may grant an exception for loans of up to 90 percent on loans of $2 million or less subject to the State Director's delegated loan authority and meeting all of the conditions as set forth in this section. In

cases where the State Director does not have the loan approval authority to approve a loan of $2 million or less or the proposed percentage, the case must be submitted to the National Office for review.

(4) Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee percentage exceeding 80 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee percentage for all additional loans guaranteed during the remainder of that fiscal year will not exceed 80 percent.

§ 4279.120 Fees and charges.

(a) *Routine lender fees.* The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business.

(b) *Professional services.* Professional services are those rendered by entities generally licensed or certified by States or accreditation associations, such as architects, engineers, packagers, accountants, attorneys, or appraisers. The borrower may pay fees for professional services needed for planning and developing a project provided that the amounts are reasonable and customary in the area. Professional fees may be included as an eligible use of loan proceeds.

§§ 4279.121–4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest-rate savings on to the borrower.

(a) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments coincident with an interest-rate adjustment. The lender will ensure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(b) Any change in the interest rate between the date of issuance of the Conditional Commitment and before the issuance of the Loan Note Guarantee must be approved in writing by the Agency approval official. Approval of such a change will be shown as an amendment to the Conditional Commitment.

(c) It is permissible to have one interest rate on the guaranteed portion of the loan and another rate on the unguaranteed portion of the loan provided that the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion.

(d) A combination of fixed and variable rates will be allowed.

§ 4279.126 Loan terms.

(a) The maximum repayment for loans on real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the Promissory Note and be paid at least annually thereafter. Interest-only payments will be paid at least annually from the date of the note.

(c) Only loans which require a periodic payment schedule which will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan. The lender may apply the maximum guidelines specified above only when the loan cannot be repaid over a shorter term.

(e) All loans guaranteed through the B&I program must be sound, with reasonably assured repayment.

§§ 4279.127–4279.130 [Reserved]

§ 4279.131 Credit quality.

The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) *Cash flow.* All efforts will be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* (1) Collateral must have documented value sufficient to protect the interest of the lender and the Agency and, except as set forth in paragraph (b)(2) of this section, the discounted collateral value will be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value coverage may be discounted accordingly. A loan primarily based on cash flow must be supported by a successful and documented financial history.

(c) *Industry.* Current status of the industry will be considered and businesses in areas of decline will be required to provide strong business plans which outline how they differ from the current trends. The regulatory environment surrounding the particular business or industry will be considered.

(d) *Equity.* A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at the time the Loan Note Guarantee is issued. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at the time the Loan Note Guarantee is issued. Tangible balance sheet equity will be determined in accordance with Generally Accepted Accounting Principles. Modifications to the equity requirements may be granted by the Administrator or designee. For the Administrator to consider a reduction in the equity requirement, the borrower must furnish the following:

(1) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible (in accordance with 4279.149 of this subpart), and

(2) Pro forma and historical financial statements which indicate the business to be financed meets or exceeds the median quartile (as identified in Robert Morris Associates Annual Statement Studies or similar publication) for the

current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(e) *Lien priorities.* The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

(f) *Management.* A thorough review of key management personnel will be completed to ensure that the business has adequately trained and experienced managers.

§§ 4279.132–4279.136 [Reserved]

§ 4279.137 Financial statements.

(a) The lender will determine the type and frequency of submission of financial statements by the borrower. At a minimum, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles will be required.

(b) If specific circumstances warrant and the proposed guaranteed loan will exceed $3 million, the Agency may require annual audited financial statements. For example, the need for audited financial statements will be carefully considered in connection with loans that depend heavily on inventory and accounts receivable for collateral.

§§ 4279.138–4279.142 [Reserved]

§ 4279.143 Insurance.

(a) *Hazard.* Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction by the business, and property damage.

(b) *Life.* The lender may require life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage will be in amounts necessary to provide for management succession or to protect the business. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

(c) *Worker compensation.* Worker compensation insurance is required in accordance with State law.

(d) *Flood.* National flood insurance is required in accordance with 7 CFR, part 1806, subpart B (FmHA Instruction 426.2, available in any field office or the National Office).

(e) *Other.* Public liability, business interruption, malpractice, and other insurance appropriate to the borrower's particular business and circumstances will be considered and required when needed to protect the interests of the borrower.

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to subpart A of part 1922 of this title and to ''Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire'' and ''Phase I Environmental Site Assessment,'' both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

§§ 4279.145–4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantees.

(a) Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) Personal and corporate guarantees for those owning greater than 20 percent of the borrower will be required where legally permissible, except as provided for in this section. Guarantees of parent, subsidiaries, or affiliated companies and secured guarantees may also be required.

(c) Exceptions to the requirements for personal guarantees must be requested by the lender and concurred in by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cash flow, and profitability indicate an above average ability to repay the loan.

§ 4279.150 Feasibility studies.

A feasibility study by a qualified independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's operations. An acceptable feasibility study should include, but not be limited to, economic, market, technical, financial, and management feasibility.

§§ 4279.151–4279.154 [Reserved]

§ 4279.155 Loan priorities.

Applications and preapplications received by the Agency will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications.

(a) When applications on hand otherwise have equal priority, applications for loans from qualified veterans will have preference.

(b) Priorities will be assigned by the Agency to eligible applications on the basis of a point system as contained in this section. The application and supporting information will be used to determine an eligible proposed project's priority for available guarantee authority. All lenders, including CLP lenders, will consider Agency priorities when choosing projects for guarantee. The lender will provide necessary information related to determining the score, as requested.

(1) Population priority. Projects located in an unincorporated area or in a city with under 25,000 population (10 points).

(2) Community priority. The priority score for community will be the total score for the following categories:

(i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).

(ii) Located in a rural community that has remained persistently poor over the last 60 years (5 points).

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).

(iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points).

(3) Empowerment Zone/Enterprise Community (EZ/EC).

(i) Located in an EZ/EC designated area (10 points).

(ii) Located in a designated Champion Community (5 points). A Champion Community is a community which developed a strategic plan to apply for an EZ/EC designation, but not selected as a designated EZ/EC Community.

(4) Loan features. The priority score for loan features will be the total score for the following categories:

(i) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less (5 points).

(ii) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less (5 points).

(iii) The Agency guaranteed loan is less than 50 percent of project cost (5 points).

(iv) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(5) High impact business investment priorities. The priority score for high impact business investment will be the total score for the following three categories:

(i) Industry. The priority score for industry will be the total score for the following, except that the total score for industry cannot exceed 10 points.

(A) Industry that has 20 percent or more of its sales in international markets (5 points).

(B) Industry that is not already present in the community (5 points).

(ii) Business. The priority score for business will be the total score for the following:

(A) Business that offers high value, specialized products and services that command high prices (2 points).

(B) Business that provides an additional market for existing local business (3 points).

(C) Business that is locally owned and managed (3 points).

(D) Business that will produce a natural resource value-added product (2 points).

(iii) Occupations. The priority score for occupations will be the total score for the following, except that the total score for job quality cannot exceed 10 points:

(A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).

(B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).

(6) Administrative points. The State Director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, or area economic development strategies. An explanation of the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

§ 4279.156 Planning and performing development.

(a) *Design policy.* The lender must ensure that all project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, state, and local codes and requirements. The lender will also ensure that the project will be completed using the available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency.

(b) *Project control.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms with applicable Federal, state, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs.

(c) *Equal opportunity.* For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR, part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act (ADA).* B&I Guaranteed Loans which involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

§§ 4279.157–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal.

(a) *Preapplications.* Lenders may file preapplications by submitting the following to the Agency:

(1) A letter signed by the borrower and lender containing the following:

(i) Borrower's name, organization type, address, contact person, and federal tax identification and telephone numbers.

(ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.

(iii) Name of the proposed lender, address, telephone number, contact person, and lender's Internal Revenue Service (IRS) identification number.

(iv) Brief description of the project, products, services provided, and availability of raw materials and supplies.

(v) Type and number of jobs created or saved.

(vi) Amount of borrower's equity and a description of collateral, with estimated values, to be offered as security for the loan.

(vii) If a corporate borrower, the names and addresses of the borrower's parent, affiliates, and subsidiary firms, if any, and a description of the relationship.

(2) A completed Form 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the 3 most recent years.

(4) For start-up businesses, a preliminary business plan must be provided.

(b) *Applications.* Except for CLP lenders, applications will be filed with the Agency by submitting the following information: (CLP applications will be completed in accordance with 4279.43(g)(1) but CLP lenders must have the material listed in this paragraph in their files.)

(1) A completed Form 4279–1, ''Application for Loan Guarantee (Business and Industry)''.

(2) The information required for filing a preapplication, as listed above, if not previously filed or if the information has changed.

(3) Form FmHA 1940–20, ''Request for Environmental Information,'' and attachments, unless the project is categorically excluded under Agency environmental regulations.

(4) A personal credit report from an acceptable credit reporting company for a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the applicant, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body.

(5) Intergovernmental consultation comments in accordance with 7 CFR, part 3015, subpart V.

(6) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available. (Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.)

(7) For all businesses, a current (not more than 90 days old) balance sheet, a *pro forma* balance sheet at startup, and projected balance sheets, income and expense statements, and cash flow statements for the next 2 years. Projections should be supported by a list of assumptions showing the basis for the projections.

(8) Lender's complete written analysis, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must address the borrower's management, repayment ability including a cash-flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.

(9) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(10) Current personal and corporate financial statements of any guarantors.

(11) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The Loan Agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee. The following requirements must be addressed in the Loan Agreement:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restriction on dividend payments.

(iii) Limitation on the purchase or sale of equipment and fixed assets.

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

(vi) Maximum debt-to-net worth ratio.

(vii) Restrictions concerning consolidations, mergers, or other circumstances.

(viii) Limitations on selling the business without the concurrence of the lender.

(ix) Repayment and amortization of the loan.

(x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors must be updated at least annually.

(xi) Type and frequency of financial statements to be required for the duration of the loan.

(xii) The final Loan Agreement between the lender and borrower will contain any additional requirements imposed by the Agency in its Conditional Commitment.

(xiii) A section for the later insertion of any necessary measures by the borrower to avoid or reduce adverse environmental impacts from this proposal's construction or operation. Such measures, if necessary, will be determined by the Agency through the completion of the environmental review process.

(12) A business plan, which includes, at a minimum, a description of the business and project, management experience, products and services, proposed use of funds, availability of labor, raw materials and supplies, and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. Any or all of these requirements may be omitted if the information is included in a feasibility study.

(13) Independent feasibility study, if required.

(14) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission (SEC) regulations, a copy of SEC Form 10–K, ''Annual Report Pursuant to Section 13 or 15D of the Act of 1934.''

(15) For health care facilities, a certificate of need, if required by statute.

(16) A certification by the lender that it has completed a comprehensive analysis of the proposal, the applicant is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

(17) Any additional information required by the Agency.

§§ 4279.162–4279.164 [Reserved]

§ 4279.165 Evaluation of application.

(a) *General review.* The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Environmental requirements.* The environmental review process must be completed, in accordance with subpart G of part 1940 of this title, prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first.

§§ 4279.166–4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender containing conditions under which a Loan Note Guarantee will be issued.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and applicant may propose alternate conditions. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment.

§ 4279.174 Transfer of lenders.

(a) The loan approval official may approve the substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment when the

Loan Note Guarantee has not yet been issued provided, that there are no changes in the borrower's ownership or control, loan purposes, or scope of project and loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender's servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279–1.

§§ 4279.175–4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency loan approval official.

§ 4279.181 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will not be issued until the lender, including a CLP lender, certifies to the following:

(a) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency.

(b) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, state, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Required hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.

(d) Truth-in-lending requirements have been met.

(e) All equal credit opportunity requirements have been met.

(f) The loan has been properly closed, and the required security instruments have been obtained or will be obtained on any acquired property that cannot be covered initially under State law.

(g) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.

(i) When required, personal, partnership, or corporate guarantees have been obtained.

(j) All other requirements of the Conditional Commitment have been met.

(k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(l) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and Form 4279–1. A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(n) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

(o) The Loan Agreement includes all measures identified in the Agency's environmental impact analysis for this proposal (measures with which the borrower must comply) for the purpose of avoiding or reducing adverse environmental impacts of the proposal's construction or operation.

§ 4279.182–4279.185 [Reserved]

§ 4279.186 Issuance of the guarantee.

(a) When loan closing plans are established, the lender will notify the Agency. Coincident with, or immediately after loan closing, the lender will provide the following to the Agency:

(1) Lender's certifications as required by § 4279.181.

(2) Executed Lender's Agreement.

(3) Form FmHA 1980–19, ''Guaranteed Loan Closing Report,'' and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) Assignment Guarantee Agreement. In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute the Assignment Guarantee Agreement; and

(2) Certificate of Incumbency. If requested by the lender, the Agency will provide the lender with a certification on Form 4279–7, ''Certificate of Incumbency and Signature (Business and Industry),'' of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) There may be instances when not all of the working capital has been disbursed, and it appears practical to disburse the balance over a period of time. The State Director, after review of a disbursement plan, may amend the Conditional Commitment in accordance with the disbursement plan and issue the guarantee.

§ 4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

§§ 4279.188–4279.199 [Reserved]

§ 4279.200 OMB control number.

The information collection requirements contained in this

regulation have been approved by OMB and have been assigned OMB control number 0575–0170. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 54 hours per response, with an average of 27 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

16. A new part 4287, consisting of §§ 4287.101 through 4287.200, is added to chapter XLII to read as follows:

PART 4287—SERVICING

Subpart A—[Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

Sec.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989

Subpart A—[Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office.

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104–4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral.

(a) *Lender reports.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using Form FmHA 1980–41, ''Guaranteed Loan Status Report.''

(b) *Loan classification.* Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately.

(c) *Agency and lender conference.* At the Agency's request, the lender will meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(d) *Financial reports.* The lender must obtain and forward to the Agency the financial statements required by the Loan Agreement. The lender must submit annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must be included.

(e) *Additional expenditures.* The lender will not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate adjustments.

(a) *Reductions.* The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

(1) Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(3) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4279.125 of subpart B of part 4279 of this chapter.

(4) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(b) *Increases.* No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction had occurred.

§ 4287.113 Release of collateral.

(a) All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144 of subpart B of part 4279 of this chapter. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Agency may be adversely affected by the release of collateral. Sale or release of collateral must be based on an arm's-length transaction.

(b) Within the parameters of paragraph (a) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be completed by the lender to justify the release.

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business and the Agency's interest. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination.

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(b) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by 4279.126 of subpart B of part 4279 of this chapter. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279 of this chapter.

(f) *Credit quality.* The lender must make a complete credit analysis which is subject to Agency review and approval.

(g) *Documents.* Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(h) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its *pro rata* share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with 4279.78(c) of subpart A of part 4279 of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

(i) *Related party.* If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) *Payment requests.* Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279 of this chapter.

(k) *Cash downpayment.* When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferor provided:

(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) the proposed substitute lender:

(i) is an eligible lender in accordance with 4279.29 of subpart A of part 4279 of this chapter;

(ii) is able to service the loan in accordance with the original loan documents; and

(iii) agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) the substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

§§ 4287.136–4287.144 [Reserved]

§ 4287.145 Default by borrower.

(a) The lender must notify the Agency when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form FmHA 1980–44, ''Guaranteed Loan Borrower Default Status,'' will be used and the lender will continue to submit this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions include but are not limited to:

(i) deferment of principal (subject to rights of any holder);

(ii) an additional unguaranteed loan by the lender to bring the account current;

(iii) reamortization of or rescheduling the payments on the loan (subject to rights of any holder);

(iv) transfer and assumption of the loan in accordance with § 4287.134 of this subpart;

(v) reorganization;

(vi) liquidation;

(vii) subsequent loan guarantees; and

(viii) changes in interest rates with the Agency's, the lender's, and holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.126 of subpart B of part 4279 of this chapter, whichever is less.

§§ 4287.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed $5,000.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78 of subpart A of part 4279 of this chapter.

(a) *Decision to liquidate.* A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have

not been able to cure the delinquency through one of the actions contained in § 4287.145 of this subpart.

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) *Liquidation by the Agency.* The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. Form FmHA 1980–45, ''Notice of Liquidation Responsibility,'' will be forwarded to the Finance Office when the Agency liquidates the loan.

(c) *Submission of liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) *Lender's liquidation plan.* The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) for acquiring and disposing of all collateral; and

(ii) to collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4279.144 of subpartB of part 4279 of this chapter on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) *Approval of liquidation plan.* The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation.

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens.

(f) *Acceleration.* The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) *Filing an estimated loss claim.* When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations.

(h) *Accounting and reports.* When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(i) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its *pro rata* share of any payments received from the borrower; liquidation; or other proceeds using Form FmHA 1980–43, ''Lender's Guaranteed Loan Payment to FmHA.''

(j) *Abandonment of collateral.* There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940 of this title. Examples where abandonment may be considered include, but are not limited to:

(1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;

(2) The collateral is functionally or economically obsolete;

(3) There are superior liens held by other parties in excess of the value of the collateral;

(4) The collateral has deteriorated; or

(5) The collateral is specialized and there is little or no demand for it.

(k) *Disposition of personal or corporate guarantees.* The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

(1) a borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;

(2) the collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or

(3) a liquidation plan is being developed for forced liquidation.

(1) *Compromise settlement.* A compromise settlement may be considered at any time.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered.

(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets.

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan.

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise.

(4) A compromise will only be accepted if it is in the best interest of the Agency.

§ 4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* Form FmHA 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* In accordance with the requirements of § 4287.157(g) of this subpart, an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment, except in certain transfer and assumption situations as specified in § 4287.134 of this subpart.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form FmHA 449–30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with § 4287.157(k) of this subpart prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a

substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve Form FmHA 449–30 and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and, where necessary, participate in meetings of the creditors and all court proceedings.

(3) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(4) The Agency will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency's opinion, the Agency and the lender will share such appraisal fee equally.

(b) *Reports of loss during bankruptcy.* When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b)(3) and (5) of this section are applicable.

(1) *Estimated loss payments.* (i) If a borrower has filed for protection under Chapter 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the reorganization plan.

(ii) The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender will complete a Form FmHA 1980–44 and forward this form to the Finance Office.

(2) *Interest loss payments.* (i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b)(1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Final loss payments.* Final loss payments will be processed when the loan is liquidated.

(4) *Payment application.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) *Protective advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

(c) *Legal expenses during bankruptcy proceedings.* (1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

(a) upon full payment of the guaranteed loan;

(b) upon full payment of any loss obligation; or

(c) upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden, estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Dated: December 12, 1996.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 96–32170 Filed 12–20–96; 8:45 am]

BILLING CODE 3410–XY–U

Federal Register

Monday
December 23, 1996

Part IV

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5668–3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list.

This rule adds 7 new sites to the General Superfund Section of the NPL. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be January 22, 1997.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see ''Information Available to the Public'' in Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100, Stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 U.S.C. 9601(23). ''Remedial'' actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List (''NPL'').

CERCLA section 105(a)(8)(B) defines the NPL as a list of ''releases'' and as a list of the highest priority ''facilities.'' CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

The purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.

Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983). If a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) and 105(a)(8)(B) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be

listed regardless of their HRS score, if all of the following conditions are met:

The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

EPA determines that the release poses a significant threat to public health.

EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on June 17, 1996 (61 FR 30510).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed generally by other Federal agencies (the ''Federal Facilities Section''). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes facilities at which EPA is not the lead agency.

Site Boundaries

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) mandates listing of national priorities among the known ''releases or threatened releases.''

Thus, the purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, it is necessary to define the release (or releases) encompassed by the listing. The approach generally used is to delineate a geographical area (usually the area within the installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, and any other location to which contamination from that area has come to be located or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). To date, the Agency has deleted 132 sites from the NPL.

On November 1, 1995, EPA announced a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465). Total site cleanup may take many years, while portions of the site may have been cleaned up and be available for productive use. As of December 1996, EPA has partially deleted 4 sites from the NPL.

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 125 sites that have been deleted from the NPL because they have been cleaned up (7 sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 287 sites are also in the NPL CCL. Thus, as of December 1996, the CCL consists of 412 sites.

Action In This Document

This final rule adds 7 sites to the General Superfund Section of the NPL. All of these sites are added to the NPL based on an HRS score of 28.5 or greater. This action results in an NPL of 1,210 sites, 1,059 in the General Superfund Section and 151 in the Federal Facilities Section. With the action of a proposed rule published elsewhere in today's Federal Register, a total of 49 sites are proposed and are awaiting final agency action, 42 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,259.

Information Available to the Public

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of the sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Docket for hours.

Addresses and phone numbers for the Headquarters and Regional dockets follow.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917 (Please note this is a viewing address only. Do not mail documents to this address.)

Jim Kyed, Region 1, U.S. EPA Waste Management Records Center, HRC-CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

Ben Conetta, Region 2, U.S. EPA, 290 Broadway, New York, NY 10007–1866, 212/637–4435

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/566–5250

Kathy Piselli, Region 4, U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8190

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202–2733, 214/655–6740

Carole Long, Region 7, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

Bob Heise, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/312–6831

Rachel Loftin, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103.

The Headquarters docket for this rule contains HRS score sheets for the final sites, Documentation Records for the sites describing the information used to compute the scores, pertinent information regarding statutory requirements or EPA listing policies that affect the sites, and a list of documents referenced in each of the Documentation Records. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—December 1996.''

A general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, the economic impacts of NPL listing, and the analysis required under the Regulatory Flexibility Act is included as part of the Headquarters rulemaking docket in the ''Additional Information'' document.

The Regional docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

Interested parties may view documents, by appointment only, in the Headquarters or Regional Dockets, or copies may be requested from the Headquarters or Regional Dockets. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. If you wish to obtain documents by mail from EPA Headquarters Docket, the mailing address is as follows: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office (Mail Code 5201G), 401 M Street, SW., Washington, DC 20460, 703/603–8917, superfund.docket@epamail.epa.gov

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804 (2).

II. Contents of This Document

This document promulgates final rules to add 7 sites to the General Superfund Section of the NPL (Table 1). The following table presents the sites in this rule arranged alphabetically by State and identifies their rank by group number. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

NATIONAL PRIORITIES LIST FINAL RULE—GENERAL SUPERFUND SECTION

State	Site name	City/county	Group
FL ...	MRI Corp (Tampa).	Tampa	16
FL ...	Stauffer Chemical Co (Tampa).	Tampa	1
LA ...	Madisonville Creosote Works.	Madisonville	7
NH ..	Beede Waste Oil.	Plaistow	1
PR ..	V&M/ Albaladejo.	Vega Baja	5/6
SC ..	Shuron Inc ...	Barnwell	1
WV ..	Sharon Steel Corp (Fairmont Coke Works).	Fairmont	2

Number of Sites Listed: 7.

Public Comments

EPA reviewed all comments received on sites included in this document. Based on comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—December 1996.''

III. Executive Order 12866

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

IV. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally

requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (within the meaning of Title II of the UMRA) for State, local, or tribal governments or the private sector. Nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. This is because today's listing decision does not impose any enforceable duties upon any of these governmental entities or the private sector. Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Therefore, today's rulemaking is not subject to the requirements of section 202, 203, or 205 of the Unfunded Mandates Act.

V. Effect on Small Businesses

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VI. Possible Changes to the Effective Date of the Rule

Provisions of the Administrative Procedure Act (APA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the APA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements under any other Act and any relevant Executive Orders.

Section 5 U.S.C. 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted. Section 5 U.S.C. 801(a)(4) provides that all other rules shall take effect after submission to Congress, as otherwise provided by law.

EPA has submitted a report under the APA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 5 U.S.C. 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself.

However, under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 5 U.S.C. 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the APA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a notice of clarification in the Federal Register.''

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: December 13, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

Appendix B to Part 300

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

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

2. Appendix B to Part 300 is revised to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
AK	Arctic Surplus	Fairbanks.	
AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh.	
AL	Interstate Lead Co (ILCO)	Leeds.	
AL	Olin Corp. (McIntosh Plant)	McIntosh.	
AL	Perdido Ground Water Contamination	Perdido	C
AL	Redwing Carriers, Inc. (Saraland)	Saraland.	
AL	Stauffer Chemical Co. (Cold Creek Plant)	Bucks.	
AL	Stauffer Chemical Co. (LeMoyne Plant)	Axis.	
AL	T.H. Agriculture & Nutrition (Montgomery)	Montgomery.	
AL	Triana/Tennessee River	Limestone/Morgan	C
AR	Arkwood, Inc	Omaha	C
AR	Frit Industries	Walnut Ridge.	
AR	Gurley Pit	Edmondson	C
AR	Industrial Waste Control	Fort Smith	C
AR	Jacksonville Municipal Landfill	Jacksonville	C
AR	Mid-South Wood Products	Mena	C
AR	Midland Products	Ola/Birta	C
AR	Monroe Auto Equipment (Paragould Pit)	Paragould.	
AR	Popile, Inc	El Dorado.	
AR	Rogers Road Municipal Landfill	Jacksonville	C
AR	South 8th Street Landfill	West Memphis.	
AR	Vertac, Inc	Jacksonville.	
AZ	Apache Powder Co	St. David.	
AZ	Hassayampa Landfill	Hassayampa.	
AZ	Indian Bend Wash Area	Scottsdale/Tempe/Phoenix.	
AZ	Litchfield Airport Area	Goodyear/Avondale.	
AZ	Motorola, Inc. (52nd Street Plant)	Phoenix.	
AZ	Nineteenth Avenue Landfill	Phoenix.	
AZ	Tucson International Airport Area	Tucson.	
CA	Advanced Micro Devices, Inc	Sunnyvale	C
CA	Advanced Micro Devices, Inc. (Bldg. 915)	Sunnyvale	C
CA	Aerojet General Corp	Rancho Cordova.	
CA	Applied Materials	Santa Clara	C
CA	Atlas Asbestos Mine	Fresno County.	
CA	Beckman Instruments (Porterville Plant)	Porterville	C
CA	Brown & Bryant, Inc. (Arvin Plant)	Arvin.	
CA	CTS Printex, Inc	Mountain View	C
CA	Celtor Chemical Works	Hoopa	C
CA	Coalinga Asbestos Mine	Coalinga	C
CA	Coast Wood Preserving	Ukiah.	
CA	Crazy Horse Sanitary Landfill	Salinas.	
CA	Del Norte Pesticide Storage	Crescent City	C
CA	Fairchild Semiconductor Corp (Mt View)	Mountain View.	
CA	Fairchild Semiconductor Corp (S San Jose)	South San Jose	C
CA	Firestone Tire&Rubber Co (Salinas Plant)	Salinas	C
CA	Fresno Municipal Sanitary Landfill	Fresno.	
CA	Frontier Fertilizer	Davis.	
CA	Hewlett-Packard (620–640 Page Mill Road)	Palo Alto.	
CA	Industrial Waste Processing	Fresno.	
CA	Intel Corp. (Mountain View Plant)	Mountain View.	
CA	Intel Corp. (Santa Clara III)	Santa Clara	C
CA	Intel Magnetics	Santa Clara	C
CA	Intersil Inc./Siemens Components	Cupertino	C
CA	Iron Mountain Mine	Redding.	
CA	J.H. Baxter & Co	Weed.	
CA	Jasco Chemical Corp.	Mountain View.	
CA	Koppers Co., Inc. (Oroville Plant)	Oroville.	
CA	Lorentz Barrel & Drum Co	San Jose.	
CA	MGM Brakes	Cloverdale	C
CA	McColl	Fullerton.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
CA	McCormick & Baxter Creosoting Co	Stockton.	
CA	Modesto Ground Water Contamination	Modesto.	
CA	Monolithic Memories	Sunnyvale	C
CA	Montrose Chemical Corp	Torrance.	
CA	National Semiconductor Corp	Santa Clara.	
CA	Newmark Ground Water Contamination	San Bernardino.	
CA	Operating Industries, Inc., Landfill	Monterey Park.	
CA	Pacific Coast Pipe Lines	Fillmore	C
CA	Purity Oil Sales, Inc	Malaga.	
CA	Ralph Gray Trucking Co	Westminster.	
CA	Raytheon Corp	Mountain View.	
CA	San Fernando Valley (Area 1)	Los Angeles.	
CA	San Fernando Valley (Area 2)	Los Angeles/Glendale.	
CA	San Fernando Valley (Area 3)	Glendale.	
CA	San Fernando Valley (Area 4)	Los Angeles.	
CA	San Gabriel Valley (Area 1)	El Monte.	
CA	San Gabriel Valley (Area 2)	Baldwin Park Area.	
CA	San Gabriel Valley (Area 3)	Alhambra.	
CA	San Gabriel Valley (Area 4)	La Puente.	
CA	Selma Treating Co	Selma.	
CA	Sola Optical USA, Inc	Petaluma	C
CA	South Bay Asbestos Area	Alviso.	
CA	Southern California Edison Co (Visalia)	Visalia.	
CA	Spectra-Physics, Inc	Mountain View	C
CA	Stringfellow	Glen Avon Heights	S
CA	Sulphur Bank Mercury Mine	Clear Lake.	
CA	Synertek, Inc. (Building 1)	Santa Clara	C
CA	T.H. Agriculture & Nutrition Co	Fresno.	
CA	TRW Microwave, Inc. (Building 825)	Sunnyvale	C
CA	Teledyne Semiconductor	Mountain View	C
CA	United Heckathorn Co	Richmond.	
CA	Valley Wood Preserving, Inc	Turlock.	
CA	Waste Disposal, Inc	Santa Fe Springs.	
CA	Watkins-Johnson Co (Stewart Division)	Scotts Valley	C
CA	Western Pacific Railroad Co	Oroville.	
CA	Westinghouse Elecetric Corp. (Sunnyvale)	Sunnyvale.	
CO	Broderick Wood Products	Denver	C
CO	California Gulch	Leadville.	
CO	Central City-Clear Creek	Idaho Springs.	
CO	Chemical Sales Co	Denver.	
CO	Denver Radium Site	Denver.	
CO	Eagle Mine	Minturn/Redcliff.	
CO	Lincoln Park	Canon City.	
CO	Lowry Landfill	Arapahoe County.	
CO	Marshall Landfill	Boulder County	C, S
CO	Sand Creek Industrial	Commerce City	C
CO	Smuggler Mountain	Pitkin County	C
CO	Summitville Mine	Rio Grande County.	
CO	Uravan Uranium Project (Union Carbide)	Uravan.	
CT	Barkhamsted-New Hartford Landfill	Barkhamsted.	
CT	Beacon Heights Landfill	Beacon Falls.	
CT	Cheshire Ground Water Contamination	Cheshire.	
CT	Durham Meadows	Durham.	
CT	Gallup's Quarry	Plainfield.	
CT	Kellogg-Deering Well Field	Norwalk	C
CT	Laurel Park, Inc	Naugatuck Borough	S
CT	Linemaster Switch Corp	Woodstock.	
CT	Nutmeg Valley Road	Wolcott.	
CT	Old Southington Landfill	Southington.	
CT	Precision Plating Corp	Vernon.	
CT	Raymark Industries, Inc	Stratford	A
CT	Solvents Recovery Service New England	Southington.	
CT	Yaworski Waste Lagoon	Canterbury.	
DE	Army Creek Landfill	New Castle County	C
DE	Chem-Solv, Inc	Cheswold.	
DE	Coker's Sanitation Service Landfills	Kent County	C
DE	Delaware City PVC Plant	Delaware City.	
DE	Delaware Sand & Gravel Landfill	New Castle County.	
DE	Dover Gas Light Co	Dover.	
DE	E.I.Du Pont de Nemours (Newport Landfill)	Newport.	
DE	Halby Chemical Co	New Castle.	
DE	Harvey & Knott Drum, Inc	Kirkwood	C

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
DE	Koppers Co Inc. (Newport Plant)	Newport.	
DE	NCR Corp. (Millsboro Plant)	Millsboro	C
DE	Sealand Limited	Mount Pleasant	C
DE	Standard Chlorine of Delaware, Inc	Delaware City.	
DE	Sussex County Landfill No. 5	Laurel	C
DE	Tybouts Corner Landfill	New Castle County	C, S
DE	Tyler Refrigeration Pit	Smyrna	C
DE	Wildcat Landfill	Dover	C
FL	Agrico Chemical Co	Pensacola.	
FL	Airco Plating Co	Miami.	
FL	American Creosote Works (Pensacola Pit)	Pensacola.	
FL	Anaconda Aluminum Co/Milgo Electronics	Miami	C
FL	Anodyne, Inc	North Miami Beach.	
FL	B&B Chemical Co., Inc	Hialeah	C
FL	BMI-Textron	Lake Park	C
FL	Beulah Landfill	Pensacola	C
FL	Cabot/Koppers	Gainesville.	
FL	Chemform, Inc	Pompano Beach	C
FL	Chevron Chemical Co (Ortho Division)	Orlando.	
FL	City Industries, Inc	Orlando	C
FL	Coleman-Evans Wood Preserving Co	Whitehouse.	
FL	Davie Landfill	Davie	C
FL	Dubose Oil Products Co	Cantonment	C
FL	Escambia Wood—Pensacola	Pensacola.	
FL	Florida Steel Corp	Indiantown.	
FL	Harris Corp. (Palm Bay Plant)	Palm Bay.	
FL	Helena Chemical Co (Tampa Plant)	Tampa.	
FL	Hipps Road Landfill	Duval County	C
FL	Hollingsworth Solderless Terminal	Fort Lauderdale	C
FL	Kassauf-Kimerling Battery Disposal	Tampa.	
FL	MRI Corp (Tampa)	Tampa.	
FL	Madison County Sanitary Landfill	Madison.	
FL	Miami Drum Services	Miami	C
FL	Munisport Landfill	North Miami.	
FL	Peak Oil Co/Bay Drum Co	Tampa.	
FL	Pepper Steel & Alloys, Inc	Medley	C
FL	Petroleum Products Corp	Pembroke Park.	
FL	Pickettville Road Landfill	Jacksonville.	
FL	Piper Aircraft/Vero Beach Water & Sewer	Vero Beach.	
FL	Reeves Southeast Galvanizing Corp	Tampa.	
FL	Sapp Battery Salvage	Cottondale.	
FL	Schuylkill Metals Corp	Plant City.	
FL	Sherwood Medical Industries	Deland.	
FL	Sixty-Second Street Dump	Tampa	C
FL	Standard Auto Bumper Corp	Hialeah	C
FL	Stauffer Chemical Co. (Tampa)	Tampa.	
FL	Stauffer Chemical Co. (Tarpon Springs)	Tarpon Springs.	
FL	Sydney Mine Sludge Ponds	Brandon.	
FL	Taylor Road Landfill	Seffner.	
FL	Tower Chemical Co.	Clermont.	
FL	Whitehouse Oil Pits	Whitehouse.	
FL	Wingate Road Municipal Incinerator Dump	Fort Lauderdale.	
FL	Yellow Water Road Dump	Baldwin.	
FL	Zellwood Ground Water Contamination	Zellwood.	
GA	Cedartown Industries, Inc	Cedartown.	
GA	Cedartown Municipal Landfill	Cedartown	C
GA	Diamond Shamrock Corp. Landfill	Cedartown	C
GA	Firestone Tire & Rubber Co (Albany Plant)	Albany.	
GA	Hercules 009 Landfill	Brunswick.	
GA	LCP Chemicals Georgia	Brunswick	S
GA	Marzone Inc./Chevron Chemical Co	Tifton.	
GA	Mathis Brothers Landfill	Kensington.	
GA	Monsanto Corp. (Augusta Plant)	Augusta	C
GA	Powersville Site	Peach County	C
GA	T.H. Agriculture & Nutrition (Albany)	Albany.	
GA	Woolfolk Chemical Works, Inc	Fort Valley.	
GU	Ordot Landfill	Guam	C, S
HI	Del Monte Corp. (Oahu Plantation)	Honolulu County.	
IA	Des Moines TCE	Des Moines.	
IA	Electro-Coatings, Inc	Cedar Rapids.	
IA	Fairfield Coal Gasification Plant	Fairfield	C
IA	Farmers' Mutual Cooperative	Hospers.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
IA	John Deere (Ottumwa Works Landfills)	Ottumwa	C
IA	Lawrence Todtz Farm	Camanche	C
IA	Mason City Coal Gasification Plant	Mason City.	
IA	Mid-America Tanning Co	Sergeant Bluff.	
IA	Midwest Manufacturing/North Farm	Kellogg.	
IA	Peoples Natural Gas Co	Dubuque.	
IA	Red Oak City Landfill	Red Oak.	
IA	Shaw Avenue Dump	Charles City.	
IA	Sheller-Globe Corp. Disposal	Keokuk.	
IA	Vogel Paint & Wax Co	Orange City	C
IA	White Farm Equipment Co. Dump	Charles City.	
ID	Bunker Hill Mining & Metallurgical	Smelterville.	
ID	Eastern Michaud Flats Contamination	Pocatello.	
ID	Kerr-McGee Chemical Corp. (Soda Springs)	Soda Springs.	
ID	Monsanto Chemical Co. (Soda Springs)	Soda Springs.	
ID	Pacific Hide & Fur Recycling Co	Pocatello.	
ID	Union Pacific Railroad Co	Pocatello	C
IL	A & F Material Reclaiming, Inc	Greenup	C
IL	Acme Solvent Reclaiming (Morristown Plant	Morristown.	
IL	Adams County Quincy Landfills 2 & 3	Quincy.	
IL	Amoco Chemicals (Joliet Landfill)	Joliet.	
IL	Beloit Corp	Rockton.	
IL	Belvidere Municipal Landfill	Belvidere	C
IL	Byron Salvage Yard	Byron.	
IL	Central Illinois Public Service Co	Taylorville	C
IL	Cross Brothers Pail Recycling (Pembroke)	Pembroke Township	C
IL	DuPage County Landfill/Blackwell Forest	Warrenville.	
IL	Galesburg/Koppers Co	Galesburg.	
IL	H.O.D. Landfill	Antioch.	
IL	Ilada Energy Co	East Cape Girardeau.	
IL	Interstate Pollution Control, Inc	Rockford.	
IL	Jennison-Wright Corporation	Granite City.	
IL	Johns-Manville Corp	Waukegan	C
IL	Kerr-McGee (Kress Creek/W Branch DuPage)	DuPage County.	
IL	Kerr-McGee (Reed-Keppler Park)	West Chicago.	
IL	Kerr-McGee (Residential Areas)	West Chicago/DuPage County.	
IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago.	
IL	LaSalle Electric Utilities	LaSalle	C
IL	Lenz Oil Service, Inc	Lemont.	
IL	MIG/Dewane Landfill	Belvidere.	
IL	NL Industries/Taracorp Lead Smelter	Granite City.	
IL	Ottawa Radiation Areas	Ottawa.	
IL	Outboard Marine Corp	Waukegan	S
IL	Pagel's Pit	Rockford.	
IL	Parsons Casket Hardware Co	Belvidere.	
IL	Southeast Rockford Gd Wtr Contamination	Rockford.	
IL	Tri-County Landfill/Waste Mgmt Illinois	South Elgin.	
IL	Velsicol Chemical Corp. (Illinois)	Marshall	C
IL	Wauconda Sand & Gravel	Wauconda	C
IL	Woodstock Municipal Landfill	Woodstock.	
IL	Yeoman Creek Landfill	Waukegan.	
IN	American Chemical Service, Inc	Griffith.	
IN	Bennett Stone Quarry	Bloomington.	
IN	Columbus Old Municipal Landfill #1	Columbus	C
IN	Conrail Rail Yard (Elkhart)	Elkhart.	
IN	Continental Steel Corp	Kokomo.	
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka.	
IN	Envirochem Corp	Zionsville.	
IN	Fisher-Calo	LaPorte.	
IN	Fort Wayne Reduction Dump	Fort Wayne	C
IN	Galen Myers Dump/Drum Salvage	Osceola.	
IN	Himco Dump	Elkhart.	
IN	Lake Sandy Jo (M&M Landfill)	Gary	C
IN	Lakeland Disposal Service, Inc	Claypool.	
IN	Lemon Lane Landfill	Bloomington.	
IN	MIDCO I	Gary.	
IN	MIDCO II	Gary.	
IN	Main Street Well Field	Elkhart	C
IN	Marion (Bragg) Dump	Marion.	
IN	Neal's Dump (Spencer)	Spencer.	
IN	Neal's Landfill (Bloomington)	Bloomington.	
IN	Ninth Avenue Dump	Gary	C

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
IN	Northside Sanitary Landfill, Inc	Zionsville	C
IN	Prestolite Battery Division	Vincennes.	
IN	Reilly Tar & Chemical (Indianapolis Plant	Indianapolis.	
IN	Seymour Recycling Corp	Seymour	C, S
IN	Southside Sanitary Landfill	Indianapolis	C
IN	Tippecanoe Sanitary Landfill, Inc	Lafayette.	
IN	Tri-State Plating	Columbus	C
IN	Waste, Inc., Landfill	Michigan City.	
IN	Wayne Waste Oil	Columbia City	C
KS	57th and North Broadway Streets Site	Wichita Heights.	
KS	Ace Services	Colby.	
KS	Chemical Commodities, Inc	Olathe.	
KS	Cherokee County	Cherokee County.	
KS	Doepke Disposal (Holliday)	Johnson County.	
KS	Obee Road	Hutchinson.	
KS	Pester Refinery Co	El Dorado.	
KS	Strother Field Industrial Park	Cowley County.	
KS	Wright Ground Water Contamination	Wright.	
KY	Airco	Calvert City.	
KY	B.F. Goodrich	Calvert City.	
KY	Brantley Landfill	Island.	
KY	Caldwell Lace Leather Co., Inc	Auburn	C
KY	Distler Brickyard	West Point	C
KY	Distler Farm	Jefferson County	C
KY	Fort Hartford Coal Co Stone Quarry	Olaton.	
KY	General Tire & Rubber (Mayfield Landfill)	Mayfield	C
KY	Green River Disposal, Inc	Maceo.	
KY	Maxey Flats Nuclear Disposal	Hillsboro.	
KY	National Electric Coil/Cooper Industries	Dayhoit.	
KY	National Southwire Aluminum Co	Hawesville.	
KY	Red Penn Sanitation Co Landfill	PeeWee Valley.	
KY	Smith's Farm	Brooks.	
KY	Tri-City Disposal Co	Shepherdsville	C
LA	Agriculture Street Landfill	New Orleans.	
LA	American Creosote Works, Inc. (Winnfield)	Winnfield.	
LA	Bayou Bonfouca	Slidell.	
LA	Bayou Sorrel Site	Bayou Sorrel	C
LA	Cleve Reber	Sorrento.	
LA	Combustion, Inc	Denham Springs.	
LA	D.L. Mud, Inc	Abbeville.	
LA	Dutchtown Treatment Plant	Ascension Parish.	
LA	Gulf Coast Vacuum Services	Abbeville.	
LA	Madisonville Creosote Works	Madisonville.	
LA	Old Inger Oil Refinery	Darrow	S
LA	PAB Oil & Chemical Service, Inc	Abbeville.	
LA	Petro-Processors of Louisiana Inc	Scotlandville.	
LA	Southern Shipbuilding	Slidell.	
MA	Atlas Tack Corp	Fairhaven.	
MA	Baird & McGuire	Holbrook.	
MA	Blackburn & Union Privileges	Walpole.	
MA	Cannon Engineering Corp. (CEC)	Bridgewater	C
MA	Charles-George Reclamation Landfill	Tyngsborough.	
MA	Groveland Wells	Groveland.	
MA	Haverhill Municipal Landfill	Haverhill	
MA	Hocomonco Pond	Westborough.	
MA	Industri-Plex	Woburn.	
MA	Iron Horse Park	Billerica.	
MA	New Bedford Site	New Bedford	S
MA	Norwood PCBs	Norwood.	
MA	Nyanza Chemical Waste Dump	Ashland.	
MA	PSC Resources	Palmer.	
MA	Re-Solve, Inc	Dartmouth.	
MA	Rose Disposal Pit	Lanesboro	C
MA	Salem Acres	Salem.	
MA	Shpack Landfill	Norton/Attleboro.	
MA	Silresim Chemical Corp	Lowell.	
MA	Sullivan's Ledge	New Bedford.	
MA	W.R. Grace & Co Inc. (Acton Plant)	Acton.	
MA	Wells G&H	Woburn.	
MD	Bush Valley Landfill	Abingdon.	
MD	Kane & Lombard Street Drums	Baltimore.	
MD	Limestone Road	Cumberland.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
MD	Mid-Atlantic Wood Preservers, Inc	Harmans	C
MD	Sand, Gravel & Stone	Elkton.	
MD	Southern Maryland Wood Treating	Hollywood.	
MD	Spectron, Inc	Elkton.	
MD	Woodlawn County Landfill	Woodlawn.	
ME	Eastern Surplus	Meddybemps.	
ME	McKin Co	Gray	C
ME	O'Connor Co	Augusta.	
ME	Pinette's Salvage Yard	Washburn.	
ME	Saco Municipal Landfill	Saco.	
ME	Saco Tannery Waste Pits	Saco	C
ME	Union Chemical Co., Inc	South Hope.	
ME	West Site/Hows Corners	Plymouth.	
ME	Winthrop Landfill	Winthrop.	
MI	Adam's Plating	Lansing	C
MI	Aircraft Components (D & L Sales)	Benton Harbor	A
MI	Albion-Sheridan Township Landfill	Albion.	
MI	Allied Paper/Portage Ck/Kalamazoo River	Kalamazoo.	
MI	American Anodco, Inc	Ionia	C
MI	Auto Ion Chemicals, Inc	Kalamazoo	C
MI	Avenue "E" Ground Water Contamination	Traverse City.	
MI	Barrels, Inc	Lansing.	
MI	Bendix Corp./Allied Automotive	St. Joseph.	
MI	Berlin & Farro	Swartz Creek	C
MI	Bofors Nobel, Inc	Muskegon.	
MI	Burrows Sanitation	Hartford	C
MI	Butterworth #2 Landfill	Grand Rapids.	
MI	Cannelton Industries, Inc	Saulte Saint Marie.	
MI	Carter Industrials, Inc	Detroit	C
MI	Chem Central	Wyoming Township	C
MI	Clare Water Supply	Clare.	
MI	Cliff/Dow Dump	Marquette	C
MI	Duell & Gardner Landfill	Dalton Township.	
MI	Electrovoice	Buchanan.	
MI	Forest Waste Products	Otisville.	
MI	G&H Landfill	Utica.	
MI	Grand Traverse Overall Supply Co	Greilickville	C
MI	Gratiot County Landfill	St. Louis	C, S
MI	H & K Sales	Belding	A
MI	H. Brown Co., Inc	Grand Rapids.	
MI	Hedblum Industries	Oscoda	C
MI	Hi-Mill Manufacturing Co	Highland	C
MI	Ionia City Landfill	Ionia.	
MI	J & L Landfill	Rochester Hills.	
MI	K&L Avenue Landfill	Oshtemo Township.	
MI	Kaydon Corp	Muskegon.	
MI	Kentwood Landfill	Kentwood	C
MI	Kysor Industrial Corp	Cadillac	C
MI	Liquid Disposal, Inc	Utica.	
MI	Lower Ecorse Creek Dump	Wyandotte	A
MI	Mason County Landfill Pere	Marquette Twp	C
MI	McGraw Edison Corp	Albion.	
MI	Metamora Landfill	Metamora.	
MI	Michigan Disposal (Cork Street Landfill)	Kalamazoo.	
MI	Motor Wheel, Inc	Lansing.	
MI	Muskegon Chemical Co	Whitehall.	
MI	North Bronson Industrial Area	Bronson.	
MI	Northernaire Plating	Cadillac	C
MI	Novaco Industries	Temperance	C
MI	Organic Chemicals, Inc	Grandville.	
MI	Ott/Story/Cordova Chemical Co	Dalton Township.	
MI	Packaging Corp. of America	Filer City.	
MI	Parsons Chemical Works, Inc	Grand Ledge.	
MI	Peerless Plating Co	Muskegon.	
MI	Petoskey Municipal Well Field	Petoskey.	
MI	Rasmussen's Dump	Green Oak Township	C
MI	Rockwell International Corp. (Allegan)	Allegan.	
MI	Rose Township Dump	Rose Township	C
MI	Roto-Finish Co., Inc	Kalamazoo.	
MI	SCA Independent Landfill	Muskegon Heights.	
MI	Shiawassee River	Howell.	
MI	South Macomb Disposal (Landfills 9 & 9A)	Macomb Township.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
MI	Southwest Ottawa County Landfill	Park Township	C
MI	Sparta Landfill	Sparta Township.	
MI	Spartan Chemical Co	Wyoming.	
MI	Spiegelberg Landfill Green Oak	Township	C
MI	Springfield Township Dump	Davisburg.	
MI	State Disposal Landfill, Inc	Grand Rapids.	
MI	Sturgis Municipal Wells	Sturgis.	
MI	Tar Lake	Mancelona Township.	
MI	Thermo-Chem, Inc	Muskegon.	
MI	Torch Lake	Houghton County.	
MI	U.S. Aviex	Howard Township	C
MI	Velsicol Chemical Corp. (Michigan)	St. Louis	C
MI	Verona Well Field	Battle Creek.	
MI	Wash King Laundry	Pleasant Plains Twp.	
MI	Waste Management of Michigan (Holland)	Holland.	
MN	Agate Lake Scrapyard	Fairview Township	C
MN	Arrowhead Refinery Co	Hermantown.	
MN	Baytown Township Ground Water Plume	Baytown Township.	
MN	Burlington Northern (Brainerd/Baxter)	Brainerd/Baxter	C
MN	FMC Corp. (Fridley Plant)	Fridley	C
MN	Freeway Sanitary Landfill	Burnsville.	
MN	General Mills/Henkel Corp	Minneapolis	C
MN	Joslyn Manufacturing & Supply Co	Brooklyn Center	C
MN	Koppers Coke	St. Paul.	
MN	Kurt Manufacturing Co	Fridley	C
MN	LaGrand Sanitary Landfill	LaGrand Township	C
MN	Lehillier/Mankato Site	Lehillier/Mankato	C
MN	Long Prairie Ground Water Contamination	Long Prairie.	
MN	MacGillis & Gibbs/Bell Lumber & Pole Co	New Brighton.	
MN	NL Industries/Taracorp/Golden Auto	St. Louis Park	C
MN	Nutting Truck & Caster Co	Faribault	C
MN	Oakdale Dump	Oakdale	C
MN	Perham Arsenic Site	Perham.	
MN	Pine Bend Sanitary Landfill	Dakota County	C
MN	Reilly Tar&Chem (St. Louis Park Plant)	St. Louis Park	S
MN	Ritari Post & Pole	Sebeka.	
MN	South Andover Site	Andover	C
MN	St. Louis River Site	St. Louis County.	
MN	St. Regis Paper Co	Cass Lake.	
MN	University Minnesota (Rosemount Res Cen)	Rosemount	C
MN	Waite Park Wells	Waite Park.	
MN	Whittaker Corp	Minneapolis	C
MN	Windom Dump	Windom	C
MO	Bee Cee Manufacturing Co	Malden.	
MO	Big River Mine Tailings/St. Joe Minerals	Desloge.	
MO	Conservation Chemical Co	Kansas City	C
MO	Ellisville Site	Ellisville	S
MO	Fulbright Landfill	Springfield	C
MO	Kem-Pest Laboratories	Cape Girardeau	C
MO	Lee Chemical	Liberty	C
MO	Minker/Stout/Romaine Creek	Imperial.	
MO	Missouri Electric Works	Cape Girardeau.	
MO	Oronogo-Duenweg Mining Belt	Jasper County.	
MO	Quality Plating	Sikeston.	
MO	Shenandoah Stables	Moscow Mills.	
MO	Solid State Circuits, Inc	Republic	C
MO	St Louis Airport/HIS/Futura Coatings Co	St. Louis County.	
MO	Syntex Facility	Verona.	
MO	Times Beach Site	Times Beach.	
MO	Valley Park TCE	Valley Park.	
MO	Westlake Landfill	Bridgeton.	
MO	Wheeling Disposal Service Co. Landfill	Amazonia	C
MS	Newsom Brothers/Old Reichhold Chemicals	Columbia.	
MT	Anaconda Co. Smelter	Anaconda.	
MT	East Helena Site	East Helena.	
MT	Idaho Pole Co	Bozeman.	
MT	Libby Ground Water Contamination	Libby	C
MT	Milltown Reservoir Sediments	Milltown.	
MT	Montana Pole and Treating	Butte.	
MT	Mouat Industries	Columbus	C
MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge.	
NC	ABC One Hour Cleaners	Jacksonville.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
NC	Aberdeen Pesticide Dumps	Aberdeen.	
NC	Benfield Industries, Inc	Hazelwood.	
NC	Bypass 601 Ground Water Contamination	Concord.	
NC	Cape Fear Wood Preserving	Fayetteville.	
NC	Carolina Transformer Co	Fayetteville.	
NC	Celanese Corp. (Shelby Fiber Operations)	Shelby	C
NC	Charles Macon Lagoon & Drum Storage	Cordova	C
NC	Chemtronics, Inc	Swannanoa	C
NC	FCX, Inc. (Statesville Plant)	Statesville.	
NC	FCX, Inc. (Washington Plant)	Washington.	
NC	Geigy Chemical Corp. (Aberdeen Plant)	Aberdeen.	
NC	General Electric Co/Shepherd Farm	East Flat Rock	P
NC	JFD Electronics/Channel Master	Oxford.	
NC	Jadco-Hughes Facility	Belmont.	
NC	Koppers Co Inc. (Morrisville Plant)	Morrisville.	
NC	Martin-Marietta, Sodyeco, Inc	Charlotte.	
NC	NC State University (Lot 86, Farm Unit #1)	Raleigh.	
NC	National Starch & Chemical Corp	Salisbury.	
NC	New Hanover Cnty Airport Burn Pit	Wilmington.	
NC	Potter's Septic Tank Service Pits	Maco.	
ND	Minot Landfill	Minot	C
NE	10th Street Site	Columbus.	
NE	Bruno Co-op Association/Associated Prop	Bruno.	
NE	Cleburn Street Well	Grand Island.	
NE	Hastings Ground Water Contamination	Hastings.	
NE	Lindsay Manufacturing Co	Lindsay	C
NE	Nebraska Ordnance Plant (Former)	Mead.	
NE	Ogallala Ground Water Contamination	Ogallala.	
NE	Sherwood Medical Co	Norfolk.	
NE	Waverly Ground Water Contamination	Waverly	C
NH	Auburn Road Landfill	Londonderry.	
NH	Beede Waste Oil	Plaistow.	
NH	Coakley Landfill	North Hampton.	
NH	Dover Municipal Landfill	Dover.	
NH	Fletcher's Paint Works & Storage	Milford.	
NH	Kearsarge Metallurgical Corp	Conway	C
NH	Keefe Environmental Services	Epping	C
NH	Mottolo Pig Farm	Raymond	C
NH	New Hampshire Plating Co	Merrimack.	
NH	Ottati & Goss/Kingston Steel Drum	Kingston.	
NH	Savage Municipal Water Supply	Milford.	
NH	Somersworth Sanitary Landfill	Somersworth.	
NH	South Municipal Water Supply Well	Peterborough	C
NH	Sylvester	Nashua	C, S
NH	Tibbetts Road	Barrington.	
NH	Tinkham Garage	Londonderry	C
NH	Town Garage/Radio Beacon	Londonderry	C
NJ	A. O. Polymer	Sparta Township.	
NJ	American Cyanamid Co	Bound Brook.	
NJ	Asbestos Dump	Millington.	
NJ	Bog Creek Farm	Howell Township	C
NJ	Brick Township Landfill	Brick Township.	
NJ	Bridgeport Rental & Oil Services	Bridgeport.	
NJ	Brook Industrial Park	Bound Brook.	
NJ	Burnt Fly Bog	Marlboro Township.	
NJ	CPS/Madison Industries	Old Bridge Township.	
NJ	Caldwell Trucking Co	Fairfield.	
NJ	Chemical Control	Elizabeth	C
NJ	Chemical Insecticide Corp	Edison Township.	
NJ	Chemical Leaman Tank Lines, Inc	Bridgeport.	
NJ	Chemsol, Inc	Piscataway.	
NJ	Ciba-Geigy Corp	Toms River.	
NJ	Cinnaminson Ground Water Contamination	Cinnaminson Township.	
NJ	Combe Fill North Landfill	Mount Olive Township	C
NJ	Combe Fill South Landfill	Chester Township.	
NJ	Cosden Chemical Coatings Corp	Beverly.	
NJ	Curcio Scrap Metal, Inc	Saddle Brook Township.	
NJ	D'Imperio Property	Hamilton Township.	
NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough.	
NJ	De Rewal Chemical Co	Kingwood Township.	
NJ	Delilah Road	Egg Harbor Township.	
NJ	Denzer & Schafer X-Ray Co	Bayville	C

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
NJ	Diamond Alkali Co	Newark.	
NJ	Dover Municipal Well 4	Dover Township.	
NJ	Ellis Property	Evesham Township.	
NJ	Evor Phillips Leasing	Old Bridge Township.	
NJ	Ewan Property	Shamong Township.	
NJ	Fair Lawn Well Field	Fair Lawn.	
NJ	Florence Land Recontouring Landfill	Florence Township.	
NJ	Franklin Burn	Franklin Township.	
NJ	Fried Industries	East Brunswick Township.	
NJ	GEMS Landfill	Gloucester Township.	
NJ	Garden State Cleaners Co	Minotola.	
NJ	Glen Ridge Radium Site	Glen Ridge.	
NJ	Global Sanitary Landfill	Old Bridge Township.	
NJ	Goose Farm	Plumstead Township	C
NJ	Helen Kramer Landfill	Mantua Township	C
NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown.	
NJ	Higgins Disposal	Kingston.	
NJ	Higgins Farm	Franklin Township.	
NJ	Hopkins Farm	Plumstead Township	C
NJ	Horseshoe Road	Sayreville.	
NJ	Imperial Oil Co., Inc./Champion Chemicals	Morganville.	
NJ	Industrial Latex Corp	Wallington Borough.	
NJ	JIS Landfill	Jamesburg/S. Brnswck.	
NJ	Kauffman & Minteer, Inc	Jobstown.	
NJ	Kin-Buc Landfill	Edison Township.	
NJ	King of Prussia	Winslow Township	C
NJ	Landfill & Development Co	Mount Holly.	
NJ	Lang Property	Pemberton Township	C
NJ	Lipari Landfill	Pitman.	
NJ	Lodi Municipal Well	Lodi	C
NJ	Lone Pine Landfill	Freehold Township	C
NJ	Mannheim Avenue Dump	Galloway Township	C
NJ	Maywood Chemical Co	Maywood/Rochelle Park.	
NJ	Metaltec/Aerosystems	Franklin Borough.	
NJ	Monitor Devices/Intercircuits Inc	Wall Township.	
NJ	Montclair/West Orange Radium Site	Montclair/W Orange.	
NJ	Montgomery Township Housing Development	Montgomery Township.	
NJ	Myers Property	Franklin Township.	
NJ	NL Industries	Pedricktown.	
NJ	Nascolite Corp	Millville.	
NJ	PJP Landfill	Jersey City.	
NJ	Pepe Field	Boonton.	
NJ	Pijak Farm	Plumstead Township	C
NJ	Pohatcong Valley Ground Water Contaminat	Warren County.	
NJ	Pomona Oaks Residential Wells	Galloway Township	C
NJ	Price Landfill	Pleasantville	S
NJ	Radiation Technology, Inc	Rockaway Township.	
NJ	Reich Farms	Pleasant Plains.	
NJ	Renora, Inc	Edison Township	C
NJ	Rockaway Borough Well Field	Rockaway Township.	
NJ	Rockaway Township Wells	Rockaway.	
NJ	Rocky Hill Municipal Well	Rocky Hill Borough.	
NJ	Roebling Steel Co	Florence.	
NJ	Sayreville Landfill	Sayreville.	
NJ	Scientific Chemical Processing	Carlstadt.	
NJ	Sharkey Landfill	Parsippany/Troy Hls.	
NJ	Shieldalloy Corp	Newfield Borough.	
NJ	South Brunswick Landfill	South Brunswick	C
NJ	South Jersey Clothing Co	Minotola.	
NJ	Spence Farm	Plumstead Township	C
NJ	Swope Oil & Chemical Co	Pennsauken.	
NJ	Syncon Resins	South Kearny.	
NJ	Tabernacle Drum Dump	Tabernacle Township	C
NJ	U.S. Radium Corp	Orange.	
NJ	Universal Oil Products (Chemical Division	East Rutherford.	
NJ	Upper Deerfield Township Sanit. Landfill	Upper Deerfield Township	C
NJ	Ventron/Velsicol	Wood Ridge Borough.	
NJ	Vineland Chemical Co., Inc	Vineland.	
NJ	Vineland State School	Vineland	C
NJ	Waldick Aerospace Devices, Inc	Wall Township.	
NJ	Welsbach & General Gas Mantle (Camden)	Camden and Gloucester City.	
NJ	White Chemical Corp	Newark	A

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
NJ	Williams Property	Swainton	C
NJ	Wilson Farm	Plumstead Township	C
NJ	Woodland Route 532 Dump	Woodland Township.	
NJ	Woodland Route 72 Dump	Woodland Township.	
NM	AT & SF (Clovis)	Clovis.	
NM	AT&SF (Albuquerque)	Albuquerque.	
NM	Cimarron Mining Corp	Carrizozo	C
NM	Cleveland Mill	Silver City.	
NM	Homestake Mining Co	Milan	C
NM	Prewitt Abandoned Refinery	Prewitt	C
NM	South Valley	Albuquerque	C, S
NM	United Nuclear Corp	Church Rock.	
NV	Carson River Mercury Site	Lyon/Churchill Cnty.	
NY	American Thermostat Co	South Cairo.	
NY	Anchor Chemicals	Hicksville.	
NY	Applied Environmental Services	Glenwood Landing	C
NY	Batavia Landfill	Batavia.	
NY	Brewster Well Field	Putnam County.	
NY	Byron Barrel & Drum	Byron.	
NY	Carroll & Dubies Sewage Disposal	Port Jervis.	
NY	Circuitron Corp	East Farmingdale.	
NY	Claremont Polychemical	Old Bethpage.	
NY	Colesville Municipal Landfill	Town of Colesville.	
NY	Conklin Dumps	Conklin	C
NY	Cortese Landfill	Village of Narrowsburg.	
NY	Endicott Village Well Field	Village of Endicott.	
NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby.	
NY	Facet Enterprises, Inc	Elmira.	
NY	Forest Glen Mobile Home Subdivision	Niagara Falls	A
NY	Fulton Terminals	Fulton.	
NY	GCL Tie & Treating Inc	Village of Sidney.	
NY	GE Moreau	South Glen Falls.	
NY	General Motors (Central Foundry Division)	Massena.	
NY	Genzale Plating Co	Franklin Square.	
NY	Goldisc Recordings, Inc	Holbrook.	
NY	Haviland Complex	Town of Hyde Park.	
NY	Hertel Landfill	Plattekill.	
NY	Hooker (102nd Street)	Niagara Falls.	
NY	Hooker (Hyde Park)	Niagara Falls.	
NY	Hooker (S Area)	Niagara Falls.	
NY	Hooker Chemical/Ruco Polymer Corp	Hicksville.	
NY	Hudson River PCBs	Hudson River.	
NY	Islip Municipal Sanitary Landfill	Islip.	
NY	Johnstown City Landfill	Town of Johnstown.	
NY	Jones Chemicals, Inc	Caledonia.	
NY	Jones Sanitation	Hyde Park.	
NY	Katonah Municipal Well	Town of Bedford	C
NY	Kentucky Avenue Well Field	Horseheads.	
NY	Li Tungsten Corp	Glen Cove.	
NY	Liberty Industrial Finishing	Farmingdale.	
NY	Little Valley	Little Valley	A
NY	Love Canal	Niagara Falls.	
NY	Ludlow Sand & Gravel	Clayville.	
NY	Malta Rocket Fuel Area	Malta.	
NY	Mattiace Petrochemical Co., Inc	Glen Cove.	
NY	Mercury Refining, Inc	Colonie.	
NY	Nepera Chemical Co., Inc	Maybrook.	
NY	Niagara County Refuse	Wheatfield.	
NY	Niagara Mohawk Power Co (Saratoga Spings)	Saratoga Springs.	
NY	North Sea Municipal Landfill	North Sea	C
NY	Old Bethpage Landfill	Oyster Bay	C
NY	Olean Well Field	Olean.	
NY	Onondaga Lake	Syracuse.	
NY	Pasley Solvents & Chemicals, Inc	Hempstead.	
NY	Pfohl Brothers Landfill	Cheektowaga.	
NY	Pollution Abatement Services	Oswego	S
NY	Port Washington Landfill	Port Washington.	
NY	Preferred Plating Corp	Farmingdale.	
NY	Ramapo Landfill	Ramapo.	
NY	Richardson Hill Road Landfill/Pond	Sidney Center.	
NY	Robintech, Inc./National Pipe Co	Town of Vestal.	
NY	Rosen Brothers Scrap Yard/Dump	Cortland.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
NY	Rowe Industries Gnd Water Contamination	Noyack/Sag Harbor.	
NY	SMS Instruments, Inc	Deer Park	C
NY	Sarney Farm	Amenia.	
NY	Sealand Restoration, Inc	Lisbon.	
NY	Sidney Landfill	Sidney.	
NY	Sinclair Refinery	Wellsville.	
NY	Solvent Savers	Lincklaen.	
NY	Syosset Landfill	Oyster Bay.	
NY	Tri-Cities Barrel Co., Inc	Port Crane.	
NY	Tronic Plating Co., Inc	Farmingdale	C
NY	Vestal Water Supply Well 1–1	Vestal.	
NY	Vestal Water Supply Well 4–2	Vestal.	
NY	Volney Municipal Landfill	Town of Volney.	
NY	Warwick Landfill	Warwick.	
NY	York Oil Co	Moira.	
OH	Allied Chemical & Ironton Coke	Ironton.	
OH	Alsco Anaconda	Gnadenhutten	C
OH	Arcanum Iron & Metal	Darke County.	
OH	Big D Campground	Kingsville	C
OH	Bowers Landfill	Circleville	C
OH	Buckeye Reclamation	St. Clairsville.	
OH	Chem-Dyne	Hamilton	C, S
OH	Coshocton Landfill	Franklin Township	C
OH	E.H. Schilling Landfill	Hamilton Township	C
OH	Fields Brook	Ashtabula.	
OH	Fultz Landfill	Jackson Township.	
OH	Industrial Excess Landfill	Uniontown.	
OH	Laskin/Poplar Oil Co	Jefferson Township	C
OH	Miami County Incinerator	Troy.	
OH	Nease Chemical	Salem.	
OH	New Lyme Landfill	New Lyme	C
OH	North Sanitary Landfill	Dayton.	
OH	Old Mill	Rock Creek	C
OH	Ormet Corp	Hannibal.	
OH	Powell Road Landfill	Dayton.	
OH	Pristine, Inc	Reading.	
OH	Reilly Tar & Chemical (Dover Plant)	Dover.	
OH	Republic Steel Corp. Quarry	Elyria	C
OH	Sanitary Landfill Co (Industrial Waste)	Dayton.	
OH	Skinner Landfill	West Chester.	
OH	South Point Plant	South Point.	
OH	Summit National	Deerfield Township	C
OH	TRW, Inc. (Minerva Plant)	Minerva	C
OH	United Scrap Lead Co., Inc	Troy.	
OH	Van Dale Junkyard	Marietta.	
OH	Zanesville Well Field	Zanesville	C
OK	Compass Industries (Avery Drive)	Tulsa	C
OK	Double Eagle Refinery Co	Oklahoma City.	
OK	Fourth Street Abandoned Refinery	Oklahoma City	C
OK	Hardage/Criner	Criner.	
OK	Mosley Road Sanitary Landfill	Oklahoma City.	
OK	Oklahoma Refining Co	Cyril.	
OK	Sand Springs Petrochemical Complex	Sand Springs.	
OK	Tar Creek (Ottawa County)	Ottawa County.	
OK	Tenth Street Dump/Junkyard	Oklahoma City	C
OR	Gould, Inc	Portland.	
OR	Joseph Forest Products	Joseph	C
OR	McCormick & Baxter Creos. Co (Portland)	Portland.	
OR	Northwest Pipe & Casing Co	Clackamas.	
OR	Reynolds Metals Company	Troutdale.	
OR	Teledyne Wah Chang	Albany.	
OR	Union Pacific Railroad Tie Treatment	The Dalles.	
OR	United Chrome Products, Inc	Corvallis	C
PA	A.I.W. Frank/Mid-County Mustang	Exton.	
PA	Aladdin Plating	Scott Township	C
PA	Ambler Asbestos Piles	Ambler	C
PA	Austin Avenue Radiation Site	Delaware County	A
PA	Avco Lycoming (Williamsport Division)	Williamsport.	
PA	Bally Ground Water Contamination	Bally Borough.	
PA	Bell Landfill	Terry Township.	
PA	Bendix Flight Systems Division	Bridgewater Township	C
PA	Berkley Products Co. Dump	Denver.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
PA	Berks Landfill	Spring Township.	
PA	Berks Sand Pit	Longswamp Township	C
PA	Blosenski Landfill	West Caln Township.	
PA	Boarhead Farms	Bridgeton Township.	
PA	Breslube-Penn, Inc	Coraopolis.	
PA	Brodhead Creek	Stroudsburg.	
PA	Brown's Battery Breaking	Shoemakersville.	
PA	Bruin Lagoon	Bruin Borough	C
PA	Butler Mine Tunnel	Pittston.	
PA	Butz Landfill	Stroudsburg.	
PA	C & D Recycling	Foster Township.	
PA	Centre County Kepone	State College Borough.	
PA	Commodore Semiconductor Group	Lower Providence Township.	
PA	Craig Farm Drum	Parker	C
PA	Crater Resources/Keystone Coke/Alan Wood	Upper Merion Township.	
PA	Crossley Farm	Hereford Township	
PA	Croydon TCE	Croydon.	
PA	CryoChem, Inc	Worman.	
PA	Delta Quarries & Disp./Stotler Landfill	Antis/Logan Twps.	
PA	Dorney Road Landfill	Upper Macungie Township.	
PA	Douglassville Disposal	Douglassville.	
PA	Drake Chemical	Lock Haven.	
PA	Dublin TCE Site	Dublin Borough.	
PA	East Mount Zion	Springettsbury Township.	
PA	Eastern Diversified Metals	Hometown.	
PA	Elizabethtown Landfill	Elizabethtown.	
PA	Fischer & Porter Co	Warminster.	
PA	Foote Mineral Co	East Whiteland Township.	
PA	Havertown PCP	Haverford.	
PA	Hebelka Auto Salvage Yard	Weisenberg Township	C
PA	Heleva Landfill	North Whitehall Township.	
PA	Hellertown Manufacturing Co	Hellertown	C
PA	Henderson Road	Upper Merion Township	C
PA	Hranica Landfill	Buffalo Township	C
PA	Hunterstown Road	Straban Township.	
PA	Industrial Lane	Williams Township.	
PA	Jacks Creek/Sitkin Smelting and Refinery	Maitland.	
PA	Keystone Sanitation Landfill	Union Township.	
PA	Kimberton Site	Kimberton Borough	C
PA	Lackawanna Refuse	Old Forge Borough	C
PA	Lindane Dump	Harrison Township.	
PA	Lord-Shope Landfill	Girard Township	C
PA	MW Manufacturing	Valley Township.	
PA	Malvern TCE	Malvern.	
PA	McAdoo Associates	McAdoo Borough	C, S
PA	Metal Banks	Philadelphia.	
PA	Metropolitan Mirror and Glass	Frackville.	
PA	Middletown Air Field	Middletown	C
PA	Mill Creek Dump	Erie.	
PA	Modern Sanitation Landfill	Lower Windsor Township.	
PA	Moyers Landfill	Eagleville.	
PA	North Penn—Area 1	Souderton.	
PA	North Penn—Area 12	Worcester.	
PA	North Penn—Area 2	Hatfield.	
PA	North Penn—Area 5	Montgomery Township.	
PA	North Penn—Area 6	Lansdale.	
PA	North Penn—Area 7	North Wales.	
PA	Novak Sanitary Landfill	South Whitehall Township.	
PA	Occidental Chemical Corp./Firestone Tire	Lower Pottsgrove Township.	
PA	Ohio River Park	Neville Island.	
PA	Old City of York Landfill	Seven Valleys	C
PA	Osborne Landfill	Grove City.	
PA	Palmerton Zinc Pile	Palmerton.	
PA	Paoli Rail Yard	Paoli.	
PA	Publicker Industries Inc	Philadephia.	
PA	Raymark	Hatboro	C
PA	Recticon/Allied Steel Corp	East Coventry Twp.	
PA	Resin Disposal	Jefferson Borough	C
PA	Revere Chemical Co	Nockamixon Township.	
PA	River Road Landfill/Waste Mngmnt, Inc	Hermitage	C
PA	Rodale Manufacturing Co., Inc	Emmaus Borough.	
PA	Route 940 Drum Dump	Pocono Summit	C

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
PA	Saegertown Industrial Area	Saegertown.	
PA	Shriver's Corner	Straban Township.	
PA	Stanley Kessler	King of Prussia.	
PA	Strasburg Landfill	Newlin Township.	
PA	Taylor Borough Dump	Taylor Borough	C
PA	Tonolli Corp	Nesquehoning.	
PA	Tysons Dump	Upper Merion Twp.	
PA	UGI Columbia Gas Plant	Columbia.	
PA	Walsh Landfill	Honeybrook Township.	
PA	Westinghouse Electronic (Sharon Plant)	Sharon.	
PA	Westinghouse Elevator Co Plant	Gettysburg.	
PA	Whitmoyer Laboratories	Jackson Township.	
PA	William Dick Lagoons	West Caln Township.	
PA	York County Solid Waste/Refuse Landfill	Hopewell Township	C
PR	Barceloneta Landfill	Florida Afuera.	
PR	Fibers Public Supply Wells	Jobos.	
PR	Frontera Creek	Rio Abajo.	
PR	GE Wiring Devices	Juana Diaz.	
PR	Juncos Landfill	Juncos.	
PR	RCA Del Caribe	Barceloneta.	
PR	Upjohn Facility	Barceloneta.	
PR	V&M/Albaladejo	Almirante Norte Ward.	
PR	Vega Alta Public Supply Wells	Vega Alta.	
RI	Central Landfill	Johnston.	
RI	Davis (GSR) Landfill	Glocester.	
RI	Davis Liquid Waste	Smithfield.	
RI	Landfill & Resource Recovery, Inc. (L&RR)	North Smithfield.	
RI	Peterson/Puritan, Inc	Lincoln/Cumberland.	
RI	Picillo Farm	Coventry	S
RI	Rose Hill Regional Landfill	South Kingston.	
RI	Stamina Mills, Inc	North Smithfield.	
RI	West Kingston Town Dump/URI Disposal	South Kingston.	
RI	Western Sand & Gravel	Burrillville	C
SC	Aqua-Tech Environmental Inc. (Groce Labs)	Greer.	
SC	Beaunit Corp. (Circular Knit & Dye)	Fountain Inn.	
SC	Carolawn, Inc	Fort Lawn.	
SC	Elmore Waste Disposal	Greer.	
SC	Geiger (C & M Oil)	Rantoules.	
SC	Golden Strip Septic Tank Service	Simpsonville	C
SC	Helena Chemical Co. Landfill	Fairfax.	
SC	Kalama Specialty Chemicals	Beaufort.	
SC	Koppers Co., Inc. (Charleston Plant)	Charleston.	
SC	Koppers Co., Inc. (Florence Plant)	Florence.	
SC	Leonard Chemical Co., Inc	Rock Hill.	
SC	Lexington County Landfill Area	Cayce.	
SC	Medley Farm Drum Dump	Gaffney	C
SC	Palmetto Recycling, Inc	Columbia.	
SC	Palmetto Wood Preserving	Dixiana.	
SC	Para-Chem Southern, Inc	Simpsonville.	
SC	Rochester Property	Travelers Rest	C
SC	Rock Hill Chemical Co	Rock Hill.	
SC	SCRDI Bluff Road	Columbia	S
SC	SCRDI Dixiana	Cayce	C
SC	Sangamo Weston/Twelve-Mile/Hartwell PCB	Pickens.	
SC	Shuron Inc	Barnwell.	
SC	Townsend Saw Chain Co	Pontiac.	
SC	Wamchem, Inc	Burton.	
SD	Williams Pipe Line Co. Disposal Pit	Sioux Falls	C
TN	American Creosote Works, (Jackson Plant)	Jackson.	
TN	Arlington Blending & Packaging	Arlington.	
TN	Carrier Air Conditioning Co	Collierville	C
TN	ICG Iselin Railroad Yard	Jackson.	
TN	Mallory Capacitor Co	Waynesboro	C
TN	Murray-Ohio Dump	Lawrenceburg.	
TN	North Hollywood Dump	Memphis	S
TN	Tennessee Products	Chattanooga	A
TN	Velsicol Chemical Corp (Hardeman County)	Toone.	
TN	Wrigley Charcoal Plant	Wrigley.	
TX	ALCOA (Point Comfort)/Lavaca Bay	Point Comfort.	
TX	Bailey Waste Disposal	Bridge City.	
TX	Brio Refining, Inc	Friendswood.	
TX	Crystal Chemical Co	Houston.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
TX	Dixie Oil Processors, Inc	Friendswood	C
TX	French, Ltd	Crosby	C
TX	Geneva Industries/Fuhrmann Energy	Houston	C
TX	Highlands Acid Pit	Highlands	C
TX	Koppers Co Inc. (Texarkana Plant)	Texarkana.	
TX	Motco, Inc	La Marque	S
TX	North Cavalcade Street	Houston.	
TX	Odessa Chromium #1	Odessa	C
TX	Odessa Chromium #2 (Andrews Highway)	Odessa	C
TX	Petro-Chemical Systems, (Turtle Bayou)	Liberty County.	
TX	RSR Corp	Dallas.	
TX	Sheridan Disposal Services	Hempstead.	
TX	Sikes Disposal Pits	Crosby	C
TX	Sol Lynn/Industrial Transformers	Houston	C
TX	South Cavalcade Street	Houston.	
TX	Texarkana Wood Preserving Co	Texarkana.	
TX	Triangle Chemical Co	Bridge City	C
TX	United Creosoting Co	Conroe.	
UT	Midvale Slag	Midvale.	
UT	Monticello Radioactive Contaminated Prop	Monticello.	
UT	Petrochem Recycling Corp./Ekotek Plant	Salt Lake City.	
UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City.	
UT	Rose Park Sludge Pit	Salt Lake City	C,S
UT	Sharon Steel Corp. (Midvale Tailings)	Midvale.	
UT	Utah Power & Light/American Barrel Co	Salt Lake City	C
UT	Wasatch Chemical Co. (Lot 6)	Salt Lake City.	
VA	Abex Corp	Portsmouth.	
VA	Arrowhead Associates/Scovill Corp	Montross.	
VA	Atlantic Wood Industries, Inc	Portsmouth.	
VA	Avtex Fibers, Inc	Front Royal.	
VA	Buckingham County Landfill	Buckingham.	
VA	C & R Battery Co., Inc	Chesterfield County	C
VA	Chisman Creek	York County	C
VA	Culpeper Wood Preservers, Inc	Culpeper.	
VA	Dixie Caverns County Landfill	Salem.	
VA	First Piedmont Rock Quarry (Route 719)	Pittsylvania County	C
VA	Greenwood Chemical Co	Newtown.	
VA	H & H Inc., Burn Pit	Farrington.	
VA	L.A. Clarke & Son	Spotsylvania County.	
VA	Rentokil, Inc. (VA Wood Preserving Div)	Richmond.	
VA	Rhinehart Tire Fire Dump	Frederick County.	
VA	Saltville Waste Disposal Ponds	Saltville.	
VA	Saunders Supply Co	Chuckatuck.	
VA	U.S. Titanium	Piney River.	
VI	Island Chemical Corp/V.I. Chemical Corp	Christiansted.	
VI	Tutu Wellfield	Tutu.	
VT	BFI Sanitary Landfill (Rockingham) Rockingham	C.	
VT	Bennington Municipal Sanitary Landfill	Bennington.	
VT	Burgess Brothers Landfill	Woodford.	
VT	Darling Hill Dump	Lyndon	C
VT	Old Springfield Landfill	Springfield	C
VT	Parker Sanitary Landfill	Lyndon.	
VT	Pine Street Canal	Burlington	S
VT	Tansitor Electronics, Inc	Bennington.	
WA	American Crossarm & Conduit Co	Chehalis	C
WA	Boomsnub/Airco	Vancouver	S
WA	Centralia Municipal Landfill	Centralia.	
WA	Colbert Landfill	Colbert.	
WA	Commencement Bay, Near Shore/Tide Flats	Pierce County	P
WA	Commencement Bay, South Tacoma Channel	Tacoma.	
WA	FMC Corp. (Yakima Pit)	Yakima	C
WA	Frontier Hard Chrome, Inc	Vancouver.	
WA	General Electric Co (Spokane Shop)	Spokane.	
WA	Greenacres Landfill	Spokane County.	
WA	Harbor Island (Lead)	Seattle	P
WA	Hidden Valley Landfill (Thun Field)	Pierce County.	
WA	Kaiser Aluminum Mead Works	Mead.	
WA	Lakewood Site	Lakewood	C, P
WA	Mica Landfill	Mica.	
WA	Midway Landfill	Kent.	
WA	Moses Lake Wellfield Contamination	Moses Lake.	
WA	North Market Street	Spokane.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
WA	Northside Landfill	Spokane	C
WA	Northwest Transformer	Everson	C
WA	Northwest Transformer (South Harkness St)	Everson	C
WA	Old Inland Pit	Spokane.	
WA	Pacific Car & Foundry Co	Renton	C
WA	Pacific Sound Resources	Seattle.	
WA	Pasco Sanitary Landfill	Pasco.	
WA	Queen City Farms	Maple Valley.	
WA	Seattle Municipal Landfill (Kent Hghlnds	Kent	C
WA	Silver Mountain Mine	Loomis	C
WA	Spokane Junkyard/Associated Properties	Spokane.	
WA	Tulalip Landfill	Marysville.	
WA	Vancouver Water Station #1 Contamination	Vancouver.	
WA	Vancouver Water Station #4 Contamination	Vancouver.	
WA	Western Processing Co., Inc	Kent	C
WA	Wyckoff Co./Eagle Harbor	Bainbridge Island.	
WI	Algoma Municipal Landfill	Algoma	C
WI	Better Brite Plating Chrome & Zinc Shops	DePere.	
WI	City Disposal Corp. Landfill	Dunn.	
WI	Delavan Municipal Well #4	Delavan.	
WI	Eau Claire Municipal Well Field	Eau Claire	C
WI	Fadrowski Drum Disposal	Franklin	C
WI	Hagen Farm	Stoughton	C
WI	Hechimovich Sanitary Landfill	Williamstown.	
WI	Hunts Disposal Landfill	Caledonia.	
WI	Janesville Ash Beds	Janesville.	
WI	Janesville Old Landfill	Janesville.	
WI	Kohler Co. Landfill	Kohler.	
WI	Lauer I Sanitary Landfill	Menomonee Falls.	
WI	Lemberger Landfill, Inc	Whitelaw	C
WI	Lemberger Transport & Recycling	Franklin Township.	
WI	Madison Metropolitan Sewerage District	Blooming Grove.	
WI	Master Disposal Service Landfill	Brookfield.	
WI	Mid-State Disposal, Inc. Landfill	Cleveland Township	C
WI	Moss-American (Kerr-McGee Oil Co)	Milwaukee.	
WI	Muskego Sanitary Landfill	Muskego.	
WI	N.W. Mauthe Co., Inc	Appleton	S
WI	National Presto Industries, Inc	Eau Claire.	
WI	Northern Engraving Co	Sparta	C
WI	Oconomowoc Electroplating Co. Inc	Ashippin	C
WI	Omega Hills North Landfill	Germantown.	
WI	Onalaska Municipal Landfill	Onalaska	C
WI	Penta Wood Products	Daniels.	
WI	Refuse Hideaway Landfill	Middleton.	
WI	Ripon City Landfill	Ripon	C
WI	Sauk County Landfill	Exelsior	C
WI	Schmalz Dump	Harrison	C
WI	Scrap Processing Co., Inc	Medford.	
WI	Sheboygan Harbor & River	Sheboygan.	
WI	Spickler Landfill	Spencer.	
WI	Stoughton City Landfill	Stoughton.	
WI	Tomah Armory	Tomah.	
WI	Tomah Fairgrounds	Tomah	C
WI	Tomah Municipal Sanitary Landfill	Tomah.	
WI	Waste Mgmt of WI (Brookfield Sanit LF)	Brookfield.	
WI	Wausau Ground Water Contamination	Wausau	C
WI	Wheeler Pit	La Prairie Township	C
WV	Fike Chemical, Inc	Nitro.	
WV	Follansbee Site	Follansbee.	
WV	Ordnance Works Disposal Areas	Morgantown.	
WV	Sharon Steel Corp (Fairmont Coke Works)	Fairmont.	
WY	Baxter/Union Pacific Tie Treating	Laramie.	
WY	Mystery Bridge Rd/U.S. Highway 20	Evansville	C

(a) A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes(a)
AK	Adak Naval Air Station	Adak.	
AK	Eielson Air Force Base	Fairbanks N Star Borough.	
AK	Elmendorf Air Force Base	Greater Anchorage Borough.	
AK	Fort Richardson (USARMY)	Anchorage.	
AK	Fort Wainwright	Fairbanks N Star Borough.	
AK	Standard Steel&Metals Salvage Yard (USDOT)	Anchorage.	
AL	Alabama Army Ammunition Plant	Childersburg.	
AL	Anniston Army Depot (SE Industrial Area)	Anniston.	
AL	Redstone Arsenal (USARMY/NASA)	Huntsville.	
AZ	Luke Air Force Base	Glendale.	
AZ	Williams Air Force Base	Chandler.	
AZ	Yuma Marine Corps Air Station	Yuma.	
CA	Barstow Marine Corps Logistics Base	Barstow.	
CA	Camp Pendleton Marine Corps Base	San Diego County.	
CA	Castle Air Force Base	Merced.	
CA	Concord Naval Weapons Station	Concord.	
CA	Edwards Air Force Base	Kern County.	
CA	El Toro Marine Corps Air Station	El Toro.	
CA	Fort Ord	Marina.	
CA	George Air Force Base	Victorville.	
CA	Jet Propulsion Laboratory (NASA)	Pasadena.	
CA	LEHR/Old Campus Landfill (USDOE)	Davis.	
CA	Lawrence Livermore Lab Site 300 (USDOE)	Livermore.	
CA	Lawrence Livermore Laboratory (USDOE)	Livermore.	
CA	March Air Force Base	Riverside.	
CA	Mather Air Force Base	Sacramento.	
CA	McClellan Air Force Base (GW Contam)	Sacramento.	
CA	Moffett Naval Air Station	Sunnyvale.	
CA	Norton Air Force Base	San Bernardino.	
CA	Riverbank Army Ammunition Plant	Riverbank.	
CA	Sacramento Army Depot	Sacramento.	
CA	Sharpe Army Depot	Lathrop.	
CA	Tracy Defense Depot (USARMY)	Tracy.	
CA	Travis Air Force Base	Solano County.	
CA	Treasure Island Naval Station-Hun Pt An	San Francisco.	
CO	Air Force Plant PJKS	Waterton.	
CO	Rocky Flats Plant (USDOE)	Golden.	
CO	Rocky Mountain Arsenal (USARMY)	Adams County.	
CT	New London Submarine Base	New London.	
DE	Dover Air Force Base	Dover.	
FL	Cecil Field Naval Air Station	Jacksonville.	
FL	Homestead Air Force Base	Homestead.	
FL	Jacksonville Naval Air Station	Jacksonville.	
FL	Pensacola Naval Air Station	Pensacola.	
FL	Whiting Field Naval Air Station	Milton.	
GA	Marine Corps Logistics Base	Albany.	
GA	Robins Air Force Base(Lf#4/Sludge lagoon	Houston County.	
GU	Andersen Air Force Base	Yigo.	
HI	Naval Computer & Telecommunications Area	Oahu.	
HI	Pearl Harbor Naval Complex	Pearl Harbor.	
HI	Schofield Barracks (USARMY)	Oahu.	
IA	Iowa Army Ammunition Plant	Middletown.	
ID	Idaho National Engineering Lab (USDOE)	Idaho Falls.	
ID	Mountain Home Air Force Base	Mountain Home.	
IL	Joliet Army Ammunition Plant (LAP Area)	Joliet.	
IL	Joliet Army Ammunition Plant (Mfg Area)	Joliet.	
IL	Sangamo Electric/Crab Orchard NWR (USDOI	Carterville.	
IL	Savanna Army Depot Activity	Savanna.	
KS	Fort Riley	Junction City.	
KY	Paducah Gaseous Diffusion Plant (USDOE)	Paducah.	
LA	Louisiana Army Ammunition Plant	Doyline.	
MA	Fort Devens	Fort Devens.	
MA	Fort Devens-Sudbury Training Annex	Middlesex County.	
MA	Hanscom Field/Hanscom Air Force Base	Bedford.	
MA	Materials Technology Laboratory (USARMY)	Watertown.	
MA	Natick Laboratory Army Research, D&E Cntr	Natick.	
MA	Naval Weapons Industrial Reserve Plant	Bedford.	
MA	Otis Air National Guard (USAF)	Falmouth.	
MA	South Weymouth Naval Air Station	Weymouth.	
MD	Aberdeen Proving Grounds (Edgewood Area)	Edgewood.	
MD	Aberdeen Proving Ground (Michaelsville LF	Aberdeen.	
MD	Beltsville Agricultural Research (USDA)	Beltsville.	

TABLE 2.—FEDERAL FACILITIES SECTION—Continued

State	Site name	City/county	Notes(a)
MD	Indian Head Naval Surface Warfare Center	Indian Head.	
MD	Patuxent River Naval Air Station	St. Mary's County.	
ME	Brunswick Naval Air Station	Brunswick.	
ME	Loring Air Force Base	Limestone.	
ME	Portsmouth Naval Shipyard	Kittery.	
MN	Naval Industrial Reserve Ordnance Plant	Fridley.	
MN	New Brighton/Arden Hills/TCAAP (USARMY)	New Brighton.	
MN	Twin Cities Air Force Base (SAR Landfill)	Minneapolis.	
MO	Lake City Army Ammu. Plant (NW Lagoon)	Independence.	
MO	Weldon Spring Former Army Ordnance Works	St. Charles County.	
MO	Weldon Spring Quarry/Plant/Pitts (USDOE)	St. Charles County.	
NC	Camp Lejeune Military Res. (USNAVY)	Onslow County.	
NC	Cherry Point Marine Corps Air Station	Havelock.	
NE	Cornhusker Army Ammunition Plant	Hall County.	
NH	Pease Air Force Base	Portsmouth/Newington.	
NJ	Federal Aviation Admin. Tech. Center	Atlantic County.	
NJ	Fort Dix (Landfill Site)	Pemberton Township.	
NJ	Naval Air Engineering Center	Lakehurst.	
NJ	Naval Weapons Station Earle (Site A)	Colts Neck.	
NJ	Picatinny Arsenal (USARMY)	Rockaway Township.	
NJ	W.R. Grace/Wayne Interim Storage (USDOE)	Wayne Township.	
NM	Cal West Metals (USSBA)	Lemitar.	
NM	Lee Acres Landfill (USDOI)	Farmington.	
NY	Brookhaven National Laboratory (USDOE)	Upton.	
NY	Griffiss Air Force Base	Rome.	
NY	Plattsburgh Air Force Base	Plattsburgh.	
NY	Seneca Army Depot	Romulus.	
OH	Feed Materials Production Center (USDOE)	Fernald.	
OH	Mound Plant (USDOE)	Miamisburg.	
OH	Wright-Patterson Air Force Base	Dayton.	
OK	Tinker Air Force (Soldier Cr/Bldg 300)	Oklahoma City.	
OR	Fremont Nat. Forest Uranium Mines (USDA)	Lakeview.	
OR	Umatilla Army Depot (Lagoons)	Hermiston.	
PA	Letterkenny Army Depot (PDO Area)	Franklin County.	
PA	Letterkenny Army Depot (SE Area)	Chambersburg.	
PA	Naval Air Development Center (8 Areas)	Warminster Township.	
PA	Navy Ships Parts Control Center	Mechanicsburg.	
PA	Tobyhanna Army Depot	Tobyhanna.	
PA	Willow Grove Naval Air & Air Res. Stn	Willow Grove.	
PR	Naval Security Group Activity	Sabana Seca.	
RI	Davisville Naval Construction Batt Cent	North Kingston.	
RI	Newport Naval Education/Training Center	Newport.	
SC	Parris Island Marine Corps Recruit Depot	Parris Island.	
SC	Savannah River Site (USDOE)	Aiken.	
SD	Ellsworth Air Force Base	Rapid City.	
TN	Memphis Defense Depot (DLA)	Memphis.	
TN	Milan Army Ammunition Plant	Milan.	
TN	Oak Ridge Reservation (USDOE)	Oak Ridge.	
TX	Air Force Plant #4 (General Dynamics)	Fort Worth.	
TX	Lone Star Army Ammunition Plant	Texarkana.	
TX	Longhorn Army Ammunition Plant	Karnack.	
TX	Pantex Plant (USDOE)	Pantex Village.	
UT	Hill Air Force Base	Ogden.	
UT	Monticello Mill Tailings (USDOE)	Monticello.	
UT	Ogden Defense Depot (DLA)	Ogden	C
UT	Tooele Army Depot (North Area)	Tooele.	
VA	Defense General Supply Center (DLA)	Chesterfield County.	
VA	Fort Eustis (US Army)	Newport News.	
VA	Langley Air Force Base/NASA Langley Cntr	Hampton.	
VA	Marine Corps Combat Development Command	Quantico.	
VA	Naval Surface Warfare—Dahlgren	Dahlgren.	
VA	Naval Weapons Station—Yorktown	Yorktown.	
WA	American Lake Gardens/McChord AFB	Tacoma	C
WA	Bangor Naval Submarine Base	Silverdale.	
WA	Bangor Ordnance Disposal (USNAVY)	Bremerton.	
WA	Fairchild Air Force Base (4 Waste Areas)	Spokane County.	
WA	Fort Lewis Logistics Center	Tillicum.	
WA	Hanford 100–Area (USDOE)	Benton County.	
WA	Hanford 200–Area (USDOE)	Benton County.	
WA	Hanford 300–Area (USDOE)	Benton County.	
WA	Jackson Park Housing Complex (USNAVY)	Kitsap County.	
WA	Naval Air Station, Whidbey Island (Ault)	Whidbey Island.	

TABLE 2.—FEDERAL FACILITIES SECTION—Continued

State	Site name	City/county	Notes(a)
WA	Naval Undersea Warfare Station (4 Areas)	Keyport.	
WA	Old Navy Dump/Manchester Lab (USEPA/NOAA)	Manchester.	
WA	Port Hadlock Detachment (USNAVY)	Indian Island.	
WA	Puget Sound Naval Shipyard Complex	Bremerton.	
WV	Allegany Ballistics Laboratory (USNAVY)	Mineral.	
WV	West Virginia Ordnance (USARMY)	Point Pleasant	S
WY	F.E. Warren Air Force Base	Cheyenne.	

(a) A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).
P=Sites with partial deletion(s).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5668–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 21

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list.

This rule proposes to add 5 new sites to the General Superfund Section of the NPL and withdraws the proposal of one site. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

DATES: Comments must be submitted (postmarked) on or before February 21, 1997.

ADDRESSES:

By Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–8917.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND. DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

For additional Docket addresses and further details on their contents, see Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100, Stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 USC 9601(23). ''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 USC 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List (''NPL'').

CERCLA section 105(a)(8)(B) defines the NPL as a list of ''releases'' and as a list of the highest priority ''facilities.'' CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on June 17, 1996 (61 FR 30510).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed generally by other Federal agencies (the ''Federal Facilities Section''). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

Site Boundaries

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) mandates listing of national priorities among the known ''releases or threatened releases.'' The purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, it is necessary to define the release (or releases) encompassed by the listing. The approach generally used is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

To date, the Agency has deleted 132 sites from the NPL.

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of December 1996, EPA has partially deleted 4 sites.

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) the site qualifies for deletion from the NPL.

Inclusion of a site on the CCL has no legal significance.

In addition to the 125 sites that have been deleted from the NPL because they have been cleaned up (7 sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 287 sites are also on the NPL CCL. Thus, as of December 1996, the CCL consists of 412 sites.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–8917.

(Please note this is a visiting address only. Mail comments to address listed in **ADDRESSES** section above.)

Jim Kyed, Region 1, U.S. EPA Waste Management Records Center, HRC-CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656.

Ben Conetta, Region 2, U.S. EPA, 290 Broadway, New York, NY 10007–1866, 212/637–4435.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/566–5250.

Kathy Piselli, Region 4, U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8190.

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214.

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740.

Carole Long, Region 7, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224.

Bob Heise, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/312–6831.

Carolyn Douglas, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2343.

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103.

Except for the site being proposed based on ATSDR health advisory criteria, the Headquarters docket for this rule contains: HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. For the site proposed based on ATSDR health advisory criteria, the Headquarters docket contains the ATSDR Health Advisory and EPA's documentation supporting the proposed listing.

The Headquarters docket also contains an ''Additional Information'' document which provides a general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, and the economic impacts of NPL listing.

Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus, for the sites proposed based on HRS score, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an ''as received'' basis. Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). EPA will make final listing decisions after considering the relevant comments received during the comment period.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Contents of This Proposed Rule

Table 1 identifies the 5 sites in the General Superfund Section being proposed to the NPL in this rule. This table follows this preamble. Four sites are proposed based on HRS scores of 28.50 or above and one site is proposed based on ATSDR health advisory criteria. The sites in Table 1 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Withdrawal of Broward County, 21st Manor Dump

EPA is hereby withdrawing the proposal of the Broward County, 21st Manor Dump, located in Fort Lauderdale, Florida. This withdrawal was proposed on October 2, 1995 (60 FR 51393). EPA received no comments regarding the proposal to withdraw this site.

Proposal, Based on Risk Assessment, To Withdraw an Earlier Proposal To List the Annie Creek Mine Tailings Site on the NPL

Also in this notice, EPA is proposing to withdraw its earlier proposal to list the Annie Creek Mine Tailings site on the NPL. The proposal was published in the Federal Register on July 29, 1991 (56 FR 35840). This decision is supported by the results of an engineering evaluation/cost assessment (EE/CA) for the site and by the protectiveness that is provided by the completed non-time critical removal action which took place at this site.

The Annie Creek site is located in the Black Hills National Forest, 3.5 miles west of Lead in Lawrence County, South Dakota. The site is in mountainous terrain forested with ponderosa pine, spruce, aspen, and birch. There is a ski area and other recreational facilities located within one mile of the site.

In September of 1987, the South Dakota Department of Natural Resources (DENR) conducted a Preliminary Assessment (PA) of the Annie Creek site. The PA concluded that finely ground tailings material, deposited from mining and milling activities that took place before 1917, were being eroded and causing siltation up to one-quarter mile downstream along Annie Creek. The PA also noted that a wooden crib damn built to contain the tailings was in deteriorating condition. The PA detected arsenic, and to a lesser extent, cyanide in surface water samples from Annie Creek below the impoundment at values above background concentrations.

In May of 1989, EPA directed that a Site Inspection (SI) be conducted. Tailings, surface water, groundwater and stream sediment samples were collected and analyzed. Results from the SI detected elevated levels of arsenic in Annie Creek and in sediments in Spearfish Creek about one mile below its confluence with Annie Creek. Lower concentrations of other contaminants were also noted.

The site, which is within the Annie Creek drainage basin, was proposed for placement on the NPL on July 29, 1991. Subsequent to proposal for placement on the NPL, EPA conducted the aforementioned Engineering Evaluation/Cost Analysis (EE/CA) for the Annie Creek site. This EE/CA was completed on September 27, 1993. A full site characterization and baseline risk assessment was conducted which included full examination of human health and ecological risks presented by contamination found at the site. The EE/CA collected all the data necessary to reach a final decision about cleanup at Annie Creek.

In October of 1993, EPA sent out a Proposed Plan to obtain the response of the community, the state, and other interested Federal authorities to EPA's selected response action for the Annie Creek site. Response was favorable, and on February 1, 1994, an Action Memorandum was signed approving the response action outlined in the Proposed Plan. The response action proposed in the EE/CA was determined to be the final response action for the site. Removal activities began at the site on July 20, 1994. Activities included the regrading and covering of contaminated soils with clean soil which was then revegatated. Surface water runoff from Annie Creek was diverted through the use of drainage controls. Significant institutional controls were also put into place as part of this response action. The response action was complete on August 2, 1994.

Based on the EE/CA that was done for the Annie Creek site and taking into account the subsequent Removal response action, the Agency has determined that the Annie Creek site, as proposed to the NPL, no longer poses a significant risk to human health and the environment.

These actions along with a final rule published elsewhere in today's Federal Register, results in an NPL of 1,210 sites, 1,059 in the General Superfund Section and 151 in the Federal Facilities Section. With this proposal of 5 new sites, there are now 49 sites proposed and awaiting final agency action, 42 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,259.

III. Executive Order 12866

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

IV. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (within the meaning of Title II of the UMRA) for State, local, or tribal governments or the private sector. Nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. This is because today's listing decision does not impose any enforceable duties upon any of these governmental entities or the private sector. Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Therefore, today's rulemaking is not subject to the requirements of sections 202, 203 or 205 of the Unfunded Mandates Reform Act.

V. Effect on Small Businesses

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not

automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

NATIONAL PRIORITIES LIST PROPOSED RULE NO. 2 GENERAL SUPERFUND SECTION

State	Site name	City/county	NPL Gr
GA	Brunswick Wood Preserving	Brunswick	3
NJ	Grand Street Mercury	Hoboken	NA
TN	Ross Metals Inc	Rossville	16
WA	Oeser Co	Bellingham	1
WA	Palermo Well Field Ground Water Contamination	Tumwater	5/6

Number of Sites Proposed to General Superfund Section: 5.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Environmental Protection, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

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

Dated: December 13, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 96–32352 Filed 12–20–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday
December 23, 1996

Part V

The President

Presidential Determination No. 97–12—Drawdown of Commodities and Services From the Inventory and Resources of the Department of Defense To Support a Peace Monitoring Force in Northern Iraq

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 97–12 of December 11, 1996

Drawdown of Commodities and Services From the Inventory and Resources of the Department of Defense To Support a Peace Monitoring Force in Northern Iraq

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

Pursuant to the authority vested in me by sections 552(c)(2) and 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) and 2364(a)(1) (the ''Act''), I hereby determine that:

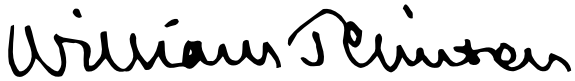
(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States;

(2) an unforeseen emergency requires the immediate provision of assistance under Chapter 6 Part II of the Act; and

(3) it is important to the security interests of the United States to furnish up to $4 million of commodities and services from the inventory of the Department of Defense to support a Peace Monitoring Force in northern Iraq, without regard to any provision of law within the scope of section 614(a)(1) of the Act, including various restrictions on providing assistance to Iraq.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Department of Defense of an aggregate value not to exceed $4 million to support a Peace Monitoring Force in northern Iraq.

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



THE WHITE HOUSE,
Washington, December 11, 1996.

[FR Doc. 96–32740
Filed 12–20–96; 8:47 am]
Billing code 4710–10–M

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
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2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
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500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
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28 Parts:			
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30 Parts:			
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200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
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43 Parts:			
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4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
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45 Parts:			
*●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
*●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
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46 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.